

Local Programs Procedures

CALIFORNIA DEPARTMENT OF TRANSPORTATION

Division of Local Assistance
Office of Guidance and Oversight

18-01



Local Programs Procedures

LPP 18-01 Manual Update Subject: Technical Changes

Effective Date: January 2019

Approved: **Original Signature**
Ray Zhang, Chief
Division of Local Assistance

Local Assistance Procedures Manual (LAPM)

Chapters

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Chapter 2 Roles and Responsibilities
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Chapter 5 Invoicing
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Chapter 11 Design Guidance
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Exhibit 2-B
Exhibits 3-A, 3-B, 3-C, 3-D, 3-F, 3-I, 3-O, 3-Q
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Local Assistance Program Guidelines (LAPG)

Chapters

Chapter 2 Financing the Federal-Aid Highway Program
Chapter 6 Highway Bridge Program
Chapter 13 Intelligent Transportation Systems
Chapter 22 Active Transportation Program
Chapter 23 Local Agency STIP Projects
Appendix A Financial Guidelines for Local Agency Reimbursement

The following Division of Local Assistance Office Bulletins (DLA-OB) have been incorporated into the LAPM and expire upon issuance of this LPP.

DLA-OB	TITLE
18-01	Period of Performance
18-02	Highway Bridge Program Project Programming Policy

WHAT IS AN LPP?

LPPs are Local Programs Procedures. These documents are used to deploy policy and procedure updates to the LAPM/LAPG. They are numbered according to calendar year and in order for which they were released.

PURPOSE

The purpose of this LPP is to incorporate DLA-OB 18-01 and DLA-OB 18-02, along with other technical changes, into the LAPM/LAPG. Technical changes may also include clarifications or corrections to portions of the LAPM/LAPG brought to our attention by the Federal Highway Administration, Districts, Local Agencies, MPOs, RTPAs and other organizations.

POLICY AND PROCEDURES

This LPP impacts all local assistance projects. Significant changes to the LAPM/LAPG are noted in the summary table below and on the attached chapter pages using a border in the right margin. Minor typo and grammatical changes were made throughout the LAPM/LAPG, but are not documented in the summary table. **Attached chapters will only consist of the impacted section or paragraph, while attached exhibits are included in their entirety, regardless of change.**

Below is a summary of the significant revisions:

Local Assistance Procedures Manual (LAPM)

LAPM	
Multiple chapters and various sections were updated *not included but changes were made throughout the LAPM.	<ul style="list-style-type: none"> High Profile Project is no longer used by FHWA. This has been revised with Projects of Division Interest (PoDI). Caltrans Audits & Investigation (A&I) is now known as the Independent Office of Audits and Investigations (IOAI). Office of Policy Development and Quality Assurance is now known as the Office of Guidance and Oversight (OGO).

Chapter 1 Introduction and Overview	
1.4 Terms and Definitions	<ul style="list-style-type: none"> Added California Division Office (CADO), Major Project, Project Oversight Agreement (POA) and Projects of Division Interest (PoDI) definitions.
1.5 Acronyms and Definition Subtitle: Table 1: Acronyms Table	<ul style="list-style-type: none"> Added CADO, PoDI and POA in the Acronyms Table.

1.7 Manual Updates	<ul style="list-style-type: none"> Created new e-mail address to ensure comments and suggestions are received by staff.
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Chapter 2 Roles and Responsibilities

Table of Content	<ul style="list-style-type: none"> Updated TOC to reflect the Projects of Division Interest (PoDI).
2.2: National Highway System	<ul style="list-style-type: none"> Corrected the NHS centerline miles to 230,000.
Figure 2-1: PoDI Project Identification and Review Process	<ul style="list-style-type: none"> Added new flowchart for determining PoDI projects.
2.5: Projects of Division Interest Subtitle: Project of Division Interest Project Selection Process	<ul style="list-style-type: none"> Incorporated criteria for determining PoDI projects.
2.6: Right-of-Way Certification Delegation	<ul style="list-style-type: none"> Corrected the language and referenced the LAPM Chapter 13 for consistency.
2.8: Projects on the National Highway System (NHS) Subtitle: Field Reviews	<ul style="list-style-type: none"> Added the word “significant” to be consistent with LAPM Chapter 7 Section 7.2, Subtitle Optional Review.
Subtitle: Restricted Construction Contract Provisions	<ul style="list-style-type: none"> Corrected the current language regarding the use of proprietary items on NHS projects by adding “unless an exception is approved”.
2.9: Federal-Aid Process of \$100 Million to \$500 Million or More Subtitle: Projects of \$500 Million or more	<ul style="list-style-type: none"> Second bullet was revised to reflect new requirements that agency submits to Caltrans.
Subtitle: Project Management Plan	<ul style="list-style-type: none"> Added the inclusion of FHWA PMP review checklist when submitting.
Subtitle: Financial Plan	<ul style="list-style-type: none"> Added the inclusion of FHWA financial plan checklist when submitting. Added language to the third bullet to provide clarity when submitting Financial Plan.
Subtitle: Projects between \$100 Million and \$500 Million	<ul style="list-style-type: none"> First paragraph was updated to be consistent with Section 2.9, second bullet. Second paragraph was updated regarding the POA requirement.
2.11: Caltrans Responsibilities Subtitle: Project Implementation	<ul style="list-style-type: none"> This section has been updated to reflect the list of Caltrans project responsibilities per the 2015 Stewardship and Oversight Agreement.

Chapter 2 Roles and Responsibilities (Exhibit)

Exhibit 2-B: Federal-Aid Project Responsibilities List

- The table has been updated per 2015 Stewardship and Oversight Agreement.

Chapter 3 Project Authorization

Table of Contents

- Updated to include Simultaneous Submittal of Allocation/Authorization Request.

3.1 Introduction
Subtitle: General

- Updated the FHWA and Caltrans Stewardship and Oversight agreement date.

Acronyms

- Added STBGP.

Terms and Definitions

- Added Projects of Division Interest (PoDI).

Subtitle: Preliminary Engineering Phases Over Ten Years

- Updated link: *FHWA Order 5020.1* to FHWA Order 5020.1a.

Subtitle: Intelligent Transportation System

- Added new language to provide more clarification on what phases should ITS projects be authorized on given cases.

3.3 Request for Authorization

- Added new section for Simultaneous Submittal of Allocation/Authorization Request.

3.4 Administrative Procedures

- Corrected the last sentence of the second paragraph regarding FMIS authorization and approval of projects.

3.6 Under Funded Projects

- Corrected the last sentence of the second paragraph regarding final invoice reimbursement if lump sum is being used.

Subtitle: Federal Reimbursement of Underfunded Projects

3.10 Toll Credits in Lieu of Non-Federal Match

- Second bullet was updated to provide more clarification on how to reflect Toll Credits in Exhibit 3-O.

Chapter 3 Project Authorization (Exhibits)

Exhibit 3-A: Request for Authorization to Proceed with Preliminary Engineering

- Incorporated policy and procedures from OB 18-01.
- Request for Authorization Package
 - Fourth checkbox was deleted. SEMP approval is NOT required as part of the INITIAL funding approval.
- Certification
 - Deleted "*adhere to ITS Standards*" and changed "*undergo*" to "perform a"

Exhibit 3-B: Request for Authorization to Proceed with Right of Way

- Incorporated policy and procedures from OB 18-01.

Exhibit 3-C: Request for Authorization to Proceed with Utility Relocation	<ul style="list-style-type: none"> • Incorporated policy and procedures from OB 18-01.
Exhibit 3-D: Request for Authorization to Proceed with Construction	<ul style="list-style-type: none"> • Incorporated policy and procedures from OB 18-01. • Under DBE Contract Goal Methodology Form (Exhibit 9-D) <ul style="list-style-type: none"> ◦ Deleted the “Anticipated Construction Contract Award Date: ____.”
Exhibit 3-F: Instructions for Request for Authorization to Proceed Data Sheets	<ul style="list-style-type: none"> • Page 3-37 was updated to reflect the Projects of Division Interest criteria mentioned in LAPM Chapter 2.
Exhibit 3-I: Request for Local Advance Construction	<ul style="list-style-type: none"> • Added “Signature of...” to specify that this must be signed by the agency.
Exhibit 3-O: Sample “Local Federal-Aid Finance Letter	<ul style="list-style-type: none"> • Incorporated policy and procedures from OB 18-01. • Added Toll Credits check box and Amount (below the Remarks section) to reflect Section 3.10, second bullet.
Exhibit 3-Q: Request for Authorization to Proceed with Non-Infrastructure Project (Construction Phase)	<ul style="list-style-type: none"> • Incorporated policy and procedures from OB 18-01.

Chapter 5 Invoicing

Tale of Contents	<ul style="list-style-type: none"> • Replaced Period of Performance End Date with Agreement End Date (AED)
5.3 Reimbursable Project Costs	<ul style="list-style-type: none"> • Corrected reference from Section 16.13 to 16.10.
Subtitle: Indirect Costs	<ul style="list-style-type: none"> • Added 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards, Section 200.414.
Subtitle: Pro Rata vs. Lump Sum	<ul style="list-style-type: none"> • Added language to provide more clarification regarding cost adjustments for Pro Rata projects.
Subtitle: Period of Performance & Agreement End Date (AED)	<ul style="list-style-type: none"> • The entire language under these sections were changed to incorporate DLA OB 18-01.

Chapter 6 Environmental Procedures

6.1 Introduction Section: 1.2 District Senior Environmental Planner (SPE) or Designee	<ul style="list-style-type: none">Deleted subsection “1.2.31 Approves Individual Section 4(f) Evaluations” per Signature Authorities under NEPA Assignment.Adjusted subsequent numbers.
6.2 An Overview of the Environmental Process Subtitle: General Procedures for Demonstrating Compliance with these Processes	<ul style="list-style-type: none">This section was updated to document the requirements for Categorical Exclusion Checklist and the Transportation Air Quality Conformity Findings requirements for PES (NI) projects.
6.3 Other Considerations Subtitle: Permits	<ul style="list-style-type: none">Corrected the language by deleting “Any work performed before the date on the permit will not be federally reimbursable” so it doesn’t contradict the prior statement.
6.5 Step by Step Procedures – PES Form Step #8	<ul style="list-style-type: none">This section was updated to be consistent with LAPM Chapter 2 under Field Reviews.

Chapter 6 Environmental Procedures (Exhibits)

Exhibit 6-A: Preliminary Environmental Study (PES) Form	<ul style="list-style-type: none">Updated text on question #6 of the PES. The PES form now allows selection of the air quality conformity exemption under 40 CFR 93.128.
Exhibit 6-B: Instructions for Completing the Preliminary Environmental Study (PES) Form	<ul style="list-style-type: none">Updated PES Instructions to included updated link to 40 CFR 93.126, Table 2 and 40 CFR 93.127, Table 3. Also updated text to read, "...or state if 40 CFR 93.128 applies."Updated links for Questions #5, #15 and #21.(page 11 of 24): Removed Biological Evaluation (BE), this term is no longer use.
Exhibit 6-C: Table 2- Exempt Projects	<ul style="list-style-type: none">Updated Table per SER guidance.
Exhibit 6-D: Table 3- Exempt Projects	<ul style="list-style-type: none">Updated Table per SER guidance.

Chapter 7 Field Review (Exhibits)

Exhibit 7-A: Instructions for Field Review Form	<ul style="list-style-type: none">The instructions were modified and updated to conform with the changes made in Exhibit 7-B.
Exhibit 7-B: Field Review Form	<ul style="list-style-type: none">Modified and updated the required fields to conform to the evaluation study within the DLA.
Exhibit 7-I: Systems Engineering Review Form (SERF)	<ul style="list-style-type: none">Added section boxes to identify the project information, local agency and Caltrans DLAE contacts.

Chapter 8 Public Hearings

8.2 Necessity of a Public hearing Subtitle: Categorical Exclusion	<ul style="list-style-type: none">Added additional information for County Clerk's office posting.
Subtitle: Environmental Assessment	<ul style="list-style-type: none">5th Bullet: changed Delegation to Assignment to update current terms.
8.4 Public Notification	<ul style="list-style-type: none">Added a last bullet, "Electronic media such as..." to bring manual to current public notification options.
Subtitle: Notice of Opportunity for Public Hearing	<ul style="list-style-type: none">Updated to bring manual to current public notification options (i.e. websites and electronic mail).
8.10 Location and Design Approval	<ul style="list-style-type: none">This language has been updated to be consistent with language in LAPM Chapter 11; 11.5 Design Guidance for projects on SHS.

Chapter 10 Consultant Selection

Entire Chapter	<ul style="list-style-type: none">This chapter was updated to provide clarification between Federal and State A&E requirements. The chapter also includes non- A&E guidance.
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Chapter 10 Consultant Selection (Exhibits)

Exhibit 10-A: A&E Consultant Financial Document Review Request	<ul style="list-style-type: none">This exhibit was updated to include state projects and clarify the usage for contracts totaling \$150,000.
Exhibit 10-C.2: State Only Funded A&E Consultant Contract Reviewers Checklist	<ul style="list-style-type: none">This new exhibit was created to address the State Only Funded A&E consultant contract.
Exhibit 10-G: Individual A&E Task Order DBE Tracking Sheet	<ul style="list-style-type: none">This exhibit was created for tracking individual task orders and DBE information and can be used to close out projects that utilize on-call contracts.
Exhibit 10-O1: Consultant Proposal DBE Commitment	<ul style="list-style-type: none">A line was added to include the consultant's ranking after evaluation to aid the local agency in determining the most qualified consultant.
Exhibit 10-R: A&E Boilerplate Agreement Language	<ul style="list-style-type: none">This exhibit has extensive changes throughout and aligns with actual local agency contracts. State prevailing wage info was also included.
Exhibit 10-T: Conflict of Interest Confidentiality Statement	<ul style="list-style-type: none">This exhibit was updated to reflect the usage is for anyone involved in procurement process. It also includes current CFR conflict of interest language.

Chapter 11 Design Guidance

11.6 Other Considerations Subtitle: Floodplain Encroachment	<ul style="list-style-type: none">Added the words “local projects” for clarity.
Subtitle: Accessibility and the Americans with Disabilities Act	<ul style="list-style-type: none">Updated the hyperlink at the end of the sixth paragraph.

Chapter 12 Plans, Specifications, & Estimate

Table of Contents	<ul style="list-style-type: none">Updated to reflect the changes made in subtitle under Sections 12.8 & 12.10.
12.6 Plans Subtitle: Plan Sheets and Specification Signatures	<ul style="list-style-type: none">Deleted a sentence after the word “State of California...” regarding the responsible charge status. The responsible person in charge for local agency projects doesn't have to be a registered PE (per https://www.fhwa.dot.gov/federalaid/110804.cfm).
Subtitle: Standard Plans	<ul style="list-style-type: none">First paragraph, second sentence was corrected to avoid confusion regarding responsible charge. The responsible person in charge for local agency projects doesn't have to be a registered PE (per https://www.fhwa.dot.gov/federalaid/110804.cfm).
12.8 Federal Contract Requirements Subtitle: Contract Time	<ul style="list-style-type: none">Changed the word “innovative” to “alternative” since the term innovative is outdated and no longer used by FHWA.
Subtitle: Federal Wage Rates	<ul style="list-style-type: none">Changed subtitle to “Federal Wage Rates Determinations”.Updated the language to provide clearer and specific guidance regarding federal wage rates.
12.10 Optional Contract Provisions Subtitle: Innovative Contracting Practices	<ul style="list-style-type: none">Changed the subtitle to “Alternative Contracting Practices”. The term Innovative is outdated.Updated the language to conform with the above change.

Chapter 12 Plans, Specifications, & Estimate (Exhibits)

Exhibit 12-B: Bidder's List of Subcontractor's (DBE and Non-DBE) Part 1 & 2	<ul style="list-style-type: none">Removed the word “Optional” as this form is required to be submitted with the bid book.Part 2 now requires the bidder to list the subcontractors who provided a quote or bid but not selected to participate on the job.
Exhibit 12-D: PS&E Checklist	<ul style="list-style-type: none">Provided additional information and added some required fields based on the process review circulated and pending for approval.
Exhibit 12-E: PS&E Checklist Instruction	<ul style="list-style-type: none">Provided additional information and deleted some language to conform with the proposed updates on Exhibit 12-D.
Exhibit 12-G: Required Federal-Aid Contract Language	<ul style="list-style-type: none">Modified and added language to provide clarification on the DBE functions, requirements and usage and consistency with Caltran's DBE Program Plan.

Exhibit 12-H: Sample Bid	<ul style="list-style-type: none"> • Added language in Article III (page 18) to provide clarification when project is subject to both State and Federal rates. • Added new Articles (VI and VII) that discusses the physical inclusion of unmodified FHWA-1273 and the Federal Prevailing Wage Rates in conformance with the federal 10-day rule. • Last page was updated to be consistent with: <ul style="list-style-type: none"> ○ LAPM Chapter 12, Section 12.8, Subtitle: Federal Wage Rates Determination and ○ The newly added Articles VI and VII.
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Chapter 13 Right of Way

Various sections	<ul style="list-style-type: none"> • This chapter was updated to provide clarification to ensure compliance with Federal requirements and State's oversight role via the Stewardship and Oversight agreement.
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Chapter 13 Right of Way (Exhibit)

Exhibit 13-B: Right of Way Certification Local Assistance Project (Off State Highway System)	<ul style="list-style-type: none"> • This exhibit was updated to ensure proper reference to federal code and in addition to the Stewardship and Oversight agreement.
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Chapter 14 Utility Relocations

Various sections	<ul style="list-style-type: none"> • A new Executive Summary has been added to help agency navigate the required documents needed for utility relocation. • This chapter was updated to provide clarification to ensure compliance with Federal requirements and State's oversight role via the Stewardship and Oversight agreement.
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Chapter 14 Utility Relocations (Exhibits)

Exhibit 14-G: Utility Agreement Clauses	<ul style="list-style-type: none"> • This exhibit was updated to ensure proper reference to federal code and in addition to the Stewardship and Oversight agreement.
Exhibit 14-J: Revised Notice to Owner	<ul style="list-style-type: none"> • This new exhibit has been added to conform with the updates made in Chapter 14. • Note: This is a CEFS Form.

Chapter 15 Advertise and Award Project

Table of Content	<ul style="list-style-type: none"> • Updated to reflect the changes made on section 15.4.
15.4 Project Advertisement Subtitle: Prequalification of Contractors	<ul style="list-style-type: none"> • Added new subsection "Prequalification of Contractors" to strengthen the guidance on this topic.

15.5 Contract Bid Opening Subtitle: Procedures	<ul style="list-style-type: none"> First and second paragraph after the last bullet “<i>Negotiation with contractors,...</i>” were deleted to be consistent with the newly added subsection in 15.4 “Prequalification of Contractors”.
15.6 Contract Award Subtitle: Award Procedures	<ul style="list-style-type: none"> Updated the first sentence to clarify that this procedure only applies for non PoDI projects.

Chapter 15 Advertise and Award Project (Exhibits)

Exhibit 15-G: Construction Contract DBE Commitment	<ul style="list-style-type: none"> Added language: “Local Agency to Complete this section upon Execution of Award”. Added: 25. Award Amount. <ul style="list-style-type: none"> Adjusted the succeeding numbers. Updated Instructions page sections #1, #3, #25
Exhibit 15-H: DBE Information – Good Faith Effort	<ul style="list-style-type: none"> Proposed new name for this exhibit. The language was updated to strengthen and clarify GFE documentation from a prime contractor or proposer.
Exhibit 15-L: Local Agency Contract Award Checklist	<ul style="list-style-type: none"> Deleted “Estimated construction complete date: ____.”

Chapter 16 Administer Construction Contract

16.1 Introduction Subtitle: Contract Administration Costs Eligible for Reimbursement	<ul style="list-style-type: none"> This paragraph was updated to conform and be parallel with LAPM Chapter 3. Section 3.3.
16.3 Maintaining Project Records Subtitle: Availability of Records for Review or Audit	<ul style="list-style-type: none"> The first sentence was updated to be consistent with the Funds Management Guidance of 2018.
16.4 Pre-Construction Conference and Partnering Subtitle: Possible/Recommended Attendees	<ul style="list-style-type: none"> Added FHWA Project Oversight Manager.
16.7 Subcontractors Subsection: If the Prime Contractor is found to be in violation of the Fair Practice Act.	<ul style="list-style-type: none"> First bullet was updated to provide clarity.
16.9 Employment Practice: Labor Compliance, EEO, DBE Section: Task 8	<ul style="list-style-type: none"> Corrected and remove duplicate link.

16.10 Change Order (CO)	<ul style="list-style-type: none"> At the very end of this section. Added language to clarify that FHWA may retain approval of CO on projects classified as PoDI.
16.11 Quality Assurance Program Subtitle: Introduction	<ul style="list-style-type: none"> Added this language “For federal construction projects,” to specify that QAP is only required for federal projects.
Subtitle: Project Certification	<ul style="list-style-type: none"> Replaced the term “the responsible person in charge” with “the person in responsible charge” (per https://www.fhwa.dot.gov/federalaid/110804.cfm).

Chapter 17 Project Completion

Table of Contents	<ul style="list-style-type: none"> Updated to show the Projects of Division Interest Projects
17.2 Definition of Terms	<ul style="list-style-type: none"> Added Projects of Division Interest definition.
17.5 Final Report of Expenditures Subtitle: Federal-Aid Projects	<ul style="list-style-type: none"> The last paragraph on page 7 below the bullet “<i>Invoice Total</i>” was deleted since this paragraph refers to the progress payment.

Chapter 17 Project Completion (Exhibits)

Exhibit 17-F A&E On-Call: Final Report-Utilization of Disadvantaged Business Enterprises for A&E On-Call Contracts	<ul style="list-style-type: none"> This new exhibit was created specifically for on-call consultant contracts and allows for the reporting of all task orders.
Exhibit 17-H: Cover Letter and Final Report of Expenditures Checklist (PE Only)	<ul style="list-style-type: none"> Reformatted and updated the required fields.

Local Assistance Program Guidelines (LAPG)

Chapter 2 Financing the Federal-Aid Highway Program

Various sections	<ul style="list-style-type: none">• Incorporated FHWA Comments received.• Updated chronology for the current Highway Act (FAST Act).• Updated to current funding programs, per the FAST Act.• Updated links.• Removed information deemed superfluous.
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Chapter 6 Highway Bridge Program

Various sections	<ul style="list-style-type: none">• Incorporated policy and procedures from OB 18-02.• Updated the office name to Office of Federal Programs.• Various sections were updated to correct significant updates from 2017.• Added new section HBP One Lane Bridge Policy standard for low volume road design.
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Chapter 13 Intelligent Transportation Systems

Various sections	<ul style="list-style-type: none">• Incorporated FHWA Comments received.• Various sections were updated due to obsolete information.• Corrected old terminology.• Removed information deemed unnecessary.
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Chapter 22 Active Transportation Projects

Executive Summary	<ul style="list-style-type: none">• A new Executive Summary has been added to highlight key dates and requirements.
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Chapter 23 Local Agency STIP Projects

Table of Content	<ul style="list-style-type: none">• Updated Table of Content to reflect the Simultaneous Submittal of Allocation/ Authorization Request.
23.4.1 Allocation of funds	<ul style="list-style-type: none">• Added new section Simultaneous Submittal of Allocation/ Authorization Request.

Appendix A Financial Guidelines for Local Agency Reimbursement

II Eligibility Subsection: B. Eligible Projects and Funding Sources	<ul style="list-style-type: none">• Updated the old transportation act and changed it to FAST Act 2015.
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The LAPM & LAPG can be found on the Division of Local Assistance website at:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm>

<http://www.dot.ca.gov/hq/LocalPrograms/lam/lapg.htm>

To receive notifications of updates, please subscribe to the DLA email list at:

<http://www.dot.ca.gov/hq/LocalPrograms/sub.htm>.

Comments and suggestions for improvement to the LAPM & LAPG may be submitted to [Ferdinand Batatan](#), Publications Manager, Division of Local Assistance.



Local Assistance Procedures Manual (LAPM)

1.4 TERMS AND DEFINITIONS

Action – A highway or transit project proposed for FHWA funding. It also includes activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of federal funds.

Administering Agency - The state or a city, county, other public agency, or nonprofit organizations, that plan, design, advertise, opens bids, award and administer the contract; are frequently called local agencies.

Affected Environment – The physical features, land, area, or areas to be influenced, or impacted, by an alternative alignment under consideration. This term also includes various social and environmental factors and conditions pertinent to an area.

Affecting – Means will or may have an effect or impact.

Alternative – One of a number of specific transportation improvement proposals, alignments, options, design choices, etc., in a defined study area. For a transportation project, alternatives to be studied normally include the no-action alternative, an upgrading of the existing roadway alternative, new transportation routes and locations, transportation systems management strategies, multi-modal alternatives, if warranted, and any combinations of the above.

Area of Potential Effect (APE) - A term used in Section 106 (Cultural Resource studies) to describe the area in which historic resources may be affected by a federal undertaking.

Avoidance Alternative – A general term used to refer to any alignment proposal, which has been either developed, modified, shifted, or downsized to specifically avoid impacting one or more resources.

California Division Office (CADO) – The Federal Highway Administration (FHWA) state Division Office. The Division Offices are local field offices that provide leadership, guidance, and direction to State Departments of Transportation in the project development and delivery of transportation projects. Working collaboratively with State partners, FHWA Division Offices ensure that the nation's roads, bridges and tunnels are safe and continue to support economic growth and environmental sustainability. <https://www.fhwa.dot.gov/about/field.cfm>

California Environmental Quality Act (CEQA) – State environmental law requiring State and local agencies to consider the environmental impacts of their decisions when approving public and private projects. Local agencies are the CEQA lead agency for local agency transportation projects off the SHS, but Caltrans is the CEQA lead agency for local agency transportation projects on the SHS unless otherwise delegated.

Categorical Exclusion (CE) – One of three (3) Classes of Action which prescribes the level of documentation required in the NEPA process. The CEs are Class II Actions, which do not individually or cumulatively have a significant effect on the environment; therefore, neither an EA, nor an EIS is required. Under NEPA Delegation, there are two means of categorically excluding a project: 1) Section 6004 Categorical Exclusions and 2) Section 6005 Categorical Exclusions.

- 6004 Categorical Exclusions: On June 7, 2007, Caltrans and FHWA entered into an MOU pursuant to Section 6004 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Section 6004 MOU assigns to Caltrans

designations from A to F with LOS A representing the best operating conditions, and LOS F the worst.

Local Agency – A California City, county, or other local public agency. In many instances this term is used loosely to include nonprofit organizations.

Logical Termini – Features such as cross route locations that are considered rational end points for a transportation improvement and which serve to make it useable.

Major Project – Defined as a project with a total estimated cost of \$500 million or more that is receiving Federal financial assistance. FHWA also has the discretion to designate a project with a total cost of less than \$500 million as a Major Project. All Major Projects must be PoDI projects, per Federal Guidance.

Metropolitan Planning Organization (MPO) – Federally mandated regional organizations responsible for comprehensive transportation planning and programming in urbanized areas. Work products include the Transportation Plan, the Transportation Improvement Program, and the Unified Planning Work Program.

Mitigation Measures – Specific design commitments made during the environmental evaluation and study process, which serve to moderate or lessen impacts deriving from the proposed action. In accordance with CEQ, mitigation includes avoidance, minimization, rectification, reduction, and compensation.

National Environmental Policy Act (NEPA) – Federal environmental law requiring federal agencies to consider the environmental impacts of their actions, evaluate least damaging alternatives, and ensure decisions are made in the public's best interest based on a balanced consideration of the need for safe and efficient transportation.

New Location – An area or an alignment proposed for highway development that is not currently used for transportation purposes.

NHS – National Highway System (see [LAPM Chapter 2: Roles and Responsibilities](#), Section 2.2 National Highway System).

No Action – An alternative that is used as the basis to measure the impacts and benefits of the preferred alternative(s) in an Environmental Assessment or EIS. The No Action alternative consists of the existing conditions on the roadway, plus any safety or maintenance improvements, which have been identified in the CDOT 5-Year Transportation Improvement Program.

No-Build Alternative – Normally includes short-term, minor restoration types of activities (e.g., safety and maintenance improvements) that maintain continuing operation of an existing facility. The no-build alternative serves as a baseline for the comparison of other alternatives.

Notice of Intent (NOI) – A notice published in the Federal Register that an EIS will be prepared and considered. The notice shall briefly describe the proposed action and possible alternatives, describe the agency's proposed scoping process including whether, when, and where any scoping meetings will be held, and state the name and address of a person within the agency who can answer questions about the proposed action and the EIS.

Permit – Written permission given by a governmental agency to take certain action during specific steps of the transportation project development process. Permits may include permission for any construction, excavation, depositing of material, or other work in navigable waters (Corps of Engineers), permission required for the discharge of dredged, or fill material into waters of the United States (Corps of Engineers), and permission to construct bridges, causeways, and drawbridges in navigable waters (U.S. Coast Guard). A permit may also refer certain other clearances or certifications such as a clearance from the Federal Aviation Administration for proposed highway construction in the vicinity of public use and military airports, and water quality certifications for the licensing of an action that would result in a discharge into regulated waters. These approvals, plus certain others relating to solid waste management, underground storage tanks, coastal zone areas, etc., involve approvals and documentation commonly referred to as permits.

Phase – For the purposes of federal-aid authorization, the development of a project is broken into stages or phases: Preliminary Engineering, Right of Way and Construction. Each of these phases must be individually authorized, usually at different times in the development of a project.

Preliminary Engineering (PE) – This phase includes all project initiation and development activities undertaken after its inclusion in the approved FSTIP through the completion of PS&E. It may include preliminary Right of Way engineering and investigations necessary to complete the environmental document.

Project Development – The overall process of advancing a transportation project from concept to implementation. Project development typically encompasses environmental and engineering tasks including planning, location, preliminary design, final design, and construction.

Projects of Division Interest (PoDI) – Projects where the CADO has retained one or more 23 U.S.C. 106 (c) responsibilities. These are projects that have an elevated risk, contain elements of higher risk, or present a meaningful opportunity for FHWA involvement to enhance meeting project objectives or advancing key initiatives. Major Projects are always designated as PoDIs.

Project Need – A detailed explanation of the specific transportation problems or deficiencies, which have generated the search for improvements. It should refer to technical information, as necessary, such as measures of traffic efficiency, or demand (origin-destination patterns, modal links, queue lengths, motorist delays, level of service, etc.), and other goals (economic development, safety improvement, legislative directives, etc.). Much of this information should be generated by the transportation planning process at a very early stage. The explanation of need should be a problem statement discussion, not a solution oriented discussion.

Project Oversight Agreement (POA) – The project specific document which highlights who is responsible for key project oversight activities. Each PoDI project will have a POA.

Project Purpose – A broad statement of the overall intended objective to be achieved by a proposed transportation facility. Normally, the purpose can be defined in just a few sentences. For instance, it may address expanded capacity in a given transportation corridor to facilitate the safe and efficient movement of people and goods, or improved access to a given area or community.

1.5 ACRONYMS AND DESCRIPTION

The acronyms table is a compilation of the acronyms that you will find throughout the manual.

Table 1: Acronyms Table

Acronyms	Description
3R	Resurfacing, Restoration or Rehabilitation
AADT	Annual Average Daily Traffic
AASHTO	American Association of State Highway and Transportation Officials
AC	Advance Construction
ADA	Americans with Disabilities Act
ASTM	American Society for Testing and Materials
ATP	Active Transportation Program
CADO	California Division Office
Caltrans	California Department of Transportation
CCO	Contract Change Order
CE	Construction Engineering
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CMAQ	Congestion Mitigation and Air Quality Improvement Program
CON	Construction
CRS	California Road System
CTC	California Transportation Commission
CTIPS	California Transportation Improvement Program System
DBE	Disadvantaged Business Enterprise
DES	Division of Engineering Services
DIB	Design Information Bulletins
DLA	Caltrans Division of Local Assistance
DLAE	Caltrans District Local Assistance Engineer
DMT	Caltrans Division of Mass Transportation
DRISI	Division of Research, Innovation, and System Information (Caltrans)
DTR	Caltrans District Transit Representative
E-76	Electronic Authorization to Proceed
EEM	Environmental Enhancement and Mitigation Program
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
ER	Emergency Relief
FA	Federal-Aid
FADS	Federal-Aid Data System (State Database)
FAST Act	Fixing America's Surface Transportation
FC	Functional Classification
FFY	Federal Fiscal Year
FHWA	Federal Highway Administration
FIPS	Federal Information Processing Standards
FMIS	Fiscal Management Information System (Federal Database)
FPN	Federal Project Number
FSTIP	Federal Statewide Transportation Improvement Program
FTA	Federal Transit Administration

FTIP	Federal Transportation Improvement Program
FY	Fiscal Year (State)
HBP	Highway Bridge Program
HCM	Highway Capacity Manual
HOV	High Occupancy Vehicle
HPMS	Highway Performance Monitoring System
HSE	Highway System Engineering
HSIP	Highway Safety Improvement Program
IAST	Independent Assurance and Sampling Testing
IIP	Interregional Improvement Program (Portion of STIP)
IRI	International Roughness Index
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
ITS	Intelligent Transportation Systems
LAPG	Local Assistance Program Guidelines
LAPM	Local Assistance Procedures Manual
LPA	Local Programs Accounting Branch
LPP	Local Programs Procedures
LRFD	Load and Resistance Factor Design
LRH	Last Resort Housing
LRS	Linear Reference System
LSSRP	Local Seismic Safety Retrofit Program
MAP-21	Moving Ahead for Progress in the 21 st Century
MPO	Metropolitan Planning Organization
MTC	Metropolitan Transportation Commission
NACTO	National Association of City Transportation Official
NBI	National Bridge Inventory
NBIS	National Bridge Inspection Standards
NCHRP	National Cooperative Highway Research Program
NEPA	National Environmental Policy Act
NHS	National Highway System
OA	Obligation Authority
OC	Overcrossing
OFR	Caltrans Office of Federal Resources
OWP	Overall Work Plan
PA/ED	Project Approval/Environmental Document
PCC	Portland Cement Concrete
PoDI	Projects of Division Interest
PE	Preliminary Engineering
PM	Post Mile
POA	Project Oversight Agreement
PPNO	Project Planning Number
PS&E	Plans, Specification and Estimate
PSA	Program Supplement Agreement
QAP	Quality Assurance Program
R/W	Right of Way
RAP	Relocation Assistance Program
RIP	Regional Improvement Program (Portion of STIP)
ROD	Record of Decision

Chapter 18: Maintenance, describes the ongoing maintenance responsibilities and activities needed to assure that the project remain a functional public asset, and the related inspection and reporting requirements.

Chapter 19: Oversight and Process Reviews, describes the oversight and process review methods by which Caltrans and/or FHWA use to ensure that the agencies have complied with their commitments and certifications under federal and state laws, regulations, and these procedures.

Chapter 20: Deficiencies and Sanctions, describes the course of action to be expected when local agencies fail to comply with state and federal requirements during their project. An appeal process is available when the local agency disagrees with district decisions or sanctions.

1.7 MANUAL UPDATES

This manual is available to each local agency on the Internet. The Caltrans Web Server is at <http://www.dot.ca.gov>. For direct access to this manual at the Division of Local Assistance Homepage go to: <http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm>.

As updates are made, they will be available on the Internet and the agency will be responsible for obtaining its own printed copy if needed.

Comments and suggestions for improvement to the manual or the processes and procedures described herein are welcome. They may be submitted to: DLAPublications@dot.ca.gov.

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Exhibits

Exhibits applicable to this chapter can be found at:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

[*Exhibit 2-A: Caltrans Local Assistance Office*](#)

[*Exhibit 2-B: Federal-Aid Project Responsibilities List for Delegated Projects off The State Highway System*](#)

(FSTIP). This inclusion must precede fund authorization for any activity for which federal-aid funds are being sought. The responsibility for selecting the program of projects for inclusion in the urbanized area Federal Transportation Improvement Program (FTIP) resides with the Metropolitan Planning Organizations (MPOs). The County Transportation Commissions and Regional Transportation Planning Agencies (RTPAs) also have a role in programming projects for the FSTIP and the state funded State Transportation Improvement Program (STIP). Their selections must be done in consultation with the state, cities, counties, and other transportation agencies within the area. The FTIPs are incorporated into the FSTIP. Caltrans works with the non-MPO local agencies to program projects in the FSTIP. [Exhibit 2-B: Federal-Aid Project Responsibilities List for Delegated Projects off the State Highway System](#), outlines the roles and responsibilities of the parties involved in local federal-aid transportation projects. The chapters in this manual provide the details for carrying out these responsibilities.

2.2 NATIONAL HIGHWAY SYSTEM

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) established provisions for Congress to adopt a National Highway System (NHS) to provide an interconnected system of principal arterials that serve major population centers, international border crossings, ports, airports, public transportation facilities, intermodal transportation facilities, and other major travel destinations; meet national defense requirements; and serve interstate and interregional travel.

Until Congress made its official adoption, the NHS was defined as all principal arterials, including the Interstate System. On November 28, 1995, the President signed the legislation defining the NHS to include all Interstate System routes, a selection of urban and rural principal arterials, the defense Strategic Highway Network including Strategic Highway Network connectors, and intermodal connectors. As a result of MAP-21, there are about 230,000 NHS centerline miles nationwide, including 14,160 NHS centerline miles in California. About 5,453 of the 14,160 NHS miles in California are off the SHS.

See [LAPG Chapter 3: Federal-Aid Routes & Functional Classifications](#), for further discussion and a listing of the local agency NHS routes under [CA Non-State Highway NHS](#) Excel worksheet.

2.3 STEWARDSHIP AND OVERSIGHT AGREEMENT

The purpose of the FHWA/Caltrans Stewardship and Oversight Agreement (S&O) is to define roles and responsibilities, outline authorities, and assure accountability in effectively and efficiently managing program and project delivery of the Federal-Aid Highway Program (FAHP).

Authority for the Agreement comes from 23 USC 106(c) which requires the United States Department of Transportation (USDOT) and the State to enter into an agreement for the extent to which the State assumes the project approval and oversight responsibilities of the USDOT.

Unlike previous stewardship agreements, the current Agreement utilizes a risk-based approach to manage the FAHP. This innovative way of doing business represents a paradigm shift in the

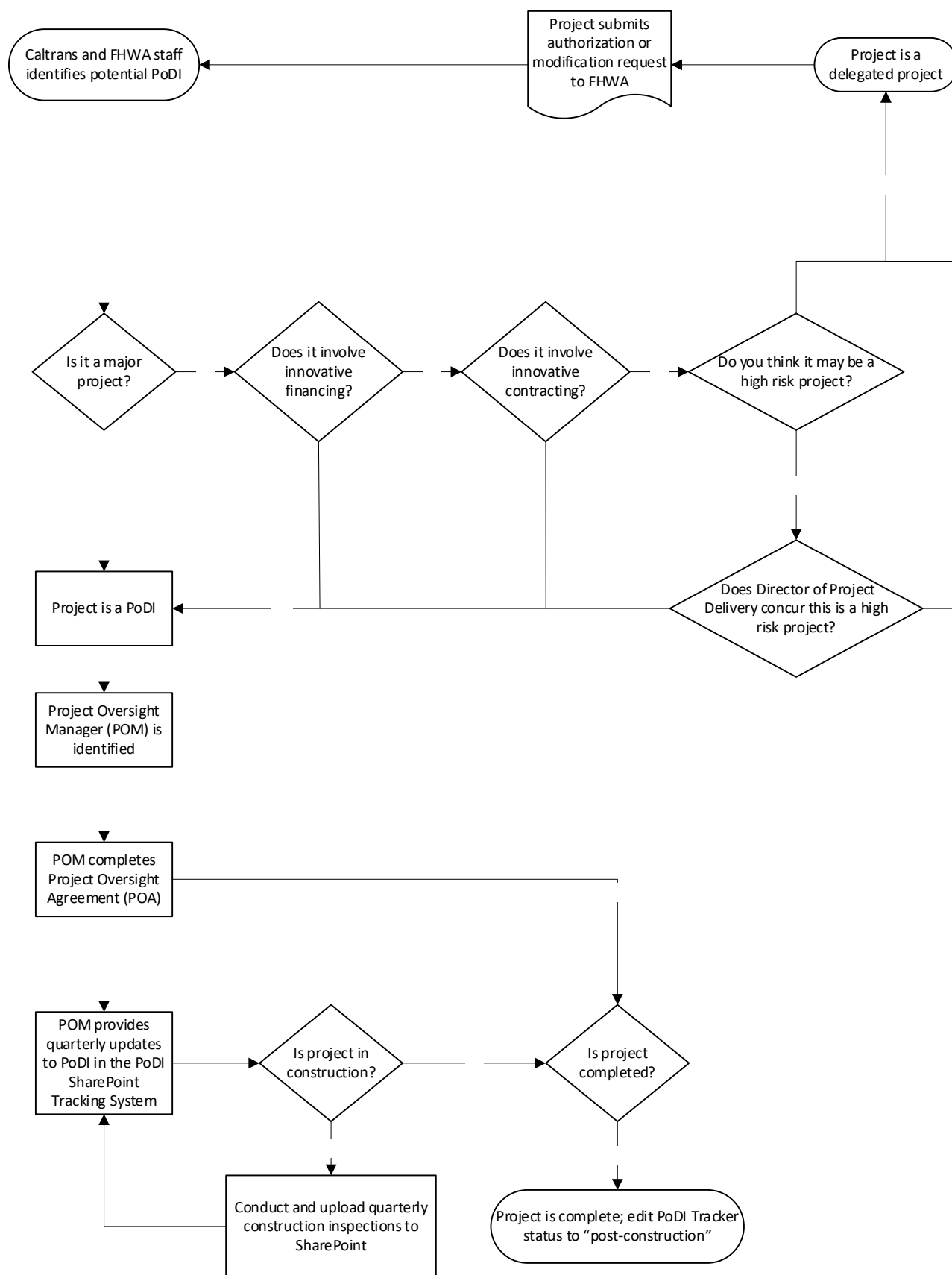


Figure 2-1: PoDI Project Identification and Review Process

2.5 PROJECTS OF DIVISION INTEREST

Projects of Division Interest (PoDI) are projects where Caltrans can assume Section 106 (c) responsibilities but FHWA has retained responsibility for (1) one or more of the Section 106 (c) items, or (2) FHWA has not retained responsibility for any such items but the projects are otherwise designated as a PoDI by the Division. Prior to September 2007 these projects were referred to as FHWA Full-Oversight projects based on set criteria (rather than risk) such as Interstate construction over \$1 million, major Intelligent Transportation System, etc. While Caltrans is responsible for approving most project level activities on low risk (delegated) projects, the FHWA maintains many project level approval activities for Projects of Division Interest projects.

Project level approval authority for Project of Division Interest projects are project specific. Very few Local Assistance projects are designated as Projects of Division Interest. Each Project of Division Interest project requires a unique Project Oversight Agreement, as mentioned in 2015 FHWA/Caltrans [Stewardship and Oversight Agreement](#).

Projects of Division Interest Project Selection Process

Project of Division Interest determinations are a joint, cooperative effort made on a project-by-project and phase-by-phase basis. Projects not meeting the criteria below are considered delegated.

The PoDI criteria are established by the Project Delivery Director in consultation with the Project Delivery Team and Division Directors. These criteria are risk-based and, therefore, will be adjusted as priorities, threats, and opportunities change at the State and National level. Federal-aid projects meeting one or more of the following criteria will be designated as a PoDI:

1. **Major Projects** (23 U.S.C. 106(h))
Projects with a total estimated project cost of \$500 million or more and any amount of Federal-aid in the construction phase are Major Projects. All FHWA Divisions Offices must designate Major Projects as PoDIs. Further, projects with a total estimated cost \$400 million or more with the potential of increasing to \$500 million or more during the life of the project are closely monitored by an assigned Project Delivery Transportation Engineer (TE). Project sponsors often agree that meeting Major Project requirements “just in case” is a good idea. However, if the total estimated project cost remains below \$500 million, the project remains a delegated project unless it meets one or more of the criteria below.
2. **Innovative Financing**
Projects utilizing TIFIA loans, TIGER, or ATCMTD discretionary grants, or Public/Private Partnership (P3) funding. Other varieties of innovative financing will be considered by the Project Delivery Director on a case by case basis.
3. **Innovative Contracting**
Projects utilizing Construction Manager/General Contractor (CM/GC), Design/Build, or SEP-14 experimental contracting methods (e.g., Job Order Contracting). Other varieties of innovative contracting will be considered by the Project Delivery Director on a case by case basis.

4. **Risk Based** (23 U.S.C 106(g))

Any project that the Division identifies as having an elevated level of risk may be selected for risk-based stewardship and oversight resulting in the PoDI designation. Consideration may be given to complex Intelligent Transportation System (ITS) projects, politically-sensitive projects, projects with innovative features, or other relevant reasons. Additionally, the project sponsor may be as much a consideration as the project. For example, though a project does not meet the above criteria, applying this criterion could provide opportunity for greater FHWA engagement with a Caltrans District or LPA who do not have any PoDIs.

Caltrans and the FHWA jointly determine which projects are considered to be Project of Division Interest based on the criteria listed above. The Project of Division Interest project determination is made at the District level in conjunction with FHWA. One goal under the Agreement is to identify Project of Division Interest projects and FHWA approval/ involvement level as early as possible (prior to Authorization to Proceed). Continuous, open communication takes place throughout the year regarding the selection of Project of Division Interest projects. Regular meetings between Caltrans and the FHWA are scheduled to discuss any changes to the known or anticipated Project of Division Interest projects. Those projects selected as Project of Division Interest are mutually agreed upon by the appropriate Caltrans District and FHWA. The steps for identifying Project of Division Interest Local Assistance projects are as follows (see Figure 2-1):

1. **Pre-Authorization:** Caltrans Local Assistance procedures, checklists, and forms require local agency to assess proposed projects against the Project of Division Interest criteria and identify whether they think the project qualifies as a Project of Division Interest project prior to each Authorization to Proceed.
2. **Initial Authorization to Proceed:** The local agency indicates whether the project meets any Project of Division Interest project criteria in their initial [Exhibit 3-E: Request for Authorization to Proceed Data Sheet\(s\)](#). The Caltrans District will assess the Request for Authorization to Proceed Data Sheet to determine if the project meets any of the criteria for Project of Division Interest projects listed above. The District may request assistance from Caltrans Headquarters' Division of Local Assistance (DLA) and local agency may be asked to participate in the POA development.

If the assessment reveals that the project does meet one or more of the above criteria, then the Caltrans DLAE will contact the FHWA representative to discuss the assessment of the project. At this point, the Caltrans and FHWA representatives will jointly decide if the project meets the above criteria. If the joint decision is that one or more of the criteria are met, then the representatives will jointly decide if the criteria met are enough to warrant selection as a Project of Division Interest project. If the project does not meet the criteria, as determined by the District Local Assistance Engineer (DLAE), then the project will move forward as a Delegated project.

Once a project has been selected as a Project of Division Interest project, a Project of Division Interest Project Oversight Agreement (refer to Attachment A of the [Stewardship and Oversight Agreement](#)) will be filled out to identify FHWA and Caltrans project approval authorities for that particular project. The Project of Division

Interest Project Oversight Agreement will document those areas where FHWA will have approval authority. It will also provide a project description, federal-aid and state project numbers, and a discussion of FHWA's involvement on the project outside of the approval authority.

The DLAE will work directly with the Local Agency and FHWA to assure that the project responsibilities of the Project of Division Interest Project Oversight Agreement are fulfilled.

Caltrans headquarters' DLA may assist the District as requested. (For Major Projects, this information will be captured in an Oversight Agreement.) If a project is determined to be Project of Division Interest at the initial Authorization to Proceed, then the Project of Division Interest Project Oversight Agreement will be revisited once the project moves closer to construction. The information within the Project of Division Interest Project Oversight Agreement will be jointly agreed upon by the Caltrans District Director (or designee) and FHWA representatives and will include signatures acknowledging this Agreement. Appropriate local agency representative signature is optional.

3. **Subsequent Authorization to Proceed:** As in the initial Request for Authorization to Proceed, the project will be reassessed against the Project of Division Interest project criteria by Caltrans DLAE and FHWA at each of the subsequent Request for Authorization to Proceed milestones. At these milestones, it will be jointly decided if the project meets the Project of Division Interest criteria and should be de-selected, selected, or continued as a Project of Division Interest project. If the reassessment at these milestones reveals that the project meets one of the Project of Division Interest criteria and should be selected as a Project of Division Interest project, then the same process described under step 2 above will be followed. Otherwise, the project will proceed as a Delegated Project.

Once a project or phase is determined to be Projects of Division Interest, the process is carried one step further by highlighting activities on the Project Responsibilities List that can be further delegated. The FHWA maintains approval authority for those activities that cannot, by law, be delegated, and activities that may pose a risk to individual projects. Highlighted boxes in the Project of Division Interest projects column of the Project Responsibilities List (refer to Attachment A of the [Stewardship and Oversight Agreement](#)) are designated as either the FHWA or Caltrans and signed and dated by both agencies. The documented and signed Project Responsibilities List may also include a general summary of other involvement, including attending regular meetings, conducting project inspections, etc.

2.6 RIGHT-OF-WAY CERTIFICATION DELEGATION

In addition to the delegations discussed above, guidance regarding Caltrans delegation for RW certification approval is described in [LAPM Chapter 13](#), Section 13.2 "Federal Aid and the Federal/State/Local Agency Relationship".

2.7 PROJECTS OFF THE NATIONAL HIGHWAY SYSTEM (NON-NHS)

The reengineering of local assistance procedures in 1995 gave local agencies additional responsibility and accountability for non-NHS projects. Many of the responsibilities delegated to Caltrans under the Stewardship Agreement are further delegated to the local project sponsors. Caltrans preliminary engineering, construction review and approval activities are reduced, and other activities involving environmental reviews, project authorization, Disadvantaged Business Enterprises, consultant selection, and agreement procedures are streamlined to eliminate duplication of effort and multiple reviews.

2.8 PROJECTS ON THE NATIONAL HIGHWAY SYSTEM (NHS)

The delegation of responsibilities to local agencies described above for non-NHS projects also applies for NHS projects. With the following exceptions (discussed in detail in the appropriate chapters of this manual), procedures are the same for both types of projects.

Field Reviews

Field reviews are required for significant local agency projects on the National Highway System and encouraged for all other federal-aid projects. If the field review is not performed, document on the field review form the reasons why the field review was not performed, as a completed field review form is required for all federal-aid projects.

PS&E Procedures for Significant NHS Projects

When Caltrans requires a field review for significant NHS projects, plans, specifications and estimate (PS&E) procedures (standards, agencies involved, use of consultants, project management, specifications, etc.) will be discussed. These procedures will be put in writing for Caltrans approval before final design is initiated. With approval, the local agency will then certify their PS&E(s) for these projects the same as they do for non-NHS projects upon completion of the PS&E. Caltrans may review the PS&E(s) if resources are available, or as part of a process review. NHS projects that are not significant will not require these approval procedures.

Design Standards

Local agencies are required to use only American Association of State Highways and Transportation Officials (AASHTO), 3R, and other design standards officially approved for use on NHS projects that are off the SHS. For SHS projects, Caltrans standards are to be used. Locally approved design standards are not allowed on NHS projects, however Caltrans may approve exceptions on a project-by-project basis except on Project of Division Interest projects, which requires FHWA approval.

Method of Construction

In general, an open and competitive bidding process must be used for construction contracts on federal-aid projects. Exceptions to competitive bidding of construction contracts must include a Public Interest Findings approved by Caltrans for Delegated Projects. FHWA approval of the Public Interest Findings may also be required on Project of Division Interest projects.

Restricted Construction Contract Provisions

Warranty clauses are restricted on NHS projects and the use of proprietary items is restricted on all federal-aid projects unless an exception is approved.

Construction Administration for Significant NHS Projects

When Caltrans requires a field review for significant NHS projects, the local agency's construction administration procedures (staging, agencies involved, use of consultants, project management, quality assurance, etc.) will be discussed. These procedures will be put in writing for Caltrans approval before the Request for Authorization for Construction is approved. Caltrans will not review the construction administration unless requested and resources are available, or as part of a process review.

Quality Assurance Programs

Local agencies may use the Quality Assurance Program described in this manual for projects on or off the NHS. Caltrans will perform Independent Assurance (IA) if Caltrans test methods are used.

Final Inspection

The local agency will make a final inspection of completed Delegated Projects prior to FHWA authorizing reimbursement of the final project voucher.

2.9 FEDERAL-AID PROJECTS OF \$100 MILLION TO \$500 MILLION OR MORE

Projects of \$500 Million or More

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires that all local agencies receiving any amount of federal financial assistance for a major project with an estimated total cost of \$500 million or more (includes all phases) and local agencies for such projects as may be identified by FHWA, submit to Caltrans for each project:

- A Project Management Plan
- Initial Financial Plan and its Financial Plan Annual Updates

A cost estimate review must be completed by FHWA prior to the Final NEPA document, and prior to the construction authorization for all major projects (≥ \$500 million).

Project Management Plan

A draft Project Management Plan (including the review checklist) shall be submitted prior to the Record of Decision (ROD), Finding of No Significant Impact (FONSI), or Categorical Exclusion (CE) determination. A final Project Management Plan shall be submitted within 90 days after the ROD, FONSI, or CE determination which determine the scope of the projects. The plan shall:

- Document the procedures and processes that are in effect to provide timely and appropriate information to the project decision makers to effectively manage the scope,

- costs, schedules, quality of, and the federal and state requirements applicable to the project.
- Document the role of the agency leadership and management team in the delivery of the project
- Be updated and submitted with the construction authorization request and updated thereafter, as required.

Financial Plan

A Financial Plan (including the review checklist) for projects of \$100 million to \$500 million and major projects over \$500 million must:

- Be submitted when all elements of the plan are fully completed, but not later than when requesting federal authorization to proceed with construction. If the local agency waits until requesting authorization to submit the Financial Plan for projects \$500 million or more, the authorization will be delayed since FHWA headquarters has to concur in the approval of the Financial Plan. For design/build projects, the plan must be received prior to award of the design/build contract.
- Be updated and submitted annually once the initial Financial Plan is approved until construction is substantially complete.
- Be based on detailed estimates of the cost to complete the project as defined in the NEPA document.
- Provide for the annual submission of updates to Caltrans that are based on reasonable assumptions as determined by Caltrans of future increases in the costs to complete the project.
- Use costs expressed in year of expenditure dollars and estimated using a risk-based approach consistent with current FHWA Cost Estimating Guidance located at: http://www.fhwa.dot.gov/ipd/project_delivery/defined/fhwa_delivery_process.htm

Projects between \$100 Million and \$500 Million

SAFETEA-LU also requires that all local agencies receiving any amount of federal-aid for a project with an estimated total cost of \$100 million or more shall prepare an Initial Financial Plan and its Annual Updates and make the plan available to Caltrans/ FHWA upon request. Financial Plans for projects with an estimated cost total cost of \$100 million or more, but less than \$500 million, must be approved prior to Construction Authorization and must be submitted with the Construction Authorization request.

The process for submitting, reviewing, and approving these plans is shown in Figure 2-2. These projects may not require a Project Oversight Agreement (Stewardship Agreement) signed by FHWA, Caltrans and, if applicable, the local agency.

Assistance

Information regarding the preparation, timing, etc., of the above plans is available through the DLAE. Other valuable information that may be helpful in the preparation of the above plans as well as other project areas is available at the FHWA Web site at:

http://www.fhwa.dot.gov/ipd/project_delivery/defined/fhwa_delivery_process.htm

Activities and Conflict of Interest. This directive is to ensure that California Department of Transportation employees do not willfully engage in any employment or activities that are illegal, that are or give the appearance of being incompatible or in conflict with their duties as State employees, that discredit their profession, Caltrans or the State, or that have an adverse effect on the confidence of the public in the integrity of government.

Conflict of Interest Form ADM-3043 is to be completed annually by all Caltrans headquarters and district employees that review, rank and rate project applications from local agencies for any federal or state funded programs. Forms must be signed by the employee and their respective supervisor. Signatures from the Acquisition Analyst and Contract Officer are not required for DLA staff who are not acting as a contract manager. Immediate supervisors shall keep copies of the signed ADM-3043. Additional information on conflict of interest is provided by the Division of Procurement on the intranet at: <http://admin.dot.ca.gov/pc/coi.shtml#1>. Instructions are also included on the back of the ADM-3043 and an electronic version of the form is available on the Caltrans intranet at: <http://cefs.dot.ca.gov/forms/index.html>.

Compliance with this policy helps safeguard state and federal funds and the public's interest. Non-compliance with this policy could result in the loss of delegated purchasing or contracting authority for the individual or the entire department.

Project Implementation

Some major federal-aid project implementation steps delegated by the FHWA to Caltrans cannot be further delegated to the local agency level and remain Caltrans' responsibility.

These are shown in [*Exhibit 2-B: Federal-Aid Project Responsibilities List for Delegated Projects off the State Highway System*](#) and include:

- Ensure project in Federal Statewide Transportation Improvement Program (FSTIP)/Transportation Improvement Program (TIP).
- Identify proposed funding category
- Develop financial plan for federal projects between \$100 million and \$500 million.
- All EA/FONSI/ROD, 4(f), 106, 6(f) and other approval actions required by federal environmental laws and regulations included in the FHWA-CA 327 NEPA Assignment MOU.
- Exceptions to design standards [23 CFR 625.3(f)].
- Airway highway clearance coordination and respective public interest finding (if required) [23 CFR 620.104].
- Provide approval of preliminary plans for unusual /complex bridges or other structures (non-interstate) [23 USC 109109(a) & FHWA policy].
- Retaining right-of-way encroachments [23 CFR 1.23(b) & (c)].
- Use of local force account agreements [23 CFR 635.104 & 204].
- Use of publicly owned equipment [23 CFR 635.106].

Note: For complete listing refer to Attachment A of the [Stewardship and Oversight Agreement](#).

EXHIBIT 2-B FEDERAL-AID PROJECT RESPONSIBILITIES LIST**FOR DELEGATED PROJECTS OFF THE STATE HIGHWAY SYSTEM**
(Pursuant to 2015 FHWA & Caltrans Stewardship and Oversight Agreement)

Project Action/Activity	Local Agency	Caltrans District	Caltrans HQ	FHWA
Project Authorization (Chapter 3)				
Construction Engineering > 15% Total Contract Item Costs	Verify ¹	Approve ¹	-	-
Project Agreement and Modification [23 CFR 630.110]	Prepare	Recommend	Approve ²	Approve ² /Verify ³
Obligate Funds	-	-	-	Approve ⁴
Funding Eligibility Determinations	Prepare	Recommend	Approve	Verify ³
Reimbursement Vouchers (interim and final)	-	-	Prepare	Approve
Section 1.9 Approvals of Incurred Costs. [23 CFR 1.9]	Prepare	Recommend	Recommend	Approve
Agreements (Chapter 4)				
Master Agreement	Sign	File Copy	Prepare/Approve	-
Program Supplement Agreement	Sign	File Copy	Initiate/Approve	-
Invoicing (Chapter 5)				
Invoice	Prepare	Approve ⁵	Approve ⁵	-
Project Eligibility	Prepare	Approve	Review	-
Environmental Procedures (Chapter 6)				
Project-Level Transportation Conformity Determination for CE pursuant to 23 USC 327 (NEPA Assessment MOU)	Prepare	Request	-	Approve
NEPA Approval Consistent with 23 USC 326 & 327 MOUs (for detailed NEPA actions and approvals refer to LAPM Chapter 6 and the SER)	Prepare	Approve	-	-
Field Review (Chapter 7)				
Field Review	Perform	Participate ⁶	-	-
Minor ITS Project development [23 CFR 940.11] (SERF)	Prepare	Approve	-	-

¹ Applies only to projects selected and programmed directly by Caltrans.² Approval and signatures are needed by both Caltrans and FHWA.³ Subject to FHWA's random sample verification process. Verification is defined here as routine, independent confirmation of sampled projects.⁴ Obligation of funds by FHWA is the final step in the project authorization process⁵ DLAE performs initial review and approval. Headquarters Local Programs Accounting performs final review of invoice prior to payment by the State which is subsequently reimbursed by FHWA.⁶ DLAE participates in field reviews unless otherwise documented in project files.

Project Action/Activity	Local Agency	Caltrans District	Caltrans HQ	FHWA
Public Hearings (Chapter 8)				
Public Hearing [23 CFR 771.111(h)]	Perform/ Certify	-	-	-
Civil Rights & Disadvantaged Business Enterprises (Chapter 9)				
DBE Implementation Agreement [LAPM]	Prepare	Approve	-	-
DBE Annual Goals [LAPM]	-	-	Prepare	Approve
ADA Coordinator [49 CFR 27.13(a)]	Certify	Accept	-	-
ADA Complaint Procedure [49 CFR 27.13(b)]	Certify	Accept	-	-
ADA Agency Self-Evaluation [28 CFR 35.105]	Certify	Accept	-	-
ADA Transition Plan [28 CFR 35.150]	Certify	Accept	-	-
Consultant Selection (Chapter 10)				
Consultant Selection [23 CFR 172.7-172.9]	Perform	Review ⁷	-	-
Consultant Agreements	Approve	Review ⁸	-	-
PIF – Use of Non-Competitive Negotiated Consultant Contracts [23 CFR 172.5(3)]	Prepare	Approve	-	-
Cognizant Agency Audit [23 CFR 172.11]	Prepare	Copied	Review ⁹	-
Consultants in Management Role [23 CFR 172.7(b)(5)]	Prepare		-	Approve
Design Standards (Chapter 11)				
Preliminary Plans for Major and Unusual Structures	Prepare	Approve	-	-
Design Standards	Approve	-	-	-
Exceptions to Design Standards [23 CFR 625.3(f)]	Prepare	Approve	-	-
Experimental Features	Prepare	Recommend	Recommend	Approve
Value Engineering [23 CFR 627, SAFETEA-LU 1904]	Approve	Review ¹⁰	-	-
Develop Financial Plans for Federal Projects between \$100 Million to \$500 Million [23 USC 106(i)]	Prepare	Review & Approve	-	-
High Risk ITS Project Development [23 CFR 940.11]	Prepare	Recommend	Recommend	Approve
Major Projects and TIFIA Loan Projects – Project Management Plan and Financial Plan [SAFETEA-LU 1904]	Prepare	Review ¹¹	Review	Approve

⁷ DLAE receives consultant contract DBE information and may participate in consultant selection process upon request and contingent on available resources.

⁸ DLAE receives and reviews executed consultant contract before payment is made.

⁹ Local agency coordinates review of proposed consultant contract indirect cost rates, etc. with Caltrans Independent Office of Audits & Investigations, DLAE to be copied on correspondence.

¹⁰ For all Federal-aid projects exceeding \$50 million on the National Highway System (NHS) and bridge projects exceeding \$40 million on the NHS. DLAE to coordinate review of local agency Value Analysis Study with District Value Analysis Coordinator.

¹¹ DLAE to coordinate with Division of Project Management.

Project Action/Activity	Local Agency	Caltrans District	Caltrans HQ	FHWA
Low Risk ITS Project development [23 CFR 940.11]	Prepare	Approve	-	-
Plans, Specifications & Estimates (Chapter 12)				
PS&E [23 CFR 630.205, 23 USC 106]	Approve & Certify	Verify	-	-
Public Interest Finding (PIF) – Statewide Application	-	Recommend	Prepare	Approve
Environmental Commitments are incorporated	Prepare	Verify	-	-
PIF – Use of publicly furnished materials [23 CFR 635.407]	Approve	-	-	-
PIF – Use of proprietary products and processes [23 CFR 635.411]	Prepare	Approve	Report ¹²	-
PIF – Use of contracting method other than competitive Bidding [23 CFR 635.104/204]	Prepare	Approve	-	-
Utility or Railroad Force Account Work [23 CFR 645.113 & 646.216]	Prepare	Approve	-	-
PIF – Advertising Period less than 3 Weeks [23 CFR 635.112]	Prepare	Approve	-	-
PIF – Use of Force Account [23 CFR 635.204,205]	Prepare	Approve ¹³	-	-
PIF – Use of Mandatory Borrow/Disposal Sites [23 CFR 635.407]	Prepare			-
PIF – Use of Publicly-Owned Equipment [23 CFR 635.106]	Prepare	Approve	-	-
Buy America Waiver [23 CFR 635.410]	Prepare	Recommend	Recommend	Approve
Innovative Contracting Requirements [SEP 14 & 15]	Prepare	Recommend	Recommend	Approve
Right-Of-Way (Chapter 13)				
Qualify Local Agencies	-	Approve	-	-
Qualify/Select Consultants	Perform/Select	Verify	-	-
R/W certificate 3 – Conceptually concur as a condition of PS&E approval [23 CFR 635.309(r)(3)]	Prepare	Recommend	Recommend	Approve
Accept ROW certificate 1 and 2 as a condition of PS&E approval [23 CFR 635.309(c)(1)&(2)]	Prepare	Approve	-	-
Functional Replacement [23 CFR 710.509]	Prepare	Recommend	Recommend	Approve
Protective Buying and Hardship Acquisition [23 CFR 710.503]	Prepare	Recommend	Recommend	Approve
Public Interest Finding (PIF) – Concur on declaring Federally Funded R/W as excess for disposal [23 CFR 710.403, 409]	Prepare	Recommend	Recommend	Approve
Railroad Agreement [23 CFR 646.216 (3)(d)]	Prepare	Approve		
Request for Credits for Early Acquisition of ROW [23 CFR 710.501]	Prepare	Recommend	Recommend	Approve

¹² DLA HQ will compile Proprietary PIFs and Certifications and report to FHWA¹³ Copy of approved force account PIFs to be forwarded to FHWA. For ARRA projects, force account PIFs are to be submitted to FHWA for approval.

Project Action/Activity	Local Agency	Caltrans District	Caltrans HQ	FHWA
Request for Direct Federal Acquisition [23 CFR 710.603]	Prepare	Recommend	Recommend	Approve
Request for Federal Land Transfer [23 CFR 710.601]	Prepare	Recommend	Recommend	Approve
Request for Waivers of comparable replacement dwelling requirements [49 CFR 24.204(b)]	Prepare	Recommend	Recommend	Approve
Withholding of Federal Payments upon failure to perform [23 CFR 710.203(c), 23 CFR 1.36]	Prepare	Recommend	Recommend	Approve
Utilities Relocation (Chapter 14)				
Utility Agreement [23 CFR 645.113, 119]	Prepare	Approve	-	-
Utility Relocation [23 CFR 645 subparts A and B]	Prepare	Approve	-	-
Advertise & Award Project (Chapter 15)				
Advertise Project	Prepare	Recommend	Recommend	Approve ¹⁴
Bid Analysis [23 CFR 635.114]	Prepare & Approve	Review	-	-
Consultant Agreements [23 CFR 172.7-172.9]	Approve	Review	-	-
Public Interest Finding (PIF) - Advertising Less than 3 Weeks [23 CFR 635.112]	Prepare	Approve	-	-
PIF - Use of Contracting Method other than Competitive Bidding [23 CFR 635.104 & 204]	Prepare	Approve	-	-
Addenda during Advertisement Period [23 CFR 635.112]	Prepare	Approve	-	-
Award of Contract [23 CFR 635.114]	Approve	-	-	-
Rejection of All Bids [23 CFR 635.114]	Approve	-	-	-
Award Package – Including DBE Reporting	Prepare	Review	Report ¹⁵	-
Administer Construction Contract (Chapter 16)				
Construction engineering by local agency [23 CFR 635.105]	Certify	Approve	-	-
Contract Administration and Inspection	Certify	Review ¹⁶	Verify ¹⁷	Verify ¹⁸
Subcontracting Requirements [23 CFR 635.114]	Certify	-	-	-
Quality Assurance Program [LAPM Chapter 16.14]	Approve	Accept	-	-
Contract Change Orders (CCO) w/ no increase in Federal funds	Approve ¹⁹	-	-	-
E-76 Modification for CCO with increase in Federal funds	Prepare	Recommend	Approve	Approve ²⁰

¹⁴ Approval for advertising is included with receipt of construction authorization for the project.

¹⁵ DBE data is reported to Caltrans Office of Business & Economic Opportunity.

¹⁶ DLAE may select areas for review.

¹⁷ DLA Construction Oversight Engineers perform periodic reviews of contract administration of construction projects.

¹⁸ FHWA can verify any aspect of the project as part of a construction field review.

¹⁹ Local agencies are financially responsible for change orders executed without additional E-76 funds.

²⁰ Local agencies must receive E-76 modification approval prior to executing the CCO.

Project Action/Activity	Local Agency	Caltrans District	Caltrans HQ	FHWA
Environmental Commitments (permit conditions and required mitigation) [23 CFR 771.109(b)]	Implement	-	-	-
Contract Time Extensions [23 CFR 635.120]	Prepare	Approve	-	-
Termination of Construction Contract [23 CFR 635.125]	Approve ²¹	-	-	-
Settlement of Construction Contract Claims [23 CFR 635.124]	Approve ²²	-	-	-
Incentive/Disincentive Amount Justification [23 CFR 635.127]	Approve	-	-	-
Liquidated Damages [23 CFR 635.127]	Approve	Review	-	-
Reimbursement Invoice	Prepare	Approve ²³	Approve	-
Project Completion (Chapter 17)				
Final Inspection/Contract Acceptance [23 USC 114(a)]	Approve	-	-	-
Materials Certification [LAPM Exhibit 17-G]	Certify	Review	Review ²⁴	
Project Verification	Recommend	Verify	-	-
Final Report of Expenditures	Prepare	Approve	-	Verify
Post-Project Audits	-	-	Perform ²⁵	-
Maintenance (Chapter 18)				
Maintenance of completed Federal-aid Projects	Perform	Review	-	-

²¹ Local agencies are financially responsible for termination agreements executed without necessary E-76 funds. Anticipated profits for work not performed is not eligible for Federal reimbursement.

²² Local agencies are financially responsible for settlement of contract claims without necessary E-76 funds. Any contract adjustment shall be fully supported.

²³ DLAE performs initial review and approval. Headquarters Local Programs Accounting performs final review of invoice prior to payment by the State which is subsequently reimbursed by FHWA.

²⁴ DLA Oversight Engineers perform periodic reviews.

²⁵ Performed by Caltrans Independent Office of Audits & Investigations with assistance from the DLAE.

Chapter 3 **Project Authorization**

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Chapter 3 Project Authorization

3.1 INTRODUCTION

General

Prior to beginning highway work for which federal reimbursement will be requested, the project or project phase must be formally authorized (approved) by the Federal Highway Administration (FHWA). Each federally funded phase of work such as Preliminary Engineering (PE), Right of Way (R/W), Utility Relocation (R/W-UTIL), and Construction (CON), requires a separate federal authorization (the authorization of federal funds may be subdivided within a phase as well). Any work performed prior to federal Authorization to Proceed is not eligible for federal reimbursement. Construction phase work performed prior to authorization may disqualify that phase.

On May 28, 2015, the FHWA and California Department of Transportation (Caltrans) entered into the current Joint Stewardship and Oversight Agreement (Agreement). This Agreement outlines the roles and responsibilities for oversight and approval of federally funded transportation projects under the jurisdiction of the FHWA. The Agreement defines two categories of projects — Delegated and Projects of Division Interest. For Delegated projects, the FHWA has delegated as many project oversight and approval actions to Caltrans as the law allows. On Projects of Division Interest projects, approval actions are determined on a project-by-project risk basis as agreed to by the FHWA and Caltrans. Regardless of whether the project is Delegated or Projects of Division Interest, Caltrans recommends federal authorization and the FHWA must formally authorize the work. The determination as to whether a project is Delegated or Projects of Division Interest is based on the criteria listed in Section 2.5: Projects of Division Interest Projects, and the process is defined in Figure 2-1, in [LAPM Chapter 2: Roles and Responsibilities](#).

Exception: For Emergency Relief projects, prior FHWA approval is not required for Emergency Opening and PE. Permanent Restoration work must have prior FHWA program approval and authorization, unless the work is done as part of Emergency Opening repairs.

Acronyms

AC	Advance Construction
ATP	Active Transportation Program
CE	Construction Engineering
CFR	Code of Federal Regulations
CMAQ	Congestion Mitigation and Air Quality Improvement Program
CON	Construction
CTC	California Transportation Commission
CTIPS	California Transportation Improvement Program System

OA	Obligation Authority
OFR	Caltrans Office of Federal Resources
PA/ED	Project Approval/Environmental Document
PE	Preliminary Engineering
PPNO	Project Planning Number
PSA	Program Supplement Agreement
PS&E	Plans, Specifications and Estimate
RIP	Regional Improvement Program (Portion of STIP)
RSTP	Regional Surface Transportation Program
RTPA	Regional Transportation Planning Agency
R/W	Right of Way
SAFETEA-LU	Safe, Accountable, Flexible, Efficient, Transportation Equity Act – A Legacy for Users
SEMP	Systems Engineering Management Plan
SERF	Systems Engineering Review Form
SHS	State Highway System
SR2S	Safe Routes to School Program
STBGP	Surface Transportation Block Grant Program
STD	State Transportation Department
STIP	State Transportation Improvement Program
STP	State Transportation Program
TAP	Transportation Alternatives Program
TE	Transportation Enhancements Program
TEA-21	Transportation Equity Act for the 21st Century
USC	United States Code

Terms and Definitions

Allocation — An administrative distribution of funds.

Apportionment — A statutorily prescribed division or assignment of funds. An apportionment is based on prescribed formulas in the law and consists of dividing authorized obligational authority for a specific program among the states.

Appropriation Period — The six years starting on July 1 of the appropriation year through June 30 of the reversion year that an encumbrance is eligible for reimbursement.

Appropriation Year — The state budget year (July 1 to June 30) that Legislature has approved for enactment and Local Programs Accounting (LPA) has authority to encumber funds.

FTIP — Federal Transportation Improvement Program, a four-year list of all transportation projects proposed for federal surface transportation funding within the planning area of one of the eighteen Metropolitan Planning Organizations (MPOs) in the state. These are only valid for reference when incorporated into the FSTIP and approved by FHWA/FTA (see Chapter 4 of the [Caltrans Project Development Procedures Manual \(PDPM\)](#) for more discussion).

LAPG — The Local Assistance Program Guidelines manual provides local project sponsors with a complete description of the federal and state programs available for financing local public transportation related facilities.

LAPM — The Local Assistance Procedures Manual describes the processes, procedures, documents, authorization, approvals and certifications, which are required in order to received federal-aid and/or state funds for many types of local transportation projects.

Local Agency — A city, county or other public entity.

Local Assistance Project — A local surface transportation project funded with federal and/or state funds for the operation, maintenance, and acquisition or development of facilities or land, provided the local entity retains ownership after completion of the project. Examples include:

- Project on Local Street with federal CMAQ funds
- Project on Local Street with RIP (STIP) funds

National Environmental Policy Act (NEPA) — Federal environmental law requiring federal agencies to consider the environmental impacts of their actions, evaluate least damaging alternatives and ensure decisions are made in the public's best interest based on a balanced consideration of the need for safe and efficient transportation.

Obligation — The federal government's legal commitment (promise) to pay or reimburse the states or other entities for the federal share of a project's eligible costs.

Obligation Authority (OA) — Total amount of federal funds that may be obligated in a FFY.

Overall Work Plan (OWP) — The OWP is the MPO/RTPA's transportation planning structure/plan for the state fiscal year, July 1 through June 30.

Preliminary Engineering (PE) — This phase includes all project initiation and development activities (including NEPA approval) undertaken through the completion of PS&E. It may include preliminary utility investigation and engineering work associated with utility relocation and pre-acquisition R/W activities such as estimating, title search and other studies necessary for project agreement approval and NEPA compliance.

Projects of Division Interest (PoDI) — Projects where the CADO has retained one or more 23 U.S.C. 106 (c) responsibilities. Are those projects that have an elevated risk, contain elements of higher risk, or present a meaningful opportunity for FHWA involvement to enhance meeting project objectives or advancing key initiatives. Major Projects are always designated as PoDIs.

Reversion Date — The last day that Caltrans may legally reimburse an encumbrance per state statute.

State Budget Authority — The state budget year and its period of reimbursement that is assigned to a particular state or federal encumbrance. State budget authority must be applied to all state and federal funds that are passed-through Caltrans to be eligible for reimbursement.

consultants and other specialists who may be needed for field review. However, a completed Field Review form shall be submitted to Caltrans within four- months from the initial PE authorization. Otherwise, the Authorization to Proceed will be canceled automatically.

Preliminary Engineering Phases Over Ten Years

Title 23 [CFR 630.112\(c\)\(2\)](#), as well as [USC Title 23, Section 102 \(b\)](#), requires the following for any federal-aid project: In the event that right-of-way acquisition for, or actual construction of, the road for which this Preliminary Engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the local agency will repay to the FHWA the sum or sums of federal funds paid to the transportation department under the terms of the agreement.

[FHWA Order 5020.1a](#) published on June 8, 2018 provides policy direction on the repayment of federal-aid funds expended on Preliminary Engineering projects when reasonable progress has not been made toward R/W acquisition or construction. This directive also provides additional guidance clarifying when the FHWA can grant time extension.

Policy

- Projects that reach the status of PE over 10 years are out of compliance with [23 CFR 630.112\(c\)\(2\)](#), as well as [Section 102 \(b\) of USC Title 23](#), unless the project has an approved time extension. All invoice requests for a project out of compliance will cease to be paid. The project will be reviewed for closure and repayment of federal funds.
- Projects that have not moved to either R/W or CON in 8 years, exceeded the 10-year deadline, or approved with a time extension, will be posted on the Division of Local Assistance (DLA) website:
http://www.dot.ca.gov/hq/LocalPrograms/pe_over_10yrs.html.
- For any project in the PE phase that is within two years of reaching the 10-year deadline, the local agency may either submit a Request for Authorization (E-76) for R/W or CON, request a time extension request, or withdraw the project. If the time extension is denied, the project will be closed and federal funds repaid.
- Local agencies must inform the District Local Assistance Engineer (DLAE) of projects that advance to the R/W or CON phase without the aid of federal funds to be closed and removed from the PE over 10 years list.

Local Agency (Agency)

- Monitor projects in the PE phase for compliance.
- Submit Request for Authorization (E-76) for R/W or CON funds, if PE phase is completed.
- Inform the DLAE when the project advances to R/W or CON phase using local or state funds only (No federal funds).
- Submit a time extension request if the PE phase cannot be completed before the 10-year deadline.
- Ensure projects progress to either the R/W or CON phase before reaching the 10-year deadline or before the approved time extension request expires.

Provided by District DLAEs:

- Copy of pending E-76 requesting funds
- Copy of initial E-76 for project
- Current project programming (FTIP)
- HBP-Program Listings for FTIP/FSTIP (compiled if Structures Project)

Provided by PE>10 Projects Coordinator:

- FMIS printouts showing project authorizations, expenditures and balances

Intelligent Transportation Systems

ITS projects with no construction phase will be authorized as “Other” under the "Requested Reason". If an ITS project has an infrastructure construction phase, then the design funding will be authorized as “Preliminary Engineering” and the Construction/Integration funding will be authorized as “Construction” under the "Requested Reason".

For Intelligent Transportation Systems (ITS) projects, PE includes Systems Engineering, equipment, software development, and use of a Systems Manager or Systems Integrator (see Chapter 13 Intelligent Transportation Systems (ITS) Program, of the [LAPG](#) for details on Systems Engineering and the project development process for ITS projects).

The Systems Engineering Review Form (SERF) of High-Risk ITS projects must be approved by FHWA prior to or shortly after PE authorization. Development of the Systems Engineering Management Plan (SEMP) is contingent upon federal review comments and approval of the SERF. FHWA approval of the SEMP is required prior to proceeding to detailed component design.

Low-Risk (formerly Minor) ITS projects can undergo the traditional one PE phase authorization and will not require FHWA approval of the SERF and SEMP. However, the local agency still must complete the SERF as part of the Field Review Form.

Exempt ITS projects can undergo the traditional one PE phase authorization and will not require the SERF and SEMP.

Right of Way

Eligible Right of Way (R/W) work includes the preparation of R/W plans, making economic studies, other R/W related-preliminary work, appraisal for parcel acquisition, review of appraisals, payments for real property acquired, preparation for and trial of condemnation cases, management of properties acquired, furnishing of relocation assistance, and other related labor expenses (see 23 CFR 710 for details). This work is reported in the local agency's [Exhibit 3-B: Request for Authorization to Proceed with Right of Way](#). Only eligible work performed after federal Authorization to Proceed with R/W may receive federal reimbursement.

As noted above, some pre-acquisition R/W activities and studies necessary for project agreement approval and completion of the NEPA process may be authorized as part of PE. However, an approved NEPA document is required prior to the majority of R/W activities (e.g., negotiating with property owners, acquisition and relocation assistance, refer to [LAPM Chapter](#)

Authorization to Proceed for NI projects will be processed under the Construction phase using [*Exhibit 3-Q: Request for Authorization to Proceed with Non-Infrastructure Project \(Construction Phase\)*](#).

FTIP/FSTIP: Most NI projects are programmed in the FTIP/FSTIP as Grouped projects, also known as Lump-sum projects. As such, they are traditionally programmed in the Construction phase. NI projects that are individually listed in the FTIP/FSTIP shall also be programmed under Construction.

Environmental Review: Even though NI projects do not involve the traditional engineering design, right of way, and ground disturbance during construction, environmental reviews are still required to ensure that the project will not have negative impacts on the environment. A full-scale preliminary environmental study (PES), however, may not be required for NI projects. Instead, the Preliminary Environmental Screening Form for Non-Infrastructure Projects (PES-NI) may be used to streamline the environmental reviews of NI projects. The approval of the PES-NI will result in a Categorical Exclusion as the NEPA determination. A copy of the PES (NI) Form is available at:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

Right of Way: Since NI projects will not involve right of way acquisition or utility relocation, FHWA has agreed with Caltrans that Right of Way Certifications will NOT be required.

Plans, Specifications, and Estimates (PS&E): Any NI project requesting authorization to proceed must include a NI project work plan in lieu of the traditional PS&E. The work plan must be of sufficient detail to describe project tasks, schedule, activities, deliverables, and budgets/costs. A sample work plan is shown in [*Exhibit 3-R: Non Infrastructure Project Work Plan Sample*](#).

Simultaneous Submittal of Allocation/ Authorization Requests

Projects programmed with federal funds requiring project specific CTC allocations (such as those in the State Transportation Improvement Program (STIP) and the Active Transportation Program (ATP) also require federal authorization to proceed before commencing with reimbursable work. See [LAPG Chapter 23](#) for detailed procedures.

3.4 ADMINISTRATIVE PROCEDURES

The Caltrans Federal-Aid Data System (FADS) and the FHWA Fiscal Management Information System (FMIS) are the databases used in the federal authorization/obligation process.

Upon receipt of a complete and acceptable Local Agency Request for Authorization to Proceed package, Caltrans District Local Assistance Office creates an electronic project file (E-76) and inputs the required project information into the FADS database. The Caltrans District Local Assistance Office then transmits the E-76 project file and required backup information to Caltrans Headquarters Division of Local Assistance (DLA). The DLA Area Engineer reviews the submittal package for completeness and accuracy, focusing on project eligibility, federal and state requirements, availability of federal funds and obligation authority, and required support documentation (see [Exhibit 3-G: Federal Project Log Sheet](#)). The DLA Area Engineer recommends FHWA approval of Delegated or Projects of Division Interest projects and then transmits the E-76 to FHWA (California Division). FHWA approves/authorizes all projects and transmits all federally funded project records to FMIS.

Upon the federal obligation of funds, the Caltrans DLAE notifies the project sponsor and issues an Authorization to Proceed (see [Exhibit 3-P: Sample "Delegated Project Authorization"](#)) and a federal project summary, and then documents the federal authorization and obligation dates. Costs incurred prior to federal authorization are not eligible for reimbursement. Projects advertised prior to federal authorization are not eligible for federal reimbursement.

For significant changes in Scope of Work and cost increases or reductions, the local agency must submit a modified Request for Authorization to Proceed package. The District, DLA and FHWA will process this E-76 request in the same manner as above.

The authorized amount for all phases of the project obligated but not fully expended will be adjusted based on [Exhibit 3-O: Sample Local Federal-Aid Project Finance Letter](#), which is attached to the Request for Authorization.

Data Universal Numbering System (DUNS) Number

In compliance with the Transparency Act reporting requirements and 2 CFR Part 25.100, local agencies must provide a DUNS Number as part of their authorization requests on LAPM [Exhibit 3-E: Request for Authorization to Proceed Data Sheet\(s\)](#). DUNS Number assignment is required for all federal-aid recipients and can be requested at no charge at: <http://fedgov.dnb.com/webform>.

Budget Authority for Projects on the State Highway System (SHS)

For Caltrans administered projects located on the SHS financed with local assistance funds, the Caltrans Project Manager assigned to the project must submit [Exhibit 3-H: Request for Capital Subvention Reimbursement Allocation/De-Allocation](#), to the DLAE when requesting federal authorization. Once the request is approved, the Division of Budgets will provide an approved reimbursement authority memo to expend the funds for capital outlay costs (utility relocation, right of way acquisition, and construction capital).

If the estimated federal share of project costs has decreased by \$250,000 or more, the Caltrans Project Manager must submit [Exhibit 3-H: Request for Capital Subvention Reimbursement](#)

funds in projects should be avoided, unless they are based on sound project management decisions.

Therefore, except as permitted by 23 CFR 630.106 (f)(2), once a federal fund source is placed under agreement (E-76) for a phase of work, the pro rata reimbursement rate for that federal fund type (apportionment) and phase of work is fixed for the life of the project. In other words, when a phase of work is placed under federal agreement (E-76), the project sponsor has agreed to deliver a scope of work for an agreed upon amount of federal funds. If project costs increase, the federal share of the eligible costs is fixed at the federal pro rata established at the time of the project was placed under agreement. For this reason, MPOs/RTPAs should strive to fund projects at the maximum federal reimbursable rate.

Administrative Rules

For Delegated projects, Caltrans DLAE will consider underfunding on a project-by-project basis. However, if there is a potential for a Region to lapse funds to the Use It or Lose It provisions of AB1012, Caltrans will not permit the initial underfunding of projects for that Region.

Many federal earmark and discretionary federal funding programs (Projects of Division Interest projects, Historic Bridge, and so forth) release or allocate federal funds on an annual basis. For long-term or high-cost projects, the total anticipated federal funds might not be available at the time of the initial federal authorization for the project phase of work. Therefore, for these types of funds, FHWA will permit adjustment to the federal pro rata as the federal funds become available.

Federal Reimbursement of Underfunded Projects

At the time of Federal Authorization (E-76), the federal reimbursement rate for a project or phase of work is established by dividing the authorized federal funds by the federal participating costs of work, not to exceed the legal pro rata.

For progress invoices, the federal reimbursement rate is limited to the rate established in FMIS by the most current Federal Authorization to Proceed/Obligation of Funds (E-76) at the time of award. On the final invoice, if the lump sum designation has been chosen, the federal reimbursement rate may fluctuate to ensure that the local agency receives the total federal funds to which it is entitled not to exceed the legal pro rata or obligated federal funds.

3.7 LOCAL ADVANCE CONSTRUCTION PROCEDURES

When federal funds are not available for obligation due to an insufficient balance of funds or OA, a local agency may request in writing federal authorization to proceed with the project (or project phase) under advance construction procedures (see [Exhibit 3-I: Request for Local Advance Construction Authorization](#)).

Under local advance construction procedures, following federal authorization to proceed, the local agency will use its own funds to perform work eligible for future federal reimbursement. The local agency must have sufficient local funds to pay for all project costs until such time as federal funds become available. An FTIP amendment may be required when the Advance Construction Authorization is converted to a real obligation of federal funds (see [Exhibit 3-I: Request for Local Advance Construction Authorization](#)). The local agency must consider the risk

Caltrans policies limit the use of toll credits for On-System Local Highway Bridge Program (HBP) projects and Highway Safety Improvement Program (HSIP) projects because all available funds have been programmed and there are more needs than funding capacity. However, local agencies may use other federal funding to dual-fund both On-System Local HBP Projects and HSIP Projects, and apply toll credits to each federal fund in the project to increase the federal reimbursement rate to 100%. See example Scenario C.

Two websites have been added to the policy to assist local agencies that wish to use toll credits for the federal Planning and Federal Transit Administration (FTA) funds:

- http://www.dot.ca.gov/hq/tpp/offices/orip/owp/index_files/Final_2011_RPH.pdf
- <http://www.dot.ca.gov/hq/MassTrans/Docs-Pdfs/5311/transittollcreditsrev012611.pdf>

One of the conditions for FHWA's approval of the toll credits is that its use does not reduce the state's non-federal transportation capital expenditures. To conform to this policy, California must demonstrate continued efforts to maintain its non-federal transportation expenditures. Therefore, project sponsors that have savings of transportation dollars due to toll credit match of federal funds shall spend that savings on other transportation related projects.

In addition, it needs to be noted that the use of toll credits does not generate any additional federal funding. Its use is merely to meet the non-federal match requirement of the federal participating cost. The amount of toll credit available each year is limited by the amount of annual Federal Obligation Authority (OA).

Caltrans policy does not allow the retroactive use of toll credits for funds that have already been obligated. However, subsequent obligations can be authorized to use toll credits.

In order to use toll credit, the following requirements MUST be met:

- The intended use of toll credits is explicitly expressed in the Request for Authorization (RFA) by marking the appropriate toll credit use area;
- Check the toll credit check box below the REMARKS section to indicate the use of and the amount of toll credit applied, not within the body of the finance letter;
- Federal reimbursement rate of those funds utilizing toll credits must be 100%, excluding federally non-participating costs;
- Programmed in the current Federal Statewide Transportation Improvement Program (FSTIP), or post-programmed, as using toll credits;
- The project is funded from one of the programs listed in Caltrans' Statewide Toll Credit Use Policy.

EXHIBIT 3-A REQUEST FOR AUTHORIZATION TO PROCEED WITH PRELIMINARY ENGINEERING*[Place this form on Local Agency Letterhead]*

To: _____ Date: _____
District Local Assistance Engineer FTIP/FSTIP ID: _____
Caltrans, Office of Local Assistance Federal Project No: _____
Project ID/Advantage ID: _____
PPNO (For STIP Projects only): _____
Project Description: _____

Dear

In order to begin federally reimbursable preliminary engineering work for the above-referenced project, we request that you secure federal “*Authorization to Proceed*” (E-76) and Obligation of Funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Exhibit 3-E *Request for Authorization to Proceed Data Sheet(s)*
- ☐ Copy of FTIP/FSTIP Reference
- ☐ Completed Exhibit 3-O *Sample Local Federal-aid Project Finance Letter*
- ☐ Copy of Executed Cooperative Agreement (only for projects on State Highway System)

Agreement End Date (AED)

The project AED must be identified on Exhibit 3-O *Sample Local Federal-aid Project Finance Letter*. Check which of the following applies:

- ☐ The AED will be established with this submittal. Date: _____
- ☐ No revision to the AED is requested with this submittal.
- ☐ A revised AED is requested with this submittal. Date: _____

Toll Credit Usage

- ☐ This project will use Toll Credit. It is fully funded.
- ☐ This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)

☐ Completed Exhibit 7-B “*Field Review Form*”

Environmental Document

- ☐ Type of NEPA Document. Approval Date: _____
- ☐ Categorical Exclusion (CE)
- ☐ Findings of No Significant Impact (FONSI)
- ☐ Record of Decision (ROD)
- ☐ Revalidation Approval Date: _____
- ☐ This agency has not completed the environmental process. The NEPA Document will be submitted at a later date, prior to beginning of final design (PS&E).

Disadvantaged Business Enterprise (DBE) Contract Goal Methodology Form (Exhibit 9-D)

- ☐ Completed Exhibit 9-D and the DBE goal is _____.
- ☐ Exhibit 9-D *DBE Contract Goal Methodology* is not required as the A&E consultant contract was executed prior to October 1, 2014, and the A&E consultant contract has a DBE contract goal, which is a percentage of the entire A&E consultant contract.
- ☐ The DBE goal is 0% because there are no sub consulting opportunities for DBE participation. Documentation verifying this determination is attached to this exhibit, on file with the local agency and has been approved by the DLAE.
- ☐ DBE is not applicable because work is to be performed by the local agency.

A&E Consultant Contracts

- ☐ Consultant contract(s) already executed.

Acceptance date of Exhibit 10-C by Caltrans	Name of Consultant

- ☐ Consultant contract will be procured after authorization. Exhibit 10-C will be sent to Caltrans for acceptance **prior to contract award**.
- ☐ Work is being done by Local Agency staff.
- ☐ Not applicable. Explain: _____

California Transportation Commission (CTC) Allocation

Check which of the following applies:

- ☐ A CTC allocation is not required, or
- ☐ A CTC allocation of \$ _____ (federal/state) funds for the PA/ED and/or PS&E component(s) of work was made at the _____ meeting of the CTC, or

- [] A CTC allocation of funds has been scheduled for the _____ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon issuance of Authorization to Proceed (E-76) by the Federal Highway Administration (FHWA), a Program Supplement Agreement (PSA) and state approved project Finance Letter will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are available for reimbursement until the applicable fund reversion date(s) shown on the state approved project Finance Letter (unless an extension is granted by the Department of Finance).

Invoice Submittal

This Agency understands that only work performed after federal “*Authorization to Proceed*” (E-76) is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed *PSA* and/or state approved “*Finance Letter*”. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended.

CERTIFICATION

I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the FHWA and California Department of Transportation (Caltrans) relative to the above-designated project.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated/encumbered as well as for all costs it incurred prior to receiving the FHWA issued “*Authorization to Proceed*”(E-76). I further understand that all subsequent phases of the project will require a separate “*Federal Authorization to Proceed*”.

For High-Risk and Low-Risk Intelligent Transportation Systems (ITS) projects, I understand that our project shall be consistent with the Regional ITS Architecture, and perform a Systems Engineering analysis. A SERF will be included in the Field Review Package. For High-Risk ITS projects, I understand that this Agency shall not proceed with component detailed design until after FHWA approval of the SEMP and receipt of “*Authorization to Proceed*.”

Please advise us as soon as the “*Authorization to Proceed*” has been issued. You may direct any questions to:
_____ at _____

Signature of Full-time Local Agency Employee in Responsible Charge

Print Name

Title

Agency

Distribution: DLAE

EXHIBIT 3-B REQUEST FOR AUTHORIZATION TO PROCEED WITH RIGHT OF WAY*[Place this form on Local Agency Letterhead]*

To: _____ Date: _____

District Local Assistance Engineer FTIP/FSTIP ID: _____

Caltrans, Office of Local Assistance Federal Project No: _____

Project ID/Advantage ID: _____

PPNO (For STIP Projects only): _____

Project Description: _____

Dear _____

In order to proceed with the Right of Way phase of work for the above-referenced project, we request that you secure Federal “*Authorization to Proceed*” (E-76) and Obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Exhibit 3-E *Request for Authorization to Proceed Data Sheet(s)*
- ☐ Copy of FTIP/FSTIP Reference Sheet
- ☐ Completed Exhibit 3-O *Sample Local Federal-aid Project Finance Letter*
- ☐ Copy of Executed Cooperative Agreement, if not previously submitted (only for projects on the State Highway System)
- ☐ Completed Exhibit 3-H *Request for Capital Subvention Reimbursement Allocation* (only for projects on the State Highway System with “Capital-Outlay” costs funded with local assistance subvention funds and administered by the State)

Agreement End Date (AED)

The project AED must be identified on Exhibit 3-O *Sample Local Federal-aid Project Finance Letter*. Check which of the following applies:

- ☐ The AED will be established with this submittal. Date: _____
- ☐ No revision to the AED is requested with this submittal.
- ☐ A revised AED is requested with this submittal. Date: _____

Toll Credit Usage

- ☐ This project will use Toll Credit. It is fully funded.
- ☐ This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)

- ☐ Completed Exhibit 7-B *Field Review Form*, or
☐ Exhibit 7-B was submitted previously on _____

Environmental Requirements

- ☐ Type of NEPA Document. Approval Date: _____
☐ Categorical Exclusion (CE) Form
☐ Findings of No Significant Impact (FONSI)
☐ Record of Decision (ROD)

☐ Revalidation. Approval Date: _____

Disadvantaged Business Enterprise Contract Goal Methodology Form (Exhibit 9-D)

- ☐ Completed Exhibit 9-D *DBE Contract Goal Methodology* and the DBE goal is _____
☐ Exhibit 9-D *DBE Contract Goal Methodology* is not required as the A&E consultant contract was executed prior to October 1, 2014, and the A&E consultant contract has a DBE contract goal, which is a percentage of the entire A&E consultant contract.
☐ The DBE goal is 0% because there are no sub consulting opportunities for DBE participation. Documentation verifying this determination is attached to this exhibit, on file with the local agency and has been approved by the DLAE.
☐ DBE is not applicable because work is to be performed by the local agency.

A&E Consultant Contracts

- ☐ Consultant contract(s) already executed.

Acceptance date of Exhibit 10-C by Caltrans	Name of Consultant

- ☐ Consultant contract will be procured after authorization. Exhibit 10-C will be sent to Caltrans for acceptance **prior to contract award**.
☐ Work is being done by Local Agency staff.
☐ Not applicable. Explain: _____

California Transportation Commission (CTC) Allocation

Check which of the following applies:

- ☐ A CTC allocation is not required, or
☐ A CTC allocation of funds for the right of way component of work was made at the _____ meeting of the CTC, or

- [] A CTC allocation of funds has been scheduled for the _____ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon issuance of Authorization to Proceed (E-76) by the Federal Highway Administration (FHWA), a Program Supplement Agreement (PSA) and state approved project Finance Letter will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are available for reimbursement until the applicable fund reversion date(s) shown on the state approved project Finance Letter (unless an extension is granted by the Department of Finance).

Invoice Submittal

This Agency understands that only work performed after federal "Authorization to Proceed" (E-76) is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed PSA and/or state approved Finance Letter. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended.

CERTIFICATION

I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administration (FHWA) and California Department of Transportation (Caltrans) relative to the above-designated project.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated/encumbered as well as for all costs it incurred prior to receiving the FHWA issued federal "Authorization to Proceed" (E-76).

Please advise us as soon as the "Authorization to Proceed" has been issued. You may direct any questions to: _____ at _____

Signature of Full-time Local Agency Employee in Responsible Charge

Print Name

Title

Agency

Distribution: DLAE

EXHIBIT 3-C REQUEST FOR AUTHORIZATION TO PROCEED WITH UTILITY RELOCATION*[Place this form on Local Agency Letterhead]*

To: _____ Date: _____

District Local Assistance Engineer FTIP/FSTIP ID: _____

Caltrans, Office of Local Assistance Federal Project No: _____

Project ID/Advantage ID: _____

PPNO (For STIP Projects only): _____

Project Description: _____

Dear _____

In order to proceed with the Utility Relocation phase of work for the above-referenced project, we request that you secure Federal “*Authorization to Proceed*” (E-76) and Obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Exhibit 3-B *Request for Authorization to Proceed with Right of Way of*
- ☐ Completed Exhibit 3-E *Request for Authorization to Proceed Data Sheet(s)*
- ☐ Copy of FTIP/FSTIP Reference Sheet
- ☐ Completed Exhibit 3-O *Sample Local Federal-aid Project Finance Letter*
- ☐ Copy of Executed Cooperative Agreement, if not previously submitted (only for projects on State Highway System)
- ☐ Exhibit 3-H *Request for Capital Subvention Reimbursement Allocation* (only for projects on State Highway System) with “Capital-Outlay” cost funded with local assistance subvention funds and administered by the state)

Agreement End Date (AED)

The project AED must be identified on Exhibit 3-O *Sample Local Federal-aid Project Finance Letter*. Check which of the following applies:

- ☐ The AED will be established with submittal. Date: _____
- ☐ No revision to the AED is requested with this Submittal.
- ☐ A revised AED is requested with this submittal. Date: _____

Toll Credit Usage

- ☐ This project will use Toll Credit. It is fully funded.
- ☐ This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)

- ☐ Completed Exhibit 7-B *Field Review Form*, or
☐ The Exhibit 7-B was submitted previously on _____

Environmental Requirements

- ☐ Type of NEPA Document. Approval Date: _____
☐ Categorical Exclusion (CE) Form
☐ Findings of No Significant Impact (FONSI)
☐ Record of Decision (ROD)
☐ Revalidation. Approval Date: _____

Disadvantaged Business Enterprise (DBE) Contract Goal Methodology Form (Exhibit 9-D)

- ☐ Completed Exhibit 9-D *DBE Contract Goal Methodology* and the DBE goal is _____
☐ Exhibit 9-D *DBE Contract Goal Methodology* is not required as the contract was executed prior to October 1, 2014, and the contract has a DBE contract goal, which is a percentage of the entire contract.
☐ The DBE goal is 0% because there are no subcontracting opportunities for DBE participation. Documentation verifying this determination is attached to this exhibit, on file with the local agency and has been approved by the DLAE.
☐ There is no goal because work is to be performed by the local agency. A Cost-Effectiveness Determination (Exhibit 12-F) is attached.

A&E Consultant Contracts

- ☐ Consultant contract(s) already executed.

Acceptance date of Exhibit 10-C by Caltrans	Name of Consultant

- ☐ Consultant contract will be procured after authorization. Exhibit 10-C will be sent to Caltrans for acceptance **prior to contract award**.
☐ Work is being done by Local Agency staff.
☐ Not applicable. Explain: _____

Utility Relocation

- ☐ This Agency agrees to comply with 23 CFR 645.119 "Alternate Procedure" (as explained in Chapter 13 *Right of Way*, and Chapter 14 *Utility Relocations*, of the LAPM). This alternate procedure is provided to simplify the processing of utility relocations or adjustments under the provisions of 23 CFR 645. Under this procedure, the Federal Highway Administration (FHWA) authorized the California Department of Transportation (Caltrans) to act in relative position of the FHWA for review and approval of the arrangements, fees, estimates, plans, utility agreements, and other related matters required by such regulation as prerequisites for authorizing the utility owner to proceed with and complete the work.

It is understood that the scope of the Department's approval authority under the Alternate Procedure includes all actions necessary to advance and complete all types of utility work under the provisions of

such regulation, except Section 645.119 (B)(1) and 645.119 (b)(2). Two of such documents that need the Department's approval are FHWA Specific Authorization and FHWA Approval of the Utility Agreement(s). See Chapter 14 "*Utility Relocations*", of the LAPM for more information on the activities necessary for federal participation in utility relocations. The approval authority has been delegated to the Right of Way District Utility Coordinators.

California Transportation Commission (CTC) Allocation

Check which of the following applies:

- ☐ A CTC allocation is not required, or
- ☐ A CTC allocation of funds for the right of way component of work was made at the _____ meeting of the CTC, or
- ☐ A CTC allocation of funds has been scheduled for the _____ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon issuance of Authorization to Proceed (E-76) by the Federal Highway Administration (FHWA), a Program Supplement Agreement (PSA) and state approved project Finance Letter will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are available for reimbursement until the applicable fund reversion date(s) shown on the state approved project Finance Letter (unless an extension is granted by the Department of Finance).

Invoice Submittal

This Agency understands that only relocation work performed after federal "*Authorization to Proceed*" (E-76), approval of the Specific Authorization, and appropriate Utility Agreement is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed "Program Supplement Agreement" and/or state approved Finance Letter. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended.

CERTIFICATION

I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and policies and procedures promulgated by the FHWA and Caltrans relative to the above-designated project. I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated/encumbered, as well as, for all costs it incurred prior to receiving the FHWA issued "*Authorization to Proceed*" (E-76).

Please advise us as soon as the "*Authorization to Proceed*" has been issued. You may direct any questions to: _____ at _____

Signature of Full-time Local Agency Employee in Responsible Charge

Print Name

Title

Agency

Distribution: DLAE

EXHIBIT 3-D REQUEST FOR AUTHORIZATION TO PROCEED WITH CONSTRUCTION*[Place this form on Local Agency Letterhead]*

To: _____ Date: _____

District Local Assistance Engineer FTIP/FSTIP ID: _____

Caltrans, Office of Local Assistance Federal Project No: _____

Project ID/Advantage ID: _____

PPNO (For STIP Projects only): _____

Project Description: _____

Dear _____

In order to advertise, award and administer the construction contract for the above-referenced project, we request that you secure Federal “*Authorization to Proceed*” (E-76) and Obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Exhibit 3-E *Request for Authorization to Proceed with Data Sheet(s)*
- ☐ Copy of FTIP/FSTIP Reference Sheet
- ☐ Completed Exhibit 3-O *Sample Local Federal-aid Project Finance Letter*
- ☐ Copy of Executed Cooperative Agreement (only for projects on State Highway System)
- ☐ Exhibit 3-H *Request for Capital Subvention Reimbursement Allocation* (only for projects on State Highway System with Capital-Outlay” cost funded with local assistance subvention funds and administered by the state)

Agreement End Date (AED)

The project AED must be identified on Exhibit 3-O *Sample Local Federal-aid Project Finance Letter*. Check which of the following applies:

- ☐ The AED will be established with this submittal. Date: _____
- ☐ No revision to the AED is requested with this submittal.
- ☐ A revised AED is requested with this Submittal. Date: _____

Toll Credit Usage

- ☐ This project will use Toll Credit. It is fully funded.
- ☐ This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)

- ☐ Completed Exhibit 7-B *Field Review Form*, or
☐ The Exhibit 7-B previously was submitted on _____.

Environmental Requirements

- ☐ Type of NEPA Document. Approval Date: _____.
☐ Categorical Exclusion (CE) Forms
☐ Findings of No Significant Impact (FONSI)
☐ Record of Decision (ROD)
☐ Revalidation. Approval Date: _____.

Disadvantaged Business Enterprise (DBE) Contract Goal Methodology Form (Exhibit 9-D)

- ☐ Completed Exhibit 9-D *DBE Contract Goal Methodology* and the DBE goal is _____.
☐ The DBE goal is 0% because there are no subcontracting opportunities for DBE participation. Documentation verifying this determination is attached to this exhibit, on file with the local agency and has been approved by the DLAE.
☐ There is no goal because it is an emergency project, a “nonprofit,” uses force account, or other. A Cost-Effectiveness Determination (Exhibit 12-F) is attached.

A&E Consultant Contracts

- ☐ Consultant contract(s) already executed.

Acceptance date of Exhibit 10-C by Caltrans	Name of Consultant

- ☐ Consultant contract will be procured after authorization. Exhibit 10-C will be sent to Caltrans for acceptance **prior to contract award**.
☐ Work is being done by Local Agency staff.
☐ Not applicable. Explain: _____

Right of Way Certification (Exhibit 13-A or 13-B)

Right of Way Certification # _____ which was approved on _____ is:

- ☐ Attached, or
☐ Previously submitted.

Utility Relocations performed and reimbursed under the Construction phase

- ☐ Not Applicable
☐ This Agency agrees to comply with 23 CFR 645.119 “Alternate Procedure” (as explained in Chapter 13, “*Right of Way*”, and Chapter 14, “*Utility Relocation*” of the LAPM). This alternate procedure is provided

to simplify the processing of Utility Relocations or adjustments under the provisions of 23 CFR 645. Under this procedure, the Federal Highway Administration (FHWA) authorized the California Department of Transportation (Caltrans) to act in relative position of the FHWA for review and approval of the arrangements, fees, estimates, plans, utility agreements, and other related matters required by such regulation as prerequisites for authorizing the utility owner to proceed with and complete the work.

It is understood that the scope of Caltrans approval authority under the Alternate Procedure includes all actions necessary to advance and complete all types of utility work under the provisions of such regulation, except Section 645.119 (b)(1) and 645.119 (b)(2). Two such documents requiring the Department's approval are FHWA Specific Authorization and FHWA Approval of the Utility Agreement (Exhibit 14-C). See Chapter 14, "Utility Relocation", of the LAPM for more information on the activities necessary for federal participation in Utility Relocations. Approval authority has been delegated to the District Right of Way Utility Coordinators.

PS&E Package and PS&E Certification

- ☐ Completed PS&E package including Exhibit 12-C *PS&E Certification*, and Exhibit 12-D *PS&E Checklist*, or
- ☐ The PS&E package including Exhibit 12-C *PS&E Certification*, and Exhibit 12-D *PS&E Checklist* submitted and accepted on _____

Local Agency Construction Contract Administration Checklist

- ☐ Exhibit 15-A *Local Agency Construction Contract Administration Checklist*, or
- ☐ The *Local Agency Construction Contract Administration Checklist* was submitted previously and our procedures have not changed.

California Transportation Commission (CTC) Allocation

Check which of the following applies:

- ☐ A CTC allocation is not required, or
- ☐ A CTC allocation of funds for the construction component of work was made at the _____ meeting of the CTC, or
- ☐ A CTC allocation of funds has been scheduled for the _____ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon issuance of Authorization to Proceed (E-76) by the Federal Highway Administration (FHWA), a Program Supplement Agreement (PSA) and state approved project Finance Letter will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are available for reimbursement until the applicable fund reversion date(s) shown on the state approved project Finance Letter (unless an extension is granted by the Department of Finance).

Invoice Submittal

This Agency understands that project construction contracts advertised prior to federal authorization are NOT eligible for reimbursement. It is also understood that Construction Engineering (CE) cost must be specifically included and authorized in the federal Authorization to Proceed with Construction to be eligible for reimbursement. If CE is authorized after construction begins, only those CE costs incurred after the date the CE is authorized are eligible for reimbursement.

Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed “*Program Supplement Agreement*” and/or state approved “*Finance Letter*”, and the DLAE has received the Construction contract award package. It is understood that an invoice must be submitted at least once every six months for each project phase until all funds are expended.

CERTIFICATION

I certify that the facts and statements in this “*Request for Authorization Package*” are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administration and the California Department of Transportation (Caltrans) relative to the above-designated project.

I understand that upon submittal of this request and a completed Exhibit 7-B “*Field Review Form*”, the federal and/or state funds will be encumbered via a “*Program Supplement Agreement*” and /or state approved “*Finance Letter*”. This Agency will comply with the liquidation deadlines as explained in Government Code 16304.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated/encumbered and all costs it incurred prior to receiving the FHWA issued “*Authorization to Proceed*” (E-76) for this phase of the project.

Please advise us as soon as the “*Authorization to Proceed*” has been issued. You may direct any questions to:

_____ at _____

Signature of Full-time Local Agency Employee in Responsible Charge

Print Name

Title

Agency

Distribution: DLAE

EXHIBIT 3-F INSTRUCTIONS FOR REQUEST FOR AUTHORIZATION DATA SHEET(S)**General**

“Request for Authorization (RFA) Data Sheets” (Exhibit 3-E) must be submitted whenever a local agency desires federal participation in a phase of work for the project. The completed RFA data sheets provide the basic project information necessary for Caltrans and FHWA to process a request for federal authorization. A federal “Authorization to Proceed” (E-76) must be issued prior to beginning work for which federal reimbursement is sought and before the project is advertised for construction.

Dist.-Co.-Rte-PM/Agency: Complete the District, County, Route (State Route only or 0 (zero), Post Mile limits (State Route only) or 4-digit Agency abbreviation. This group of characters is called the Project Locator.

FTIP/FSTIP ID No.: This project ID number is assigned by the Regional Transportation Planning Agency (RTPA) or Metropolitan Planning Organization (MPO) and references the project in the regional Federal Transportation Improvement Program (FTIP) and Statewide Federal State Transportation Improvement Program (FSTIP). All projects that receive federal “Authorization to Proceed” must be listed in the triennial element of the current federally approved FTIP/FSTIP. This project ID number is available at the regional RTPA/MPO web site in the Caltrans CTIPS system referenced below.

FHWA requires that all federally funded phases of work be specifically listed in the federally approved FTIP/ FSTIP. Phases of work not listed must be amended into the FTIP/FSTIP via a TIP amendment prior to the authorization/obligation of federal funds.

Federal Project Number: The Federal Project Number (FPN) is the major federal project identifier and must be reported for all federal-related transactions. The last seven (7) numeric digits of the FPN are used to identify the project in both the Caltrans’ Federal Aid Data System (FADS) and the Federal Management Information System (FMIS). Typically, the alpha/numeric characters preceding the last seven numeric digits of the FPN are used to identify the federal funding program (for ongoing multi-year projects the fiscal year of programming may also be identified). For the initial project federal authorization, the Caltrans District Local Assistance Engineer (DLAE) or Division of Local Assistance (DLA) will assign the FPN. On subsequent authorization requests, enter the FPN previously assigned.

Project Planning Number (PPNO): For projects financed, in whole or in part with funds from the State Transportation Improvement Program (STIP), Caltrans will assign a project PPNO. Project PPNOs are available at Caltrans maintained California Transportation Improvement Program System (CTIPS) web site.

Caltrans Expenditure Authorization (EA): The EA is the primary state identifier for transportation projects financed with federal and/or state funds. The first two (2) characters of the EA identify the Caltrans District number (01, 02, ... 12). The next 6 characters identify the six (6) digits of the EA (the combined eight (8) characters are referred to as the Primary EA). The suffix to the EA may contain up to five (5) characters, including an “S” or “L.” For projects funded with local assistance federal funds (including Regional Improvement Program Funds from the STIP), an “L” suffix is used at the end of the Primary EA. The Caltrans Division of Local Assistance administers local assistance federal funds. For the initial program authorization, the DLAE establishes the EA to be used. On subsequent authorization request, enter the EA previously assigned.

CTIPS Reference No.: Enter the thirteen (13)-character California Transportation Improvement Program System (CTIPS) reference number. The MPO FTIP/FSTIP project ID number may be used if a CTIPS reference number is not available. The (CTIPS) project number is assigned by Caltrans and is available at the Caltrans maintained CTIPS.

Bridge No.: This number is required for all projects that involve bridge replacement, rehabilitation or seismic retrofit work. Enter the National Bridge Inventory (NBI) structure number of the bridge(s) to be replaced, rehabilitated, or retrofitted. The NBI structure number(s) are available via the Caltrans Division of Local Assistance Highway Bridge (HBP) web site at <http://www.dot.ca.gov/hq/LocalPrograms/>

The NBI structure number format is XXYZZZZS where XX represents the two (2) digits county number (01-58); Y is the bridge owner; ZZZZ is the actual bridge number; S represents the suffix for the bridge.

Preliminary Engineering and Right of Way activities using HBP funds also must report NBI structure number(s).

Responsible Agency: The responsible agency is the agency receiving the federal funds and preparing the “Request for Authorization.” This agency is ultimately responsible for implementation of the project. Typically, this agency will provide the required match to federal funds and maintains the completed facility. The responsible agency must enter into a project funding agreement directly with the state for project design, construction, etc., but also may enter into a separate agreement with a city, county or other entity to implement and administer the project or project phase on their behalf.

Implementing Agency: Name of agency implementing the project or project phase on behalf of the responsible agency. Discuss in the Local Agency Comments section of the RFA data sheets.

Project Title: Enter the project title as listed in the current federally approved FTIP/FSTIP.

Work Description: Provide a brief description of the work for which federal participation is being sought. The description of work must be consistent with the federally approved FTIP/FSTIP. Changes in project scope or limits will require prior RTPA/MPO concurrence and FTIP/FSTIP amendment. For changes in project scope or limits, a **revised “Authorization to Proceed” must be approved by FHWA.**

When planning projects are involved, identify the time period that the project covers.

Project Location: Enter a brief description for the project limits that includes a U.S., State or local route(s). The description should reference the project by municipal boundaries, county lines, intersecting highways, streams, railroad crossings, etc. If more space is needed to describe a multi-location project attach a separate listing of project limits for each project locations.

For projects located in urban areas, identify the city and relate the project to named places as space permits.

Urban Area Name: As defined in Section 101, Title 23 of the U.S.C., an urbanized area is an area having a population of 50,000 or more persons. An attributable urbanized area is an urban area having a population of 200,000 or more and eligible to receive Federal Urbanized Area funds. The following is a list of the currently recognized urbanized areas within the State:

Los Angeles-Long Beach	Santa Rosa
San Francisco-Oakland	Seaside-Monterey
San Diego	Antioch-Pittsburg
San Jose	Lancaster
Sacramento	Hesperia-Apple Valley-Victorville
San Bernardino-Riverside	Indio-Coachella
Fresno	Concord
Bakersfield	Mission Viejo
Stockton	Temecula-Murrieta
Oxnard-Ventura	Thousand Oaks
Modesto	

Indian Reservation: Indicate (Y/N) whether or not the project is located on an Indian Reservation.

Congressional Districts: Enter the congressional district(s) that are impacted by the project and the percentage of funds for each district.

Toll Road: Indicate (Y/N) if a toll road is involved. To monitor toll road projects or work performed on toll roads, enter a “Y.”

Rural Area: Defines as an area having a population of less than 50,000.

Federal-Aid System: Indicate the federal-aid system on which the project is located. Valid entries are:

Interstate
NHS Non-Interstate
Other Federal-aid System
Not on Any Federal-aid System

Functional Classification: Streets and highways are grouped into classes or systems according to the character of service they provide. If there are multiple functional classifications involved, enter the higher classification. Valid entries for functional classification are:

Freeway and Expressway
Principal Arterial
Minor Arterial
Major Collector Minor Collector
Local
No Functional Class

State Highway: Indicate (Y/N), whether or not the project is located within the right of way limits of an existing **or** proposed state highway. If so, enter the State Highway Route number (e.g., I-405).

Administering Agency (Local or Caltrans): Indicate the name of the agency administering the project. If the project is located on a state highway and Caltrans is the project administrator, enter the name of the Caltrans Project Manager.

FHWA Oversight: Indicate whether or not this project is “Delegated” or “Projects of Division Interest” (see Section 2.5 Projects of Division Interest Projects, and Figure 2-1 Projects of Division Interest Identification and Review Process, in Chapter 2 of the LAPM). The criteria for Projects of Division Interest project consideration are:

- Major Projects [23 U.S.C. 106(h)]
- Innovative Financing
- Innovative Contracting
- Risk Based [23 U.S.C. 106(g0)]

Projects of Division Interest require an FHWA/Caltrans signed Project Oversight Agreement (per Stewardship and Oversight Agreement, see LAPM Chapter 2).

Advance Construction Authorization: Indicate (Y/N) whether or not an Advance Construction Authorization is being requested. If so, a local agency must submit a “Request for Advance Construction Authorization” form (see Exhibit 3-I).

100% Safety Eligible: Indicate (Y/N), whether or not this project is using 100% Safety funds in accordance with Title 23 of United States Code (U.S.C.) Section 120.

Cost Summary: Identify all project-related costs through the current request. The “TOTAL” cost of work is the sum of both the total federal participating and nonfederal participating project costs. The “federal participating” cost is equal to the cost of all work eligible for federal participation. Identify the “federal funding program and dollar amount” for each phase of work. Identify the funds previously obligated as well as these funds current request. The total federal funds obligated should not exceed the funds programmed in the federally approved FTIP/FSTIP (unless prior approval is received from appropriate MPO/RTPA), Caltrans Administered Federal Program (such as Bridge, Safety) or allocated by the FHWA (discretionary/earmarked federal funds).

Finally, enter the “LOCAL” and/or other types of federal matching funds. Identify previous obligations and the current request for each phase of work. (If more space is needed, use a separate sheet of paper.)

Public Law, Section, and Legislated Project No: Identify the Public Law, Section and Legislated Project No. identifying to DEMO project.

Federal DEMO ID: This five (5) character alphanumeric identifier is required for all Demonstration (DEMO) funded projects. The first two characters are alpha (represent name of state) and the last three (3) characters are numeric (sequential number for the state), e.g., CA015, CA016.

The federal DEMO ID is assigned by the FHWA and relates to a specific DEMO project identified in public law. The DEMO ID is listed in the allocation memo to the FHWA Division office in Sacramento from the FHWA in Washington, D.C.

(DEMO) Estimated Construction Date: Enter the estimated start date (MM/YYYY) of physical construction for the DEMO project with its appurtenant facilities. This information must be reported for all DEMO funded projects. This includes any removal, adjustment or demolition of buildings or major obstructions, and utility or railroad work that is a part of the contract for physical construction.

Related DEMO Project(s): Occasionally, a DEMO funded transportation project is funded by multiple DEMO IDs. FHWA administrative procedures require that a separate federal project numbers be established for each DEMO ID to facilitate the tracking of federal funds on a DEMO ID basis. For projects funded with multiple DEMO IDs, cross-reference any directly related FPNs.

MPO/RTPA: Enter the name of the Metropolitan Planning Organization (MPO) or Regional Transportation Planning Agency (RTPA) within which the project is located.

Federal Funded Phases: Identify the project phases of work programmed to receive federal funds in the FTIP/FSTIP.

Federal Fund Types: Identify all fund types by federal or state program (e.g. STPL, CMAQ, HBP, STIP, etc.) and amounts programmed for the project.

FTIP/FSTIP/Year and No.: Enter the Federal Fiscal Year the FTIP/FSTIP was approved. For amendments to the FTIP/FSTIP, enter the amendment number and approval date. Federal Fiscal Year 2003/2004 is identified as 03/04

Approval Date: Enter the date that the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) approved the FTIP or FSTIP (or amendment thereto) for the work being authorized. Enter the date in a MM/DD/YY (i.e., 10/05/02) format.

Approved Expedited Project Selection Procedures (EPSP): Indicate (Yes or No) whether or not Caltrans has approved the appropriate MPO/RTPA’s EPSP.

Disadvantage Business Enterprise (DBE) Submittals: Enter the Caltrans Approval date of the California Department of Transportation DBE Implementation Agreement for Local Agencies (Exhibit 9-A). Enter the Caltrans Approval date for the current FFY Local Agency DBE Annual Submittal Form (Exhibit 9-B). The Local Agency must have a completed California Department of Transportation DBE Implementation Agreement for Local Agencies, and the current FFY Local Agency DBE Annual Submittal Form approved by Caltrans prior to the Agency's initial request for federal authorization. For this reason, the approval process for submitting the Local Agency DBE Annual Submittal Form should start well in advance of the planned date of first federal authorization. The approval date should be entered in a MM/DD/YY (i.e., 09/20/06) format.

Initial Federal Authorization Dates: Enter the federal authorization date for each phase of work as the project progresses through the project development process. This date represents the eligibility date for the start of federally reimbursable work. Federally reimbursable work may begin on the date that the FHWA (Sacramento) approves/authorizes (via electronic signature) the E-76. Work done prior to the FHWA authorization date shown on the E-76 will not be federally reimbursable.

Estimated Completion Date: Enter the estimated completion date for each phase of work.

Environmental Data: Identify the NEPA Class of Action (CE, EA or EIS) for the project by inserting a check mark next to the appropriate class and indicate the date the NEPA Determination or document was signed. For EISs, indicate the year of the public release of the EIS and the EIS Number (assigned by FHWA).

A copy of the signed NEPA Determination or document should accompany the requests for Authorization to Proceed with Right of Way and/or Construction.

Air Basin: The name of the Air Basin is required for projects funded with federal Congestion and Air Quality Improvement Program (CMAQ) funds.

Right of Way Acquired Parcels: Report the number of right of way parcels to be acquired and the estimated cost.

Family Relocation Assistance Payments (RAP-Family): Report the total number of family relocation assistance payments to be made and the estimated costs.

Business Relocation Assistance Payments (Business): Report the total number of business relocation assistance payments to be made and the estimated costs.

Last Resort Housing/Hardship (SRH/HRDSHP): Report the total number of Last Resort Housing/Hardship payments to be made and the estimated costs.

Utilities: Report the total estimated amount of utility payments to be made. Enter the amount to the nearest dollar.

Support: Report the total estimated dollar amount of the support payments to be made. Enter the amount rounded to the nearest dollar.

Total: Sum of all the R/W estimates above.

Utility Relocations/Adjustments: Enter the name of the utility owner, type of utility, and estimated cost to relocate/adjust each utility for which federal reimbursement is being requested. The local agency must be totally obligated to pay for the utility relocation work. Refer to Chapter 14, "Utility Relocations," of the *Local Assistance Procedures Manual* (LAPM) for requirements and information related to federal participation in utility relocation work.

#Parcels: Enter the number of parcels for each type of acquisition and/or activity

Acquisition Type and/or Activity: Enter the type of acquisition (residential, business or easement, partial or full take, etc.) and/or Activity (relocation assistance, type of easement, other type of compensation, etc.)

Acres: Enter the number of acres attributable to each acquisition type and/or activity.

Estimated Cost: Enter the estimated cost attributable to each acquisition type and/or activity.

Right of Way Certification: Enter the Right of Way Certification status (1,2, or 3) as defined in 23 CFR 635.309 and Chapter 13 “Right of Way” of the LAPM and enter the date the Right of Way Certification was accepted by the Caltrans Right of Way official.

Local Agency Comments: Provide any important project information related to the current request for authorization. If more space is needed, submit the information on a separate sheet of paper.

Person Preparing Request for Authorization: Enter the name, title, e-mail address, and phone number of the person preparing the request for authorization and to whom questions may be addressed.

Contact for Program Agreement: Enter the name, title, phone number and e-mail address of the person to whom the project funding agreements should be sent for signature by the local agency.

EXHIBIT 3-I REQUEST FOR LOCAL ADVANCE CONSTRUCTION AUTHORIZATION
(On Local Agency Letterhead)

To: _____ Date: _____
District Local Assistance Engineer FTIP/FSTIP ID: _____
Federal Project Number: _____
EA: _____
Project Description: _____

Re: Request for Advance Construction Authorization for _____ for _____ at _____

Dear:

The _____ requests federal Advance Construction authorization for the (*Preliminary Engineering, Right of Way, Construction and/or Construction Engineering*) phase(s) of work for the above referenced project.

The _____ understands that currently there are insufficient federal transportation funds (and/or Obligational Authority (OA)) to obligate the appropriate funds for the proposed work.

The _____ agrees to use local funds in lieu of federal funds to finance the cost of work until such time that federal funds (and/or OA) become available for obligation and subsequent reimbursement of the federal share of work. It is understood that an FTIP amendment may be required when the Advance Construction Authorization is converted to a real obligation of federal funds. It also is understood that federal reimbursement is **not** guaranteed.

The _____ understands that work performed prior to federal authorization is ineligible for federal reimbursement and that advertising the construction contract prior to federal authorization will deem the construction and construction phases of work ineligible for federal funds

For questions regarding this request you may contact _____.

Signature of Local Agency Representative Authorized to Commit Local Funds

Title

Distribution: 1) DLAE 2) DLA 3) MPO

EXHIBIT 3-O SAMPLE LOCAL FEDERAL-AID PROJECT FINANCE LETTER

DEPARTMENT OF TRANSPORTATION
DIVISION OF ACCOUNTING
LOCAL PROGRAM ACCOUNTING BRANCH

Anticipated Advertisement Date: _____
Anticipated Award Date (CON only): _____
Anticipated Contract Acceptance Date (CON only): _____
Agreement End Date: _____

Date: _____
Agency: _____
Fed Project No.: _____
Project ID.: _____
PPNO.: _____
Bridge No : _____

ATTN: _____

Work on State Highway (Y or N): ____ If yes, provide following:
Administered by State or Local? _____
Project Manager Name: _____
Accounting Program Code(s): _____
Coop or Contribution Agrmnt No.: _____

"P" or "L"*	TOTAL COST OF WORK	FEDERAL PARTICIPAT. COST	FEDERAL FUND TYPE (1)	FEDERAL FUND TYPE (2)	STATE MATCH FUNDS	LOCAL MATCH FUNDS	OTHER FUNDS
PRELIMINARY ENGINEERING							
Agency Preliminary Engineering							
State Furnished Preliminary Engineering							
Overhead at ____ %							
RIGHT OF WAY (R/W)							
Capital/Acquisition							
Support/Engineering							
CONSTRUCTION							
Contract Items							
Utilities							
Supplemental Work							
Contingencies							
Trainees							
Agency/State Furn. Mat.							
Contract Total:							
CONSTRUCTION ENGINEERING							
Agency Construction Engineering							
State Furnished Construction Engineering							
Overhead at ____ %							
State Furnished Materials Testing							
Overhead at ____ %, Subjob _____							
Striping by Agency							
Force Account Work by Agency							
TOTALS:							

Federal Participation: _____
Federal Appn. Code(s): _____
Federal Reimbursement Rate(s) for Progress Invoice:

PHASE	FED (1)	FED (2)
PE		
R/W		
CON		
CE		

Certification
* "P" = Pro Rata, "L" = Lump Sum
I certify that this Finance Letter accurately reflects the current cost estimate for all phases of the project obligated but not fully expended.
For questions regarding finance letter, contact:
Printed Name: _____
Telephone No.: _____
Signature : _____
Title : _____
Project location : _____
Remarks : _____
Toll Credits: Amount: _____

**EXHIBIT 3-Q REQUEST FOR AUTHORIZATION TO PROCEED
WITH NON-INFRASTRUCTURE PROJECT (CONSTRUCTION PHASE)***[Place this form on Local Agency Letterhead]*

To: _____ Date: _____

District Local Assistance Engineer FTIP/FSTIP ID: _____

Caltrans, Office of Local Assistance Federal Project No: _____

Project ID/Advantage ID: _____

PPNO (For STIP Projects only): _____

Project Description: _____

Dear _____

In order to begin federally reimbursable work for the above-referenced non-infrastructure project, we request that you secure Federal Authorization to Proceed and the obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Exhibit 3-E *Request for Authorization to Proceed Data Sheet*
- ☐ Copy of FTIP/FSTIP Reference
- ☐ Completed Exhibit 3-O *Finance Letter*
- ☐ NI project work plan, budget, schedule and deliverables

Agreement End Date (AED)

The project AED must be identified on Exhibit 3-O *Sample Local Federal-aid Project Finance Letter*. Check which of the following applies:

- ☐ The AED will be established with this submittal. Date: _____
- ☐ No revision to the AED is requested with this submittal.
- ☐ A revised AED is requested with this submittal. Date: _____

Toll Credit Usage

- ☐ This project will use Toll Credit. It is fully funded.
- ☐ This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)

- ☐ Completed Exhibit 7-B *Field Review Form*, or
- ☐ Project Application for SRTS-NI, or TE

Environmental Document

- ☐ Categorical Exclusion (CE). Approval Date: _____.
- ☐ Preliminary Environmental Screening Form for Non-Infrastructure Projects (PES-NI)

Disadvantaged Business Enterprise (DBE)

- ☐ All work for this phase of the project will be performed by local agency staff.
- ☐ For consultant contracts a Disadvantaged Business Enterprise (DBE) goal will be established for each contract and Exhibit 10-O1 *Consultant Proposal DBE Commitment* will be submitted with each proposal. Within 30 days of contract execution, Exhibit 10-O2 *Consultant Contract DBE Information* shall be forwarded to the DLAE.

A&E Consultant Contracts

- ☐ Consultant contract(s) already executed.

Acceptance date of Exhibit 10-C by Caltrans	Name of Consultant

- ☐ Consultant contract will be procured after authorization. Exhibit 10-C will be sent to Caltrans for acceptance **prior to contract award**.
- ☐ Work is being done by Local Agency staff.
- ☐ Not applicable. Explain: _____

California Transportation Commission (CTC) Allocation

- ☐ A CTC allocation is not required, or
- ☐ A CTC allocation of \$ _____ (federal/state) funds was made at the _____ meeting of the CTC, or
- ☐ A CTC allocation of funds has been scheduled for the _____ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon issuance of Authorization to Proceed (E-76) by the Federal Highway Administration (FHWA), a Program Supplement Agreement (PSA) and state approved project Finance Letter will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are available for reimbursement until the applicable fund reversion date(s) shown on the state approved project Finance Letter (unless an extension is granted by the Department of Finance).

Invoice Submittal

This Agency understands that only work performed after federal “Authorization to Proceed” (E-76) is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed “Program Supplement Agreement” and/or State approval Finance Letter. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended.

CERTIFICATION

I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the FHWA and California Department of Transportation (Caltrans) relative to the above-designated project.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated encumbered as well as for all costs it incurred prior to receiving the FHWA issued “Authorization to Proceed.” I further understand that all subsequent phases of the project will require a separate “Federal Authorization to Proceed.”

Please advise us as soon as the “*Authorization to Proceed*” has been issued. You may direct any questions to:
_____ at _____

Signature of Full-time Local Agency Employee in Responsible Charge

Print Name

Title

Agency

Distribution: DLAE

Chapter 5 Invoicing

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Award Package for State Transportation Improvement Program (STIP) or Active Transportation Program (ATP) projects

The Award Package for state-only funded construction contracts shall consist of the completed Award Information for STIP Projects (see [LAPG Chapter 23: Local Agency STIP Projects](#), Exhibit 23-A, or see [LAPG Chapter 22: Award Information for ATP Projects](#), Exhibit 22-A).

5.3 REIMBURSABLE PROJECT COSTS

The costs of salaries, wages and related project costs may be reimbursable for the following activities. All costs must be broken down into eligible direct and/or indirect cost components. For list of ineligible costs see [LAPM Chapter 16: Administer Construction Contracts](#), Section 16.10: Contract Change Orders.

Phases of Work

1. **Preliminary Engineering:** Preliminary Engineering is the initiation, design, and related work preparatory to the advancement of a project to physical construction. For local STIP and ATP projects, the Preliminary Engineering costs must be segregated into:
 - Environmental Studies and Permits (E&P)
 - Plans, Specifications & Estimate (PS&E)
2. **Right of Way:** Acquisition of Right of Way, real property, or rights thereto is included. It also includes the preparation of Right of Way plans, making economic studies and other related preliminary work, appraisal for parcel acquisition, review of appraisals, preparation for and trial of condemnation cases, management of properties acquired, furnishing of relocation advisory assistance, utility relocation, and other related labor expenses.

Note: Right of Way rental income and the proceeds from the sale of excess land may be retained by local agencies if it is used for a valid Title 23 purpose. It is the local agency's responsibility to assure they comply with Title 23 if this option is selected. For additional information about Right of Way topics, see [LAPM Chapter 13: Right of Way](#).
3. **Construction Engineering:** Construction Engineering is the supervision and inspection of construction activities, additional staking functions considered necessary for effective control of the construction operations, testing materials incorporated into construction, checking shop drawing, and measurements needed for the preparation of pay estimates. Construction Engineering must be authorized to be eligible for reimbursement.
4. **Construction:** Eligible construction costs include the actual costs to construct the transportation facility and its appurtenant facilities. It also includes: removal, adjustment or demolition of buildings or major construction; utilities or railroad work that is a part of the physical construction of the project; and administrative settlement cost of contract claims.
5. **Administrative Settlement Costs:** These are service costs related to contract claims related to the review and defense of claims against federal-aid-projects. See [LAPM Chapter 16: Administer Construction Contracts](#).

Direct Costs

Direct costs are costs incurred solely for a specific state/federal-aid funded transportation project. Direct costs must be reasonable and allowable per 2 CFR 200. These costs include contractor payments, Right of Way acquisition, direct materials, salaries, wages, fringe benefits and related costs, approved equipment and other capital expenditures, contracted services and other items of expense furnished specifically for the federal-aid project. Refer to [2CFR Subpart E – Cost Principles](#) and [2CFR 439 – Equipment and other capital expenditures](#) for additional information regarding reasonable and allowable costs and equipment thresholds.

Indirect Costs

With the enactment of the Transportation Equity Act for the 21st Century (TEA-21) on June 9, 1998, and the issuance of FHWA Guidance 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards, indirect costs are eligible for federal reimbursement. Should any department, division or other organization unit within the local agency seek reimbursement of their indirect costs, they must receive an Approval/ Acceptance Letter of the local agency's Indirect Cost Rate Proposal (ICRP)/Indirect Cost Allocation Plan (ICAP) for the fiscal year(s) involved from Caltrans Independent Office of Audits and Investigations (IOAI) prior to billing for any indirect costs. If a project involves more than one fiscal year, approval of the indirect cost rate(s) for each fiscal year for each unit of the government wishing to bill indirect costs are required prior to claiming reimbursement. The Indirect Cost Calculation section on the invoice must be completed and the summary data transferred to the first page of the invoice. Indirect costs must not be combined with direct costs on invoices. See [Section 5.13: Obtaining Approval for Indirect Costs](#) in this chapter for details on obtaining approval/acceptance of ICRP/ICAP.

After obtaining approval/acceptance, and at the discretion of the local agencies, indirect costs may be included when seeking reimbursement. However, any completed project with a Final Report of Expenditures will not be eligible for retroactive indirect cost reimbursement.

Note: Some programs may have special requirements or restrictions for indirect costs. As examples; the Environmental Enhancement and Mitigation (EEM) program does not allow reimbursement for indirect costs, and the Freeway Service Patrol program does not allow the use of state funds for administrative purposes pursuant to Streets and Highways Code Section 2564.

The sample invoice exhibits in the back of this chapter ([Exhibits 5-A: Sample Federal-Aid Invoice \(Except for STIP and ATP projects\)](#) to [Exhibit 5-G: Sample Alternative Payment Procedure](#) shows how the indirect costs should be billed.

Underfunded Projects

When local agency personnel request federal funding for a project, it is either:

1. Fully funded (federal funds requested at maximum federal reimbursement rate, i.e., 88.53% for Surface Transportation Program projects), or
2. Underfunded, (federal funds requested at less than maximum reimbursement rate, i.e., 75% vs. 88.53%. See example below), or

3. There is nonparticipating work (costs that are not eligible for federal reimbursement).

The calculated federal reimbursement ratio is computed by dividing the amount of federal funds authorized by the total participating costs.

For example, project CML – XXXX (XXX) has:

- Federal participating ratio of 100%
- Normal pro rata share of 88.53%
- Total estimated costs of the project are \$1,000,000.00
- Total federal funds are \$750,000.00
- The Federal Appropriation Code is Q240
- The reimbursement ratio would be: $\$750,000.00 / \$1,000,000.00 = 75\%$

If the federal funding (\$750,000) divided by the federally participating costs (\$1,000,000) is less than the full pro rata share (88.53%), the project is considered underfunded. In this case, the progress payments must be reimbursed at the lower reimbursement ratio, which is 75%.

Pro Rata vs. Lump Sum

23 Code of Federal Regulations (CFR) 630.106(f)(1) requires the federal share of eligible project costs to be established at the time of project agreement execution either by pro rata with the agreement stating the federal share as a specified percentage, or by lump sum with the agreement stating that federal funds are limited to a specified dollar amount not to exceed the legal pro rata.

In requests for federal authorization to proceed, local agencies must document whether the federal-aid share is to be pro rata or lump sum, by phase and fund type. Caltrans will then enter the pro rata or lump sum share in the Federal-Aid Data System (FADS) E-76 transmittals. For the construction phase of work, the pro rata or lump sum share may be adjusted before or shortly after contract award in accordance with 23 CFR 630.106(f)(2). Requests for award adjustment must be submitted by a local agency to Caltrans within 90 days of contract award.

Subsequent to an award adjustment, an increase in the federal funding obligation beyond the established lump sum share may be allowable as a result of an increase to the total project construction cost. A prior established lump sum amount less than the legal federal share does not prohibit reimbursement up to the maximum legal share. For pro-rata projects, subsequent cost adjustments will maintain the established reimbursement rate. If no additional federal funds are added, the reimbursement rate will be reduced. In no cases will the reimbursement rate be increased.

On existing projects for which the lump sum or pro rata method had not been established during previous project agreement processing, the next request for adjustment must indicate the method to be established. Otherwise, the pro rata method will be assigned by default.

The federal share to be established will be identified in the local agency's project Finance Letter submittal (see [Exhibit 3-0: Sample Local Federal-Aid Finance Letter](#)), LP2000 Finance Letter utility, and in FADS Fund Detail Screen prior to District E-76 transmittal to headquarters.

Agreement End Date (AED)

The Period of Performance is defined as the time frame during which eligible federal project costs can be incurred. The beginning of the Period of Performance is established when the project's first authorization (E-76) is approved by FHWA. The end of the Period of Performance is when the agency has finished incurring federally reimbursable costs. As a result of these eligible costs being incurred within the Period of Performance, they are eligible for reimbursement.

The Agreement End Date (AED) is the date that an agency must estimate in order to identify the end of the project's Period of Performance. It is defined as the date after which no additional costs may be incurred for an authorized phase of work and coincides with when the agency submits its complete and accurate Final Report of Expenditures (FROE) to the District Local Assistance Engineer (DLAE). Any costs incurred after this date will not be eligible for federal reimbursement. The AED is established by adding twelve (12) months to the local agency's estimated date of completing the authorized phase of work. The completion of the Preliminary Engineering and Right of Way phases of work is estimated as the anticipated advertising date for construction. For the Construction phase of work, completion is estimated as board/council construction contract acceptance. Upon adding a future phase of work, the local agency must also revise the AED. Revisions to the AED require Caltrans concurrence and FHWA approval. If the AED is revised after the authorized AED has past, any costs incurred between the expiration of the authorized AED and the revised AED are ineligible for reimbursement.

Establishing the AED

Effective immediately, local agencies are required to estimate the AED and include it at the time of their authorization request. The AED is required to be shown on the Local Federal-Aid Project Finance Letter (Local Assistance Procedures Manual (LAPM) Exhibit 3-0) and submitted with every Request for Authorization package for the project. The figure below highlights where the AED must be entered. When preparing the E-76, the DLAE will enter this date into the Agreement End Date field in the Caltrans Federal Aid Data System (FADS). After Caltrans concurrence and FHWA approval, Caltrans will notify the local agency of the established AED along with the project authorization.

3-0 SAMPLE LOCAL FEDERAL-AID PROJECT FINANCE LETT

Anticipated Advertisement Date:	<input type="text"/>
Anticipated Award Date (CON only):	<input type="text"/>
Anticipated Contract Acceptance Date (CON only):	<input type="text"/>
Agreement End Date:	<input type="text"/>

Revising the AED

The local agency is expected to monitor the progress of its project. If the need arises, the local agency may need to revise the AED to accurately reflect the amount of time needed to complete the project or phase of the project. This is readily done and documented as part of an agency's authorization request when the project progresses from one phase of work to the next, as the project's delivery schedule will be more refined. While working within a particular phase of work, however, to request a revision to the AED, the local agency must submit an updated Local Federal-Aid Project Finance Letter and adequate justification to the District Local

Assistance Engineer (DLAE). Examples of situations which may justify a revision to the AED include, but are not limited to: litigation, major changes in design, environmental or permit issues, construction claims, differing site conditions, significant additional work, area-wide material shortages, labor strikes, unusually severe weather, or other events which are outside the control of the local agency. This documentation must be submitted as a separate request to the DLAE. Revisions to the AED without Caltrans concurrence and FHWA approval may result in costs not being eligible for reimbursement.

5.4 METHODS OF REIMBURSEMENT

Local agency invoices are routinely processed for payment within 45 days after Caltrans receives a complete and accurate invoice. The State Controller's Office (SCO) issues payments within 15 days after receiving the claim schedules from LPA. To receive reimbursement ten days sooner, see Electronic Fund Transfer (EFT) Reimbursement Method below.

Local agency invoices should be submitted no more than once per month. The invoice format must follow the requirements in this chapter. If they do not follow the format, they will be returned to obtain the additional information needed by Caltrans to process the payment.

Payment in Arrears

State and federal law requires that all federal and most state funded local agency project payments be done on a reimbursement basis. Therefore, the local agency must incur and pay for project costs prior to invoicing Caltrans for reimbursement. The local agency is required to submit two copies of proper documentation with their invoices to validate that the expenditures were properly incurred. Acceptable documentation is discussed in [Section 5.5: Invoice Guidelines, Format, and Checklist](#)

Lump Sum Payment Up Front

Projects in which there is a request for direct deposit of funds into an escrow account must be approved by the DLAE and submitted to LPA 30 days prior to closing escrow for the purchase of the property. LPA will not process the invoice unless the local entity is able to provide a firm escrow closing date.

Planning, Programming & Monitoring and Freeway Service Patrol projects - Agreement clauses, when used, allow lump sum advance payments to all agencies, which receive \$300,000 or less per fiscal year. Sixty days after all expenditures have been made by the local agency; they must submit a Final Report of Expenditures, including a final invoice, to Caltrans showing how the advance has been spent. Agencies that receive over \$300,000 will be paid on a reimbursement basis.

State Match and Exchange Program (X projects) - These funds are advanced to the local agencies to be spent in accordance with the provisions in the Local Agency – State Agreement. It is the responsibility of the Regional Transportation Planning Agencies (RTPA) to provide the Division of Local Assistance's Office of Implementation with an annual report on these funds. The report with an as of date of June 30, is due August 1 of each year. It must show the amounts given to each city and/or county. Failure to provide this report will result in future

- 1.2.17. Assists, as needed, with any Monitoring or Process Reviews pursuant to 23 U.S.C. 327.
- 1.2.18. Assists with the development of the 23 U.S.C. 327 Quarterly Reports and the Quarterly Performance Reports under 23 U.S.C. 326.
- 1.2.19. Cooperates fully with FHWA in all quality assurance activities.
- 1.2.20. Provides FHWA with any information necessary in order for the FHWA to carry out its government-to-government consultation.
- 1.2.21. Ensures that the NEPA compliance and any other environmental responsibilities assigned under the 23 U.S.C. 326 and 327 MOUs have been completed according to the MOUs.
- 1.2.22. Carries out assigned consultation, review, and coordination activities in a timely and proactive manner.
- 1.2.23. Makes all reasonable and good faith efforts to identify and resolve conflicts with federal, state, and local agencies.
- 1.2.24. Performs Document Quality Control Review and signs Certification forms for EAs and EISs.
- 1.2.25. Makes Wetlands Only Practicable Alternative Finding (WOPAF) and Least Environmentally Damaging Practicable Alternative (LEDPA) Finding.
- 1.2.26. Makes determination that proposed action includes all Practicable Measures to Minimize Harm.
- 1.2.27. Approves Wetlands Only Practicable Alternative Finding (WOPAF) .
- 1.2.28. Coordinates with the U.S. Army Corps of Engineers (USACE), Environmental Protection Agency (EPA), USFWS, and NMFS prior to making Wetland Determination.
- 1.2.29. Approves Section 4(f) de minimis and Programmatic Section 4(f) Evaluations.
- 1.2.30. Jointly approves Draft Section 4(f) Evaluations for Public Circulation with HQ District Environmental Coordinator and Legal.
- 1.2.31. Determines validity of approved CEs, EAs, and EISs for FHWA NEPA Reevaluations ([23 CFR 771.129](#)) and Caltrans NEPA/CEQA Revalidation Form.
- 1.2.32. Approves Notice of Intent (NOI) to prepare an EIS, and sends to FHWA for publication in the Federal Register (FR).

Note: Only a federal agency can post in the FR.

invasive species control efforts under each state's Department of Transportation roadside vegetation management program. Where the potential exists for the introduction or spread of invasive species, the environmental document should include a discussion of the potential impact of these species and any anticipated prevention or control measures to be taken. Guidance on compliance with the provisions of E.O. 13112 is available in the [SER](#), Chapter 1.

- **Clean Air Act, as amended (42 U.S.C. 7401 et seq.)** – This Act requires that federally supported activities must conform to the State Implementation Plan (SIP), whose purpose is that of attaining and maintaining the National Ambient Air Quality Standards (NAAQS). Section 176(c) of the Clean Air Act as amended in 1990, established the criteria and procedures by which FHWA (Title 23 U.S.C.) and MPOs determine the conformity of federally funded or approved highway and transit plans, programs, and projects to SIPs. The provisions of 40 CFR Part 51 and Part 93 (Final Rule effective November 24, 1993) shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan. For additional information refer to the [SER, Volume 1](#); Chapter 11.
- **Clean Water Act of 1977 & 1987 (33 U.S.C. 1251-1359)** – This Act protects the chemical, physical and biological integrity of the Nation's waters by regulating discharges of pollutants into waters of the U.S. Section 401 of the Clean Water Act (CWA) requires a water quality certification from the State or Regional Water Quality Control Board when a project requires a federal license or permit and will result in a discharge into waters of the U.S. Section 402 of the CWA establishes a permitting system for the discharge of any pollutant into waters of the U.S. A National Pollutant Discharge Elimination System (NPDES) permit is required for all point discharges of pollutants to surface waters. Section 404 of the CWA establishes a permit program administered by the USACE regulating the discharge of dredged or fill material into waters of the U.S. (including wetlands). For additional information refer to the [SER, Volume 1](#); Chapter 9.

General Procedures for Demonstrating Compliance with These Processes

The general procedures for demonstrating compliance with these Acts are provided below:

- For Non-Infrastructure Projects only, the local agency confirms the project is in the FTSIP; project does not involve right of way acquisition or physical construction; and all questions on the PES (NI) can be answered "No". If these criteria can be met, then the District DLAE and SEP jointly sign the PES (NI) form concurring with the NEPA Class of Action, and that the project will involve no disturbance to the ground or natural environment. The DLAE and district SEP (or designee) jointly signs the PES(NI) form and the CE/CE Determination form. The last page of the PES (NI) form, Section B, would suffice for the Categorical Exclusion Checklist and the Transportation Air Quality Conformity Findings Checklist. A brief explanation stating that Section B of the PES (NI) meets the requirements for the Categorical Exclusion Checklist and Transportation Air Quality Conformity Findings Checklist would be the inserts to include for the PES (NI) project Uniform File. No other documentation is required.

screened undertakings to more than 20 months for very complex projects involving multiple resources or requiring archaeological excavation.

- An EA that results in a FONSI may take between two to three years. At a minimum, the Draft EA must consider the build alternative and the no build. Complex Draft EAs must undergo a separate review by Caltrans HQ environmental coordinator and Legal Office. The Complex Draft EAs go through a thirty (30) day public review period. The Routine Draft EAs also go through 30 day review period. Processing an EA which results in a FONSI with an Historic Property Survey Report (HSPR), or any other environmentally related process may require additional time because these environmentally related processes require separate studies and separate regulatory reviews. For example, a preliminary Finding of Effect for cultural or archaeological resources must be completed before a draft EA or an EIS can be circulated for public review. Section 106 requirements and Section 7 or other technical requirements must be completed before the final EA or an EIS can be approved.
- An EIS may take between three to four years. Draft EISs require consideration of multiple alternatives and separate reviews by Caltrans HQ environmental coordinator and Legal Office.
- The local agency should begin “required technical studies” as soon as possible after the PES form is fully signed.

Note: The local agency shall not begin “required technical studies” before obtaining the DLAE and district SEP (or designee) signatures on the PES Form. Section 106 studies should not begin until the district PQS and the DLAE give verbal approval of the APE map. This will minimize the potential for investing in studies that may not be required.

6.3 OTHER CONSIDERATIONS

Permits

The local agency is responsible for obtaining all necessary permits, agreements, and approvals from resource and regulatory agencies (401/404, Encroachment, and Coast Guard Bridge Permit, etc.) before advertisement for construction. With the exception of Emergency Opening projects, construction should not proceed before permits have been obtained and submitted to the DLAE. If work occurs prior to permits being obtained, the local agency is assuming the risk that elements of work may not be fully reimbursable. The local agency must transmit one copy of each permit (with conditions) to the DLAE for submittal to the district SEP (or designee) prior to the first invoice. The district SEP (or designee) must enter permit data (as required) into the LP2000.

Mitigation Commitments and Plans, Specifications, and Estimate

The local agency is also responsible for developing a list of all mitigation as related to NEPA and providing it along with the technical reports and draft environmental document to the

commence with any required technical study until after the PES form has been fully signed by all signatories.

The PES/Categorical Exclusion (CE) process is shown in Figure 6-1: PES Form and Categorical Exclusion (CE) Process Flowchart. The numbers on the flowchart correlate with the step-by-step procedures within this section through Section 6.7.

1. Local agency (LA) develops complete project description and project maps.
 2. LA reviews relevant literature, maps and inventories.
 3. LA requests technical information from resource and regulatory agencies.
 4. LA verifies research findings in the field (site visit).
 5. LA completes PES Form ([Exhibit 6-A: Preliminary Environmental Study \(PES\) Form](#)), according to [Exhibit 6-B: Instructions for Completing the Preliminary Environmental Study \(PES\) Form](#). On the PES Continuation Sheet, the LA provides: (1) additional information on project description, (2) a summary of how the requirements of federal laws have been satisfied for all “No” answers (such as, identify the steps that were taken to determine a “No” response), and (3) specific information for all “Yes” and “To Be Determined” answers (such as, if question #15 regarding Federally Listed Threatened and Endangered Species is checked “Yes,” identify the specific plant or animal species observed or that could potentially occur within the project area).
 6. LA signs PES Form and submits to DLAE with all supporting documentation.
 7. DLAE date stamps the PES form on day received and verifies that project is in the RTP and FSTIP, and that the scope of work described on the PES Form is consistent with the project description in the FSTIP.
 8. DLAE reviews PES form and maps to ensure that the project description matches what is programmed and that the packet is complete and sufficient. If the packet is incomplete, the DLAE returns the packet to the local agency and if necessary, schedules a meeting or field review to assist the local agency with completion of the PES form. NOTE: Field reviews are required for local agency projects on the National Highway System and encouraged for all other federal-aid projects. If the field review is not performed, document on the field review form the reason why the field review was not performed, as a completed field review form is required for all federal-aid projects.
- DLAE invites the district SEP (or designee) and appropriate CT technical specialists to the meeting or field review. For complex projects, the DLAE may also want to invite the Local Assistance NEPA Assignment Coordinator and the HQ Environmental Coordinator.
9. District SEP identifies which district PQS, biologist, and other technical specialist(s) will assist with project review and circulates the PES form to assigned staff.
 10. The district biologist reviews the PES form, maps and results of general reconnaissance surveys, and indicates the required technical study type in Sections B, and completes applicable Section C and D of the PES form. If appropriate, the district biologist prepares a “Finding of No Effect” memo for compliance with Section 7.

EXHIBIT 6-A PRELIMINARY ENVIRONMENTAL STUDY (PES)

Federal Project No.: _____
(Federal Program Prefix-Project No., Agreement No.)Final Design: _____
(Expected Start Date)To: _____
(District Local Assistance Engineer)_____
(District)_____
(Address)_____
(Email Address)From: _____
(Local Agency)_____
(Project Manager's Name and Telephone No.)_____
(Address)_____
(Email Address)Is this Project "ON" the
State Highway System? ☐ Yes
☐ NoIF YES, STOP HERE and contact the District Local Assistance Engineer
regarding the completion of other environmental documentation.Federal State Transportation Improvement Program
(FSTIP)_____
(Currently Adopted Plan Date)_____
(Page No. ___ attach to this form)<http://www.dot.ca.gov/hq/transprog/oftmp.htm>Programming
for FSTIP:

Preliminary Engineering

Right of Way

Construction

(Fiscal Year) \$ _____
(Dollars)_____
(Fiscal Year) \$ _____
(Dollars)_____
(Fiscal Year) \$ _____
(Dollars)

Project Description as Shown in RTP and FSTIP:

Detailed Project Description: (Describe the following, as applicable: purpose and need, project location and limits, required right of way acquisition, proposed facilities, staging areas, disposal and borrow sites, construction activities, and construction access.)

(Continue description on "Notes" sheet, last page of this Exhibit, if necessary)

Preliminary Design Information:

Does the project involve any of the following? Please check the appropriate boxes and delineate on an attached map, plan, or layout including any additional pertinent information.

Yes No

☐ ☐

Widen existing roadway

☐ ☐

Increase number of through lanes

☐ ☐

New alignment

☐ ☐Capacity increasing—other
(e.g., channelization)☐ ☐

Realignment

☐ ☐

Ramp or street closure

☐ ☐

Bridge work

☐ ☐

Vegetation removal

☐ ☐

Tree removal

Yes No

☐ ☐

Ground disturbance

☐ ☐

Road cut/fill

☐ ☐Excavation: anticipated
maximum depth _____☐ ☐

Drainage/culverts

☐ ☐

Flooding protection

☐ ☐

Stream channel work

☐ ☐

Pile driving

☐ ☐

Demolition

Yes No

☐ ☐

Easements

☐ ☐

Equipment staging

☐ ☐

Temporary access road/detour

☐ ☐

Utility relocation

☐ ☐Right of way acquisition
(if yes, attach map with APN)☐ ☐

Disposal/borrow sites

☐ ☐

Part of larger adjacent project

☐ ☐

Railroad

Required Attachments:

- ☐ Regional map ☐ Project location map ☐ Project footprint map (existing/proposed right of way)
- ☐ Engineering drawings (existing and proposed cross sections), if available ☐ Borrow/disposal site location map, if applicable
(Note: all maps (except project location map and regional maps) should be consistent with the project description (minimum scale: 1" = 200').)
- ☐ GeoTracker Printout for Hazardous Materials (<http://geotracker.waterboards.ca.gov/>).
- ☐ Federal Threatened and Endangered Species List from USFWS (<http://ecos.fws.gov/ipac/>).
- ☐ Federal Threatened and Endangered Species List from NMFS
(https://www.westcoast.fisheries.noaa.gov/maps_data/california_species_list_tools.html).
- ☐ Current Photos of Project Site ☐ FEMA map ☐ VIA Questionnaire

Examine the project for potential effects on the environment, direct or indirect and answer the following questions. The "construction area," as specified below, includes all areas of ground disturbance associated with the project, including staging and stockpiling areas and temporary access roads.

Each answer must be briefly documented on the "Notes" pages at the end of the PES Form.

A. Potential Environmental Effects	Yes	To Be Determined	No
General			
1. Will the project require future construction to fully utilize the design capabilities included in the proposed project?			
2. Will the project generate public controversy?			
Noise			
3. Is the project a Type I project as defined in 23 CFR 772.5(h); "construction on new location or the physical alteration of an existing highway, which significantly changes either the horizontal or vertical alignment or increases the number of through-traffic lanes"?			
4. Does the project have the potential for adverse construction-related noise impact (such as related to pile driving)?			
Air Quality			
5. Is the project in a NAAQS non-attainment or maintenance area?			
6. Is the project exempt from the requirement that a conformity determination be made? (If "Yes," state which conformity exemption per 40 CFR 93.126, or 40 CFR 93.128) (check one box below and identify the project type if applicable): 40 CFR 93.126 Project type: 40 CFR 93.128			
7. Is the project exempt from regional conformity? (If "Yes," state which conformity exemption in 40 CFR 93.127, Table 3 applies):			
8. If project is not exempt from regional conformity, (If "No" on Question #7) Is project in a metropolitan non-attainment/maintenance area? Is project in an isolated rural non-attainment area? Is project in a CO, PM10 and/or PM2.5 non-attainment/maintenance area?			
Hazardous Materials/Hazardous Waste			
9. Is there potential for hazardous materials (including underground or aboveground tanks, etc.) or hazardous waste (including oil/water separators, waste oil, asbestos-containing material, lead-based paint, ADL, etc.) within or immediately adjacent to the construction area?			
Water Quality/Resources			
10. Does the project have the potential to impact water resources (rivers, streams, bays, inlets, lakes, drainage sloughs) within or immediately adjacent to the project area?			
11. Is the project within a designated sole-source aquifer?			

Coastal Zone

12. Is the project within the State Coastal Zone, San Francisco Bay, or Suisun Marsh? ☐ ☐ ☐

Floodplain

13. Is the construction area located within a regulatory floodway or within the base floodplain (100-year) elevation of a watercourse or lake? ☐ ☐ ☐

Wild and Scenic Rivers

14. Is the project within or immediately adjacent to a Wild and Scenic River System? ☐ ☐ ☐

Biological Resources

15. Is there a potential for federally listed threatened or endangered species, or their critical habitat or essential fish habitat to occur within or adjacent to the construction area? ☐ ☐ ☐
16. Does the project have the potential to directly or indirectly affect migratory birds, or their nests or eggs (such as vegetation removal, box culvert replacement/repair, bridge work, etc.)? ☐ ☐ ☐
17. Is there a potential for wetlands to occur within or adjacent to the construction area? ☐ ☐ ☐
18. Is there a potential for agricultural wetlands to occur within or adjacent to the construction area? ☐ ☐ ☐
19. Is there a potential for the introduction or spread of invasive plant species? ☐ ☐ ☐

Sections 4(f) and 6(f)

20. Are there any historic sites or publicly owned public parks, recreation areas, wildlife or waterfowl refuges (Section 4(f)) within or immediately adjacent to the construction area? ☐ ☐ ☐
21. Does the project have the potential to affect properties acquired or improved with Land and Water Conservation Fund Act (Section 6(f)) funds? ☐ ☐ ☐

Visual Resources

22. Does the project have the potential to affect any visual or scenic resources? ☐ ☐ ☐

Relocation Impacts

23. Will the project require the relocation of residential or business properties? ☐ ☐ ☐

Land Use, Community, and Farmland Impacts

24. Will the project require any right of way, including partial or full takes? Consider construction easements and utility relocations. ☐ ☐ ☐
25. Is the project inconsistent with plans and goals adopted by the community? ☐ ☐ ☐
26. Does the project have the potential to divide or disrupt neighborhoods/communities? ☐ ☐ ☐
27. Does the project have the potential to disproportionately affect low-income and minority populations? ☐ ☐ ☐
28. Will the project require the relocation of public utilities? ☐ ☐ ☐
29. Will the project affect access to properties or roadways? ☐ ☐ ☐
30. Will the project involve changes in access control to the State Highway System (SHS)? ☐ ☐ ☐
31. Will the project involve the use of a temporary road, detour, or ramp closure? ☐ ☐ ☐
32. Will the project reduce available parking? ☐ ☐ ☐
33. Will the project construction encroach on state or federal lands? ☐ ☐ ☐
34. Will the project convert any farmland to a different use or impact any farmlands? ☐ ☐ ☐

Cultural Resources

35. Is there National Register listed, or potentially eligible historic properties, or archaeological resources within or immediately adjacent to the construction area?
(Note: Caltrans PQS answers question #35) ☐ ☐ ☐
36. Is the project adjacent to, or would it encroach on Tribal land? ☐ ☐ ☐

For Sections B, C, and D, check appropriate box to indicate required technical studies, coordination, permits, or approvals.

B. Required Technical Studies and Analyses	C. Coordination	D. Anticipated Actions/Permits/Approvals
<input type="checkbox"/> Traffic <i>Check one:</i> <input type="checkbox"/> Traffic Study <input type="checkbox"/> Technical Memorandum <input type="checkbox"/> Discussion in ED Only	<input type="checkbox"/> Caltrans <input type="checkbox"/> Caltrans <input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval <input type="checkbox"/> Approval <input type="checkbox"/> Approval
<input type="checkbox"/> Noise <i>Check as applicable:</i> <input type="checkbox"/> Traffic Related <input type="checkbox"/> Construction Related <i>Check one:</i> <input type="checkbox"/> Noise Study Report <input type="checkbox"/> NADR <input type="checkbox"/> Technical Memorandum <input type="checkbox"/> Discussion in ED Only	<input type="checkbox"/> Caltrans <input type="checkbox"/> Caltrans <input type="checkbox"/> Caltrans <input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval <input type="checkbox"/> Approval <input type="checkbox"/> Approval <input type="checkbox"/> Approval
<input type="checkbox"/> Air Quality <i>Check as applicable:</i> <input type="checkbox"/> Traffic Related <input type="checkbox"/> Construction Related <i>Check one:</i> <input type="checkbox"/> Air Quality Report <input type="checkbox"/> Technical Memorandum <input type="checkbox"/> Discussion in ED Only	<input type="checkbox"/> Caltrans <input type="checkbox"/> Caltrans <input type="checkbox"/> Caltrans <input type="checkbox"/> FHWA <input type="checkbox"/> Caltrans <input type="checkbox"/> Regional Agency	<input type="checkbox"/> Approval <input type="checkbox"/> Approval <input type="checkbox"/> Approval <input type="checkbox"/> Conformity Finding (23 USC 327 CE, EAs, EISs) <input type="checkbox"/> Conformity Finding (23 USC 326 CE) <input type="checkbox"/> PM10/PM2.5 Interagency Consultation
<input type="checkbox"/> Hazardous Materials/ Hazardous Waste <i>Check as applicable:</i> <input type="checkbox"/> Initial Site Assessment (Phase 1) <input type="checkbox"/> Preliminary Site Assessment (Phase 2) <input type="checkbox"/> Discussion in ED Only	<input type="checkbox"/> Caltrans <input type="checkbox"/> Caltrans <input type="checkbox"/> Caltrans <input type="checkbox"/> Cal EPA DTSC <input type="checkbox"/> Local Agency	<input type="checkbox"/> Approval <input type="checkbox"/> Approval <input type="checkbox"/> Approval <input type="checkbox"/> Review Database <input type="checkbox"/> Review Database
<input type="checkbox"/> Water Quality/Resources <i>Check as applicable:</i> <input type="checkbox"/> Water Quality Assess. Report <input type="checkbox"/> Technical Memorandum <input type="checkbox"/> Discussion in ED Only	<input type="checkbox"/> Caltrans <input type="checkbox"/> Caltrans <input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval <input type="checkbox"/> Approval <input type="checkbox"/> Approval
<input type="checkbox"/> Sole-Source Aquifer (Districts 5, 6 and 11)	<input type="checkbox"/> EPA (S.F. Regional Office)	<input type="checkbox"/> Approval of Analysis in ED
<input type="checkbox"/> Coastal Zone	<input type="checkbox"/> CCC	<input type="checkbox"/> Coastal Zone Consistency Determination

B. Required Technical Studies and Analyses	C. Coordination	D. Anticipated Actions/Permits/Approvals
<input type="checkbox"/> Floodplain		
<i>Check as applicable:</i>		
<input type="checkbox"/> Location Hydraulic Study	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Floodplain Evaluation Report	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Summary Floodplain Encroachment Report	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Only Practicable Alternative Finding
	<input type="checkbox"/> FHWA	<input type="checkbox"/> Approves significant encroachments and concurs in Only Practicable Alternative Findings
<input type="checkbox"/> Wild and Scenic Rivers	<input type="checkbox"/> River Managing Agency	<input type="checkbox"/> Wild and Scenic Rivers Determination
<input type="checkbox"/> Biological Resources		
<i>Check as applicable:</i>		
<input type="checkbox"/> NES, Minimal Impact	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> NES		
<input type="checkbox"/> BA	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approves for Consultation
	<input type="checkbox"/> USFWS <input type="checkbox"/> NOAA Fisheries	<input type="checkbox"/> Section 7 Informal/Formal Consultation
<input type="checkbox"/> EFH Evaluation	<input type="checkbox"/> NOAA Fisheries	<input type="checkbox"/> MSA Consultation
<input type="checkbox"/> Bio-Acoustic Evaluation	<input type="checkbox"/> NOAA Fisheries	<input type="checkbox"/> Approval
<input type="checkbox"/> Technical Memorandum	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Wetlands		
<i>Check as applicable:</i>		
<input type="checkbox"/> WD and Assessment	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
	<input type="checkbox"/> ACOE	<input type="checkbox"/> Wetland Verification
	<input type="checkbox"/> NRCS	<input type="checkbox"/> Agricultural Wetland Verification
	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Wetlands Only Practicable Alternative Finding
<input type="checkbox"/> Invasive Plants		
<input type="checkbox"/> Discussion in ED Only	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Section 4(f)		
<i>Check as applicable:</i>		
	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Determine Temporary Occupancy
<input type="checkbox"/> De minimis	<input type="checkbox"/> Caltrans	<input type="checkbox"/> De minimis finding
<input type="checkbox"/> Programmatic 4(f) Evaluation Type: _____	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Individual 4(f) Evaluation	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
	<input type="checkbox"/> Agency with Jurisdiction <input type="checkbox"/> SHPO <input type="checkbox"/> DOI <input type="checkbox"/> HUD <input type="checkbox"/> USDA	

B. Required Technical Studies and Analyses	C. Coordination	D. Anticipated Actions/Permits/Approvals
<input type="checkbox"/> Section 6(f)	<input type="checkbox"/> Agency with Jurisdiction <input type="checkbox"/> NPS	<input type="checkbox"/> Determines Consistency with Long-Term Management Plan
	<input type="checkbox"/> NPS	<input type="checkbox"/> Approves Conversion
<input type="checkbox"/> Visual Resources		
<input type="checkbox"/> Technical Memorandum	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Minor VIA	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Moderate VIA	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Advance/Complex VIA	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Relocation Impacts		
<i>Check one:</i>		
<input type="checkbox"/> Relocation Impact Memo	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Relocation Impact Study	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Relocation Impact Report	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Land Use and Community Impacts		
<i>Check one:</i>		
<input type="checkbox"/> CIA	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Technical Memorandum	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Discussion in ED Only	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Construction/Encroachment on State Lands		
<i>Check as applicable:</i>		
<input type="checkbox"/> SLC Jurisdiction	<input type="checkbox"/> SLC	<input type="checkbox"/> SLC Lease
<input type="checkbox"/> Caltrans Jurisdiction	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Encroachment Permit
<input type="checkbox"/> SP Jurisdiction	<input type="checkbox"/> SP	<input type="checkbox"/> Encroachment Permit
<input type="checkbox"/> Construction/Encroachment on Federal Lands	<input type="checkbox"/> Federal Agency with Jurisdiction	<input type="checkbox"/> Encroachment Permit
<input type="checkbox"/> Construction/Encroachment On Indian Trust Lands	<input type="checkbox"/> Bureau of Indian Affairs	<input type="checkbox"/> Right of Way Permit
<input type="checkbox"/> Farmlands		
<i>Check one:</i>		
<input type="checkbox"/> CIA	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Technical Memorandum	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<input type="checkbox"/> Discussion in ED Only	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approval
<i>Check as applicable:</i>		
<input type="checkbox"/> Form AD 1006	<input type="checkbox"/> NRCS	<input type="checkbox"/> Approves Conversion
	<input type="checkbox"/> CDOC	<input type="checkbox"/> Approves Conversion
<input type="checkbox"/> Conversion to Non-Agri Use	<input type="checkbox"/> ACOE	

B. Required Technical Studies and Analyses	C. Coordination	D. Anticipated Actions/Permits/Approvals
<input type="checkbox"/> Cultural Resources (PQS completes this section)		
	<input type="checkbox"/> Caltrans PQS	<input type="checkbox"/> Screened Undertaking
<input type="checkbox"/> APE Map	<input type="checkbox"/> Caltrans PQS and DLAE	<input type="checkbox"/> Approves APE Map
	<input type="checkbox"/> Local Preservation Groups and/or Native American Tribes	<input type="checkbox"/> Provides Comments Regarding Concerns with Project
<input type="checkbox"/> HPSR <input type="checkbox"/> ASR <input type="checkbox"/> HRER	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approves for Consultation
<input type="checkbox"/> Finding of Effect Report	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Concurs on No Effect, No Adverse Effect with Standard Conditions
	<input type="checkbox"/> SHPO	<input type="checkbox"/> Letter of Concurrence on Eligibility, No Adverse Effect without Standard
<input type="checkbox"/> MOA	<input type="checkbox"/> Caltrans	<input type="checkbox"/> Approves MOA
	<input type="checkbox"/> SHPO	<input type="checkbox"/> Approves MOA
	<input type="checkbox"/> ACHP (if requested)	<input type="checkbox"/> Approves MOA
<input type="checkbox"/> Permits Copies of permits and a list of mitigation commitments are mandatory submittals following NEPA approval.	<input type="checkbox"/> ACOE	<input type="checkbox"/> Section 404 Nationwide Permit
	<input type="checkbox"/> ACOE	<input type="checkbox"/> Section 404 Individual Permit
	<input type="checkbox"/> Caltrans/ACOE/EPA	<input type="checkbox"/> NEPA/404 Integration MOU
	<input type="checkbox"/> USFWS	
	<input type="checkbox"/> NOAA Fisheries	
	<input type="checkbox"/> ACOE	<input type="checkbox"/> Rivers and Harbors Act Section 10 Permit
	<input type="checkbox"/> USCG	<input type="checkbox"/> USCG Bridge Permit
	<input type="checkbox"/> RWQCB	<input type="checkbox"/> Section 401 Water Quality Certification
	<input type="checkbox"/> CDFW	<input type="checkbox"/> Section 1602 Streambed Alteration Agreement
	<input type="checkbox"/> RWQCB	<input type="checkbox"/> NPDES Permit
	<input type="checkbox"/> CCC	<input type="checkbox"/> Coastal Zone Permit
	<input type="checkbox"/> Local Agency	
	<input type="checkbox"/> BCDC	<input type="checkbox"/> BCDC Permit

Notes: Additional studies may be required for other federal agencies.

ACHP	=	Advisory Council on Historic Preservation	HRER	=	Historical Resources Evaluation Report
ACOE	=	U.S. Army Corps of Engineers	HUD	=	U.S. Housing and Urban Development
ADL	=	Aerially Deposited Lead	MOA	=	Memorandum of Agreement
APE	=	Area of Potential Effect	MSA	=	Magnuson-Stevens Fishery Conservation and Management Act
APN	=	Assessor Parcel Number	NEPA	=	National Environmental Policy Act
ASR	=	Archaeological Survey Report	NADR	=	Noise Abatement Decision Report
BA	=	Biological Assessment	NES	=	Natural Environment Study
BCDC	=	Bay Conservation and Development Commission	NHPA	=	National Historic Preservation Act
BE	=	Biological Evaluation	NOAA	=	National Oceanic and Atmospheric Administration
BO	=	Biological Opinion	NMFS	=	National Marine Fisheries Service
Cal EPA	=	California Environmental Protection Agency	NPDES	=	National Pollutant Discharge Elimination System
CCC	=	California Coastal Commission	NPS	=	National Park Service
CDFW	=	California Department of Fish and Wildlife	NRCS	=	Natural Resources Conservation Service
CDOC	=	California Department of Conservation	PM10	=	Particulate Matter 10 Microns in Diameter or Less
CE	=	Categorical Exclusion	PM2.5	=	Particulate Matter 2.5 Microns in Diameter or Less
CIA	=	Community Impact Assessment	PMP	=	Project Management Plan
CWA	=	Clean Water Act	PQS	=	Professionally Qualified Staff
DLAE	=	District Local Assistance Engineer	ROD	=	Record of Decision
DOI	=	U.S. Department of Interior	RTIP	=	Regional Transportation Improvement Program
DTSC	=	Department of Toxic Substances Control	RTP	=	Regional Transportation Plan
EA	=	Environmental Assessment	RWQCB	=	Regional Water Quality Control Board
ED	=	Environmental Document	SER	=	Standard Environmental Reference
EFH	=	Essential Fish Habitat	SEP	=	Senior Environmental Planner
EIS	=	Environmental Impact Statement	SHPO	=	State Historic Preservation Officer
EPA	=	U.S. Environmental Protection Agency	SLC	=	State Lands Commission
FEMA	=	Federal Emergency Management Agency	SP	=	State Parks
FHWA	=	Federal Highway Administration	TIP	=	Transportation Improvement Program
FONSI	=	Finding of No Significant Impacted	USCG	=	U.S. Coast Guard
FTIP	=	Federal Transportation Improvement Program	USDA	=	U.S. Department of Agriculture
HPSR	=	Historic Property Survey Report	USFWS	=	U.S. Fish and Wildlife Service
			WD	=	Wetland Delineation

E. Preliminary Environmental Document Classification (NEPA)

Based on the evaluation of the project, the environmental document to be developed should be:

Check one:

- ☐ Environmental Impact Statement (*Note: Engagement with participating agencies in accordance with 23 USC 139 required*)
☐ Compliance with 23 USC 139 regarding Participating Agencies required
- ☐ Complex Environmental Assessment
- ☐ Routine Environmental Assessment
- ☐ Categorical Exclusion without required technical studies.
- ☐ Categorical Exclusion with required technical studies

(if Categorical Exclusion is selected, check one of the following):

- ☐ Section 23 USC 326
☐ 23 CFR 771 activity (c)(____)
☐ 23 CFR 771 activity (d) (____)
☐ Activity _____ listed in the Section 23 USC 326
- ☐ Section 23 USC 327

F. Public Availability and Public Hearing

Check as applicable:

- ☐ Not Required
- ☐ Notice of Availability of Environmental Document
- ☐ Public Meeting
- ☐ Notice of Opportunity for a Public Hearing
- ☐ Public Hearing Required

G. Signatures**Local Agency Staff and/or Consultant Signature**

(Signature of Preparer)

(Date)

(Telephone No.)

(Name)

Local Agency Project Engineer Signature

This document was prepared under my supervision, according to the *Local Assistance Procedures Manual*, Exhibit 6-B, "Instructions for Completing the Preliminary Environmental Study Form."

(Signature of Local Agency)

(Date)

(Telephone No.)

Caltrans District Professionally Qualified Staff (PQS) Signature

- ☐ Project does not meet definition of an “undertaking”; no further review is necessary under Section 106 (“No” Section A, #35).
- ☐ Project is limited to the type of activity listed in Attachment 2 of the Section 106 PA and based on the information provided in the PES Form, the project does not have the potential to affect historic properties (“No” Section A, #35).
- ☐ Project is limited to the type of activity listed in Attachment 2 of the Section 106 PA, but the following additional procedures or information is needed to determine the potential for effect (“To Be Determined” Section A, #35):
- ☐ Records Search ☐ _____ ☐ _____ ☐ _____
- ☐ Project meets the definition of an “undertaking”; all properties in the project area are exempt from evaluation per Attachment 4 of the Section 106 PA (“No” Section A, #35).
- ☐ The proposed undertaking is considered to have the potential to affect historic properties; further studies for 106 compliance are indicated in Sections B, C, and D of this PES Form (“Yes” Section A, #35).

(Signature of Professionally Qualified Staff)_____
(Date)_____
(Telephone No.)

The following signatures are required for all CEs, routine and complex EAs, and EISs:

Caltrans District Senior Environmental Planner (or Designee) and DLAE Signatures

I have reviewed this Preliminary Environmental Study (PES) Form and determined that the submittal is complete and sufficient. I concur with the studies to be performed and the recommended NEPA Class of Action.

(Signature of Senior Environmental Planner or Designee)_____
(Date)_____
(Telephone No.)_____
(Name)_____
(Signature of District Local Assistance Engineer or Designee)_____
(Date)_____
(Telephone No.)_____
(Name)

- ☐ HQ DEA Environmental Coordinator concurrence _____. Email concurrence attached.
(date)

**Preliminary Environmental Investigation
Notes to Support the Conclusions of the PES Form
(May Also Include Continuation of Detailed Project Description)**

Brief Explanation of How Project Complies, or Will Comply with Applicable Federal Mandate (Part A):

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Continuation of Detailed Project Description:

Distribution 1) Original - DLAE, 2) Local Agency Project Manager, 3) DLA Environmental Coordinator
4) Senior Environmental Planner (or designee), 5) District PQS

EXHIBIT 6-B INSTRUCTIONS FOR COMPLETING THE PRELIMINARY ENVIRONMENTAL STUDY (PES) FORM

A Preliminary Environmental Study (PES) form must be completed for **all** local agency federal-aid projects “**off**” the State Highway System (SHS). If a local agency desires federal reimbursement for National Environmental Protection Act (NEPA) compliance, then the local agency must submit a “Request for Authorization to Proceed with Preliminary Engineering” form (see *Local Assistance Procedures Manual* (LAPM), Chapter 3, “Project Authorization” Exhibit 3-A) to the DLAE prior to commencing with the PES form. The local agency may not proceed with any reimbursable activities prior to the project’s inclusion in a federally approved Federal Statewide Transportation Improvement Program (FSTIP) and receipt of “Authorization to Proceed” notification from Caltrans (see LAPM, Chapter 3, “Project Authorization,” Section 3.2).

Detailed instructions for completing the Preliminary Environmental Study (PES) form are provided below.

Federal-Aid Project No: (Federal Program Prefix-Project No., Agreement No.) Example: RPSTPLE 5017(020). Obtain federal-aid project number from your District Local Assistance Engineer (DLAE). This number is required in order for the district SEP (or designee) to process PES Form.

Final Design: Indicate the date the local agency expects to begin final design. The 23 CFR 771.113 (Timing of Administration activities) prohibits final design activities until NEPA approval has been obtained; this is the date by which NEPA clearance is needed.

To: (Self explanatory)

From: (Self explanatory)

Is the Project “ON” the SHS? Check “Yes” or “No.” If Yes, **STOP**, and contact the DLAE regarding the Caltrans policy on local agency projects “on” the SHS.

Note: The current and long-standing policy is for the Caltrans to be California Environmental Quality Act (CEQA) lead agency for improvement projects “on” the SHS. The Department’s practice of acting as CEQA Lead for projects on the SHS is based on the Caltrans statutory obligation to plan, design, construct, operate and maintain the SHS as well as its actual ownership of the SHS. Further, as owner of the right of way, Caltrans is the entity ultimately responsible for property stewardship of all resources within State right of way. This stewardship obligation cannot be delegated to others. This applies even if the project is financed by others. See Caltrans policy memo provided at:

http://www.dot.ca.gov/ser/downloads/memos/CEQA_Lead_Agency_24Jun04.pdf

Based on information contained in the above referenced policy memo, local agency projects “**on**” the SHS are processed as State Highway Projects according to the procedures set forth in the *Caltrans Project Development Procedures Manual*.

Federal Statewide Transportation Improvement Program (FSTIP): Enter the currently adopted FSTIP date and page number on which project is identified and attach a copy of the FSTIP page (showing the project) to the PES form. The FSTIP is available at:

<http://www.dot.ca.gov/hq/transprog/oftmp.htm>

Note: The California FSTIP is a multi-year, statewide, intermodal program of transportation projects that is consistent with the statewide transportation plan and planning processes, metropolitan plans, and Federal Transportation Improvement Programs (FTIPs) and processes. The FSTIP is prepared by Caltrans in cooperation with the Metropolitan Planning Organizations (MPOs) and the Regional Transportation Planning Agencies (RTPAs). The FTIPs/FSTIP contains all capital and non-capital transportation projects, or identified phases of transportation projects proposed for funding under the Federal Transit Act and Title 23 of the United States Code including federally funded projects

Programming for FSTIP: Identify the fiscal year and dollar amount programmed in the FSTIP for each phase of the project (preliminary engineering, right of way, and construction).

Project Description as Shown in FSTIP: Enter the project description exactly as it appears in the FSTIP.

Detailed Project Description: Describe all aspects of the project including project location and limits, proposed facilities, and required right of way acquisition. Discuss the main transportation problem or problems that point to the need for the project and describe how the project will solve the identified problem or need (that is, is the project necessary in order to correct existing roadway deficiencies, such as substandard geometry or lane width?). How will the project correct these deficiencies? Describe any design deficiencies, such as substandard cross section or horizontal or vertical alignment. Is the new or upgraded facility needed to serve a new housing development, or shopping complex? Discuss the logical termini of the project.

Note: 23 CFR 771.111(f) requires that federal-aid projects processed with Environmental Assessments and Environmental Impact Statements:

- *Connect logical termini and be of sufficient length to address environmental matters on a broad scope;*
- *Have independent utility or independent significance, that is, be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and*
- *Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.*

Provide as much detail as possible for all boxes checked “Yes” under Preliminary Design Information.

Preliminary Design Information: Check all applicable boxes and provide as much pertinent information on engineering drawings and maps as possible. If project will involve excavation, delineate location of excavation on map and indicate maximum depth of excavation. If right of way will be acquired, provide a map of the project area with the location of each parcel to be acquired. Provide Assessor Parcel Numbers for all parcels.

Required Attachments: Please note that all of the maps listed on the PES Form are **required**. Maps should be consistent with the project description and at a minimum scale of 1” = 200’.

A. Potential Environmental Effects:

Section A of the PES form should not be completed until after the local agency has completed Steps 1 through 4 in the LAPM, Chapter 6, Section 6.7, Step-by-Step Procedures, as follows:

- Develop Complete Project Description and Detailed Map
- Review Relevant Literature Maps and Inventories
- Request Technical Information from Resource and Regulatory Agencies
- Verify Research Findings in the Field (Site Visit)

Following completion of Steps #1 through #4, answer each of the following questions. For “No” response, explain in the “Preliminary Investigation Notes to Support the Conclusions of the PES Form” how the mandate of federal law has been met (such as, The Preliminary Environmental Investigation [Steps #1- 4 above] concluded that the resource is not present within the project area or that the resource is present, but will not be affected by the project. A technical memo explaining how the project will not affect the resource in question is attached, or a “No Effect” determination by a Caltrans Biologist is attached, etc.).

For “No” response, check the “No” box next to the appropriate question in Section A of the PES Form, and in the “Preliminary Investigation Notes to Support the Conclusions of the PES Form” briefly discuss how the mandates of federal law have been met.

For “Yes” response, indicate in Section B whether a technical study, technical memo or discussion in the ED will be prepared to comply with the federal requirements. Local agency should consult the DLAE and district SEP (or designee) when determining the appropriate level of analysis. Required technical reports shall be prepared in

according to the guidance and procedures set forth in the *Standard Environmental Reference* (SER). Local agency shall not commence with technical studies until after the PES Form is fully signed by local agency and Caltrans staff.

All environmental contracts shall be prepared according to the guidance and procedures set forth in the LAPM, Chapter 10, "Consultant Selection."

http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/p10consult.pdf.

The contract shall be consistent with requirements set forth in the PES Form and shall direct the preparation of reports according to the guidance set forth in the SER.

<http://www.dot.ca.gov/ser/vol1/vol1.htm>

General

1. Will the project require future construction to fully utilize the design capabilities included in the proposed project?

Note: This question is designed to address independent utility and segmentation. The Council on Environmental Quality (CEQ) regulations (40 CFR 1502.13) are directed at avoiding improper segmentation, wherein the significance of the environmental impact of an action as a whole would not be evident, if the action were to be broken into component parts and the impact of those parts analyzed separately.

If "No," check the "No" box next to Question #1 in Section A of the PES form. In the "Preliminary Investigation Notes to Support the Conclusions of the PES Form," briefly discuss the transportation problem, traffic and transportation conditions that the project is intended to address and clearly state the rationale supporting the project's end points.

If "Yes," or "To Be Determined," check the appropriate box next to Question #1 in Section A of the PES form. (*Note: Projects must satisfy the provisions of 23 CFR 771.111[f] in order to be eligible for federal reimbursement.*) Under Section B of the PES form, indicate whether a Traffic Study, Technical Memorandum, or Discussion in ED Only will be prepared to clearly show how the action shall:

- Connect logical termini and be of sufficient length to address environmental matters on a broad scope.
- Have independent utility or independent significance, such as, be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made.
- Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

2. Will the project generate any public controversy?

Consider whether there is any public controversy associated with the project and if so, on what grounds.

If "No," check the "No" box next to Question #2 in Section A of the PES Form. In the "Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form" indicate what steps were taken to determine the potential for public controversy.

If "Yes," or "To Be Determined," check the appropriate box next to Question #2 in Section A of the PES form. In the "Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form" indicate the grounds on which the controversy exists.

Note: Projects involving substantial controversy on environmental grounds require appropriate environmental studies (23 CFR 771.117[b] [2]).

If the basis for controversy is environmental, complete Section F of the PES form as appropriate.

Consult with the DLAE and district SEP or designee when determining the extent of public involvement that may be necessary.

Noise:**3. Is the project a Type 1 project as defined in 23 CFR 772.5(h)?**

For projects with noise studies completed after July 13, 2011, Type 1 project will be defined as a federal or federal aid project for: (1) the construction of a highway on a new location, or (2) the physical alteration of an existing highway where there is either: (a) Substantial horizontal alteration. *A project that halves the distance between the traffic noise source and the closest receptor between the existing condition to the future build condition*, or (b) substantial vertical alteration. *A project that removes shielding thereby exposing the line-of-sight between the receptor and the traffic noise source. This is done by altering either the vertical alignment of the highway or the topography between the highway traffic noise source and the receptor*; or (3) the addition of a through-traffic lane(s). This includes the addition of a through-traffic lane that functions as a high-occupancy vehicle (HOV) lane, high-occupancy toll (HOT) lane, bus lane, or truck climbing lane, or (4) the addition of an auxiliary lane, except for when the auxiliary lane is a turn lane, or (5) the addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange, or (6) restriping existing pavement for the purpose of adding a through traffic lane or an auxiliary lane, or (7) the addition of a new or substantial alteration of a weigh station, rest stop, ride-share lot, or toll plaza.

If “No,” check the “No” box next to Question #3 in Section A of the PES form. Check all applicable boxes under Preliminary Design Information (that is, widen existing roadway, increase number of through-lanes, new alignment, capacity increasing, and so forth). In the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form,” briefly discuss the scope of the project and how this type of work will not involve any of the Type I activities described above. For non-Type I projects, no further analysis is needed for Traffic Related noise; however, a Technical Memo will be needed to briefly document predicted construction related noise. Check Construction Related and Technical Memo under Section B of the PES form. Where an EA or EIS is being prepared, the evaluation of predicted construction noise can be briefly documented in the ED. Check Discussion in ED Only. If “Yes,” or “To Be Determined,” check the appropriate box next to Question #3 in Section A of the PES form. Indicate under Section B of the PES form that a Noise Study Report will be required to determine whether the Type I project would result in a noise impact that will require consideration of abatement.

The Annotated Outline for the Noise Report is provided at:

http://www.dot.ca.gov/ser/downloads/noise/Final_Noise_Study_Report.pdf

If the Noise Study Report concludes that the Type I project will result in a noise impact that requires consideration of abatement (such as a sound wall) a Noise Abatement Decision Report will be required to determine if the proposed noise abatement is reasonable and feasible. Check NADR under Section B. A Template for the NADR is provided at: http://www.dot.ca.gov/hq/env/noise/index.htm#nadr_temp

4. Does the project have the potential for adverse construction-related noise impacts (such as related to pile driving)?

Consider whether the construction of the project will involve pile driving, structure demolition, blasting, and so forth. Will the project have the potential for adverse construction-related noise impacts either on land or underwater? If “No,” check the “No” box next to Question #4 in Section A of the PES form. Check all applicable boxes under Preliminary Design Information (that is, bridge work, equipment staging, excavation, pile driving road cuts, stream channel work, and so forth.) that could result in excessive noise. In the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form” briefly discuss how these types of activities will not result in excessive construction noise or generate underwater noise.

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #4 in Section A of the PES form. Under Section B of the PES form indicate whether a Technical Memorandum or Discussion in the ED will be prepared. Consult with the DLAE and district SEP (or designee) when determining which level of analysis will be necessary based on the potential for impact.

Ensure that environmental consultant Scope of Work references the DLA Caltrans Oversight Information Notice (COIN) #12-03 located at: <http://www.dot.ca.gov/hq/LocalPrograms/COIN/coin-12-03-2012-15-10.pdf>, and “Technical Guidance for Assessment and Mitigation of Hydro-acoustic Effects of Pile Driving on Fish is available at: http://www.dot.ca.gov/hq/env/bio/files/Guidance_Manual_2_09.pdf

And additional guidance on Transportation and Construction-Induced Vibration” is provided in the SER at: <http://www.dot.ca.gov/ser/vol1/sec3/physical/ch12noise/chap12noise.htm>.

5. Is the project in a National Ambient Air Quality Standard (NAAQS) nonattainment or maintenance area?

Check the Table of Conformity Areas provided at:

<http://www.dot.ca.gov/env/air/docs/conformity-areas-plus.pdf>

Is the county that the project is located in, listed in the Table of Conformity Areas?

If “Yes,” check the “Yes” box as appropriate, next to Question #5 in Section A of the PES form and proceed to Question #6.

If “No,” no further Air Quality (AQ) studies are needed because transportation conformity only applies in federal non-attainment and maintenance areas. Check the “No” box next to Question #5 in Section A of the PES form and proceed to Question #9.

6. Is the project exempt from the requirement that a conformity determination be made?

Review the list of project types in 40 CFR Part 93, Sec. 93.126, Table 2 Exempt Projects, provided as Exhibit 6-C of this chapter, or electronically at:

https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=2bc4ff0f1dded8366e2c91b96817229e&mc=true&n=sp40.20.93.a&r=SUBPART&ty=HTML#se40.22.93_1126

Is project one of the project types included in the 40 CFR 93.126, Table 2?

If “Yes,” no conformity determination is required. Check the “Yes” box next to Question #6 in Section A of the PES form, and state which conformity exemption in Table 2 applies or state if 40 CFR 93.128 applies. Skip Questions #7 & #8.

If “No,” a project level conformity determination may be required. Continue with Question #7.

7. Is the project exempt from regional conformity?

Review list of project types listed in 40 CFR Section 93.127, Table 3 Projects Exempt from Regional Analysis, provided as Exhibit 6-D of this chapter, or electronically at:

https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=2bc4ff0f1dded8366e2c91b96817229e&mc=true&n=sp40.20.93.a&r=SUBPART&ty=HTML#se40.22.93_1126

Is project one of the project types included in 40 CFR 93.127, Table 3?

If “Yes,” **and project is located in a non-attainment/maintenance area for ONLY ozone**, no project-level conformity determination is required. Check the “Yes” box next to Question #7 under Section A of the PES form, and state which conformity exemption in Table 3 applies. In the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form” state: “A regional emissions analysis is not required because project is one of the project types included in Table 3, and a localized hot spot analysis is not required because project is located in an area that is attainment/unclassified for ALL of CO, PM10 and PM2.5. Skip to Question #9.

If **“Yes,” and the project is located in an area that is nonattainment/attainment-maintenance for CO, PM10 or PM2.5, a project-level conformity determination is required.** Check the “Yes” box next to Question #7 under Section A of the PES form and state which conformity exemption in Table 3 applies. Under Section B of the PES form check Air Quality Report, Technical Memorandum, or Discussion in ED Only. Consult with the district SEP (or designee) to determine the appropriate level of analysis and documentation needed. Indicate coordination with and approval by Caltrans under Sections C and D of the PES form. In the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form” state: “A regional emissions analysis is not required because project is one of the project types included in Table 3; however, a localized hot spot analysis is required because project is located in an area that is nonattainment/maintenance for CO, PM10 and PM2.5 (indicate which).”

Guidance on conducting a Localized Hotspot Analysis is provided at:

http://www.dot.ca.gov/hq/env/air/main_sections/analysistools.htm

Also refer to the attachment at the bottom of the FHWA PM2.5/PM10 Qualitative Analysis Guidance (March 2006).

Do not begin technical studies until after the PES Form is signed by the Caltrans SEP and DLAE. Skip to Question #9.

If **“No,” a project-level conformity determination is required including both a regional emissions analysis and hot spot analysis regional level conformity analysis (for example, dispersion modeling).**

Check the “No” box next to Question #7 in Section A of the PES Form. In Section B of the PES Form, check Air Quality Report, Technical Memorandum, or Discussion in ED Only. Consult with the district SEP (or designee) to determine the appropriate level of analysis and documentation needed. Indicate coordination with and approval by Caltrans under Sections C and D of the PES Form. Guidance on project-level conformity determinations and regional emissions analysis and hot spot analysis are provided at:

<http://www.dot.ca.gov/ser/vol1/sec3/physical/ch11air/chap11.htm#Conformity>.

Do not begin technical studies until after the PES Form is signed by the Caltrans SEP and DLAE. Continue with Question #8.

- 8. If project is not exempt (that is, if “No” on Question #6 and Question #7) a project-level conformity determination is required. The project-level conformity determination would include both the regional emissions analysis and a hot spot analysis (in PM2.5, PM10 and CO nonattainment or maintenance areas).**

For the regional emissions analysis **in a metropolitan nonattainment/maintenance area**, the project needs to be included in the MPOs currently conforming Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP). To be “included” in the currently conforming RTP and TIP, there must be no significant changes in the project’s design concept and scope from those assumed in regional emissions analysis. Additionally, the assumed open-to-traffic date must be correct. On the first page of the PES form identify the date of the currently adopted RTP and FTIP within which the project is included and provide the page numbers wherein the project is specifically listed.

For regional emissions in an **“isolated rural” nonattainment area** (nonattainment area with no MPO within the nonattainment area boundaries), a regional emissions analysis would be performed as part of the project-level conformity determination. Refer to 40 CFR 93.109 for guidance on projects not included in a conforming RTP and TIP. Specific Isolated Rural area requirements are in 40 CFR 93.109(1). Under Section B of the PES form, check Air Quality Study and under Section C and D, check coordination with and approval by Caltrans respectively. Guidance on project-level conformity determinations and Regional Emissions analysis is provided at:

http://www.dot.ca.gov/hq/env/air/main_sections/analysistools.htm

Do not begin technical studies under after the PES form is fully signed.

For projects in **CO, PM10, and/or PM2.5 nonattainment/maintenance areas**, a localized hot spot analysis also needs to be completed. Check Air Quality Study, Technical Memorandum, or Discussion in ED Only. Consult with the district SEP (or designee) to determine the appropriate level of analysis and documentation needed. Indicate coordination with and approval by Caltrans under Sections C and D of the PES form. Guidance on conducting a localized hot spot analysis is provided at:

http://www.dot.ca.gov/hq/env/air/main_sections/analysistools.htm

Also refer to the attachment at the bottom of the FHWA PM2.5/PM10 Qualitative Analysis Guidance (March 2006).

<http://www.dot.ca.gov/ser/vol1/sec3/physical/ch11air/chap11.htm#Conformity>.

Do not begin technical studies until after the PES form is fully signed.

Hazardous Materials/Hazardous Waste

9. Is there a potential for hazardous materials (including underground or aboveground tanks, and so forth.) or hazardous waste (including oil/water separators, waste oil, asbestos-containing material, lead-based paint, ADL, and so forth) within or immediately adjacent to the construction area?

Conduct screening according to the procedures set forth in the SER, provided at:

http://www.dot.ca.gov/ser/vol1/sec3/physical/ch10haz/chap10.htm#project_screening

Note: Screening typically includes a review of local records of prior land uses and local and state-maintained databases of hazardous materials sites and underground tanks. During the site visit, note existing land uses (that is, gas stations, auto wrecking yards, railroad yard or tracks, landfills, and so forth) and any evidence of past land uses (that is, above ground tanks, stained soil, 50-gallon drums, and so forth.).

Are there any signs of past or present hazardous materials or waste uses, or any known hazardous materials within or immediately adjacent to the construction area?

If “No,” check the “No” box next to Question #9 in Section A of the PES form. On the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form” include the steps taken to determine whether any hazardous materials or wastes could potentially occur within or immediately adjacent to the construction area. Include field notes from site visit, documenting observations, (that is, surrounding land uses [current and historic], general characteristics of area/soil, absence of staining on soil, proximity to gas station, landfill or rail yard, and so forth).

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #9 in Section A of the PES form. Further study will be required. Check ISA (Phase I) in Section B of the PES form and indicate coordination and permit requirements under Sections C and D of the PES Form.

The ISA (Phase I) shall be undertaken according to the guidance set forth in the SER, Chapter 10, “Hazardous Wastes,” provided at:

http://www.dot.ca.gov/ser/vol1/sec3/physical/ch10haz/chap10.htm#elements_isa

Water Quality/Resources

10. Does the project have the potential to impact water resources (rivers, streams, bays, inlets, lakes, drainage sloughs) within or immediately adjacent to the project area?

Review maps to determine if there are water resources (that is, rivers, streams, lakes, reservoirs, impoundments, bays, inlets, estuaries, wetlands, drainage sloughs, vernal pools, swales, CWA Section 303d impaired water bodies, and so forth) within or immediately adjacent to the project area. Confirm and note presence or absence on the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form.” Are there water resources in the immediate project vicinity that may be affected by the project?

If “No,” check the “No” box next to Question #10 under Section A of the PES form. Under “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form” briefly

discuss the project's potential for impacting water quality. Include a vicinity map (clearly showing project's proximity to water resources) and a copy of the field notes confirming the absence of water resources.

If "Yes," or "To Be Determined," check the appropriate box next to Question #10 in Section A of the PES form. Check "Yes" next to "Bridge Work," "Stream Channel Work" or "Flooding," as appropriate. Under Preliminary Design Information on the first page of the PES form, check "Water Quality Assessment Report," "Technical Memorandum," "Analysis in ED or Permit Only," (as applicable). Under Section B of the PES form and under "Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form" specifically identify the water resources that may be affected by the project.

The technical report shall be prepared according to the guidance set forth in the SER, Chapter 9, "Hydrology, Water Quality and Stormwater," provided at:

<http://www.dot.ca.gov/ser/vol1/vol1.htm>

Projects involving the dredging or filling in of waters of the US (including wetlands) will require coordination with the U.S. Army Corps of Engineers (ACOE) and may require water quality permits, such as Section 404 Individual or Nationwide Permit, Section 401 from Regional Water Quality Control Board (RWQCB), or 1600 permit from the California Department of Fish and Game (CDFG).

Projects involving work in navigable waters, such as the demolition or construction of bridges or docks and bulkheads, or that result in obstructions to navigation, or in the dumping of trash, or sewage into navigable waterways (Rivers & Harbors Act [Section 10]) will also require a Section 10 Permit.

Projects involving the construction of a bridge over a Navigable River will require coordination with the U.S. Coast Guard (USCG) and may require a USCG Bridge Permit. Check USCG (bottom of Section C of the PES form) indicating that coordination with the USCG is required during the environmental and design phases of the project and check USCG Bridge Permit (bottom of Section D of PES form) indicating that a Coast Guard Bridge Permit may be needed.

Since 2 to 3 months is normally required to process a routine application involving a public notice, local agencies should apply for permits as early as possible to allow sufficient time to obtain all necessary approvals prior to beginning construction. For large or complex projects, local agencies should request a "pre-application consultation" or informal meeting with the ACOE during the early planning phase of your project to minimize the potential for delays later.

Projects with 5 acres or more of permanent impacts to waters of the US and processed with an EIS, will require an Individual Section 404 Permit. Local agency should consult with the DLAE (or designee) as early as possible to ensure compliance with all provisions of the Memorandum of Understanding, among the FHWA, California Department of Transportation (Caltrans), United States Environmental Protection Agency (US EPA), United States Army Corps of Engineers (USACOE), United States Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS), National Environmental Policy Act (NEPA) and Clean Water Act Section 404 Integration Process for Federal Aid Surface Transportation Projects in California (April 2006) AKA: NEPA/404 MOU. MOU provided at:

http://www.dot.ca.gov/ser/downloads/MOUs/NEPA404/nepa404_2006_final_mou.pdf

11. Is the project within a designated Sole-Source Aquifer?

A Sole-Source Aquifer is an aquifer upon which a community depends exclusively for its fresh water supply. The U.S. Environmental Protection Agency's Sole-Source Aquifer Program was established under Section 1424(e) of the U.S. Safe Drinking Water Act (SDWA) in 1977 to help prevent contamination of groundwater from federally funded projects. The Sole-Source Aquifer Program allows for EPA environmental review of any project which is financially assisted by federal funds to determine whether the project has the potential to contaminate a Sole-Source Aquifer. If there is such a potential, the project would need to be modified to reduce or eliminate the risk, or federal (FHWA) financial support may be withdrawn.

Four (4) aquifers in California have been designated as "Sole-Source Aquifers" by the EPA. These include:

- Santa Margarita Aquifer, Scotts Valley, Santa Cruz County

- Fresno Aquifer, Fresno County
- Ocotillo-Coyote Wells Aquifer, Imperial County
- Campo/Cottonwood Creek Aquifer, San Diego County

Consider if the project is located within or near one of the four EPA-designated Sole-Source Aquifers. Additional information regarding each aquifer is provided at:

<http://www.epa.gov/region09/water/groundwater/ssa.html>

If “No,” check the “No” box next to Question #11 under Section A of the PES Form. No further study is needed. If the project is proposed within Santa Cruz, Fresno or Imperial Counties, or where proximity is questionable, state distance of project from Sole-Source Aquifer in the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form” and attach map showing project’s relation to Sole-Source Aquifer boundary.

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #11 under Section A of the PES form. Additional study will be needed. Check Sole-Source Aquifer box under Section B of the PES form. If the project is being processed with an EA or an EIS, EPA review of the NEPA document will be required prior to the public availability period. Check EPA box under Section C of the PES form. If the project is being processed with a CE, and the project will involve a well or sewage disposal, or result in a threat of aquifer contamination or hazard to public health, EPA review will also be required prior to Caltrans approval of the CE. Check Sole-Source Aquifer under Section C of the PES form, and check Coordination with EPA under Section C of the PES form.

If the project is within a designated Sole-Source Aquifer, but does not involve a well or sewage disposal, or result in a threat of aquifer contamination or hazard to public health and will be processed with a CE, project is exempt from a project-by-project review by EPA. Documentation of research and impacts on the aquifer shall be prepared according to the guidance set forth in the SER, Chapter 9, “Hydrology, Water Quality and Stormwater,” provided at:

<http://www.dot.ca.gov/ser/vol1/vol1.htm>

Coastal Zone

12. Is the project within the State Coastal Zone, San Francisco Bay or Suisun Marsh?

If “No,” check the “No” box next to Question #12 under Section A of the PES Form. Reiterate location of project in the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form.” Where proximity is questionable, state distance of project (in miles) from State Coastal Zone jurisdiction. Attach a regional map showing location of project relative to State Coastal Zone.

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #12 under Section A of the PES form. Check Coastal Zone under Section B of the PES form. Preparation of a separate technical report for coastal resources is not required. However, other technical reports may be needed to confirm project’s consistency with the State Coastal Zone Management Plan. As part of the permitting process, the following technical reports are often used to support the permit application: **water quality reports, visual assessments, community impact assessments, natural environment studies, biological assessments, and geotechnical reports**. In addition, the permitting agencies will require a copy of the approved final ED as well as documentation of consultation with resource and regulatory agencies including permits and approvals from these agencies.

Local agencies are responsible for obtaining a Coastal Consistency Determination or Waiver (required under the Federal Coastal Zone Management Act) from the California Coastal Commission (CCC). However, in order to obtain the consistency determination/waiver, the local agency must demonstrate that the project is consistent with the California Coastal Act and any Local Coastal Plan (LCP). The CCC Consistency Office will require a Coastal Development Permit (CDP) from the Local Coastal Agency (LCA), or at least a letter documenting consistency with the LCP before they will provide a consistency determination/waiver. Check Coordination boxes next to LCA and CCC

(Federal Consistency Office) under Section C and check Action/Permit/Approval box next to CDP and Coastal Zone Consistency Determination under Section D of the PES form.

Projects located within the San Francisco Bay Area and involving the construction, remodel or repair of structures, or the dredging or extraction of materials from within the San Francisco Bay, or in certain tributaries that flow into the Bay will also need to obtain a Bay Conservation and Development Commission (BCDC) permit prior to commencing any work within BCDC's jurisdiction. Check Coordination with BCDC under Section C of the PES Form and check BCDC Permit under Section D of the PES form.

Projects located within coastal areas outside San Francisco Bay will need to obtain a Coastal Zone Permit from the CCC prior to commencing any work within CCC's jurisdiction. Check Coordination with CCC under Section C of the PES form and check Coastal Zone Permit under Section D of the PES form.

Consult with the DLAE and district SEP (or designee) to determine the best course of action.

Refer to the SER, Chapter 18, for additional guidance on compliance in Coastal Zone areas, at:

<http://www.dot.ca.gov/ser/vol1/sec3/special/ch18coastal/chap18.htm>

Floodplain

13. Is the construction area located within a regulatory floodway or within the base floodplain (100-year) elevation of a watercourse or lake?

Check current Federal Management Agency (FEMA) maps and current National Flood Insurance Program (NFIP) maps available from public libraries, State Department of Water Resources, city and county flood control managers, or public works departments.

Will the project encroach on the base (100 year) floodplain? If "No," check the "No" box next to Question #13 in Section A of the PES form. Attach a copy of relevant FEMA or NFIP map, showing location of project. In the "Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form," cite FEMA or NFIP map number and date. Also indicate whether or not all work will occur within existing right of way.

If "Yes," or "To Be Determined," check the appropriate box next to Question #13 in Section A of the PES form. Further study will be required to determine if the action would support base floodplain development or if the action will involve any work permanently encroaching on a regulatory floodway, or if the action will involve any work affecting the base floodplain (100-year) elevations of a watercourse or lake. Check Location Hydraulic Study under Section B of the PES form. The conclusion of the Location Hydraulic Study will determine whether a Floodplain Evaluation Report or a Summary of Floodplain Encroachment Report will be needed.

The Location Hydraulic Study shall be prepared according to the guidance set forth in the SER, Chapter 17, "Floodplains," provided at:

<http://www.dot.ca.gov/ser/vol1/sec3/special/ch17flood/chap17.htm>

Wild and Scenic Rivers

14. Is the project within or immediately adjacent to a Wild and Scenic River System?

Look up the river on the following web site to determine if it is designated wild and scenic. Consider the project's proximity to these rivers. (*Note: Designation protects river and a 0.25-mile corridor from development. Consider whether the action involves any construction in, across, or adjacent to a river, designated as a component of, or proposed for inclusion in the National System of Wild and Scenic Rivers published by the U.S. Department of the Interior/U.S. Department of Agriculture.*)

If "No," check the "No" box next to Question #14 in Section A of the PES Form. In the "Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form" indicate in miles of closest designated Wild and Scenic River. When the project is in the general vicinity of a Wild and Scenic River, indicate that the project is not within the 0.25-mile protected corridor. Attach Regional Map showing project's relation to river in question.

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #14 in Section A of the PES form. Further study will be required to determine if the construction, operation or maintenance of the project will affect the river and whether the effect will be significant. Check Wild and Scenic Rivers Study under Section B, coordination with River Managing Agency under Section C, and Wild and Scenic Rivers Determination under Section D of the PES form.

Consult with the DLAE and district SEP (or designee) to determine the level of analysis that will be necessary based on the potential for impact.

The Wild and Scenic River Studies shall be undertaken according to the guidance set forth in the SER, Chapter 19, “Wild and Scenic Rivers,” provided at:

<http://www.dot.ca.gov/ser/vol1/sec3/special/ch19wsrivers/chap19.htm>

Early coordination with the River Managing Agency is strongly encouraged to expedite the Wild and Scenic Rivers Determination.

Biological Resources

15. Is there a potential for federally listed threatened or endangered species or their designated critical habitat to occur within or adjacent to the construction area? Note: The Federal Endangered Species Act, Sections 7, 9 and 10 protect federally listed threatened and endangered species and their designated critical habitat.

Consult the U.S Fish and Wildlife Service (USFWS), Division of Endangered Species website

https://www.fws.gov/sacramento/es_species/Lists/ to determine whether there are any federally listed threatened or endangered species, or their designated critical habitat in the county within which the project is located.

If “No,” check the “No” box next to Question #15 in Section A of the PES form and request the Caltrans district biologist prepare a finding of “No Effect” for the project file.

If “To Be Determined,” check the “To Be Determined” box next to Question #15 in Section A of the PES determining if there is a potential for federally listed plant and animal species or their critical habitat to occur within the project area. *Note: Caltrans staff assistance will depend on current workload and staff availability. When Caltrans district biologists are not available, the local agency will need to retain a qualified biologist to survey the project area and prepare a Technical Memo summarizing the following:*

- Description of project setting
- USFWS list of the federally listed plant and animal species and their critical habitat occurring within the county
- Brief discussion of the habitat needs of each species on the list
- General reconnaissance survey notes and conclusion as to whether or not any of the species on the USFWS list exist or could occur within the project area
- Caltrans district biologists will review the Technical Memo, when appropriate, make a finding of “No Effect”

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #15 in Section A of the PES form. Further study will be required. Check the appropriate technical report (NES or BA) under Section B of the PES form. Consult with the DLAE and the district SEP (or designee) to determine the appropriate study based on the potential for impact(s). When a NES or NES (Minimal Impacts) is required, encircle the appropriate one in Section B, check coordination with Caltrans under Section C, and check Approval by Caltrans under Section D. When a BA is required, encircle the appropriate study under Section B, check coordination with Caltrans under Section C, and check approval for consultation by Caltrans under Section D. For BAs for federal-listed plants, animals or their critical habitat, check coordination with USFWS under

Section C and Section 7 Informal/Formal Consultation under Section D. For BAs for federal-listed species protected by the NOAA, NMFS, check coordination with NOAA Fisheries under Section C.

Consult the following web sites to determine if the project has the potential to affect fish species covered by a Fisheries Management Plan at: <http://www.nmfs.noaa.gov/habitat/efh/Consultation/TOC.html>
<http://www.nmfs.noaa.gov/sfa/magact/>

If the project has the potential to affect fish species covered by a Fisheries Management Plan, an Essential Fish Habitat (EFH) Evaluation will be required. Check EFH Evaluation under Section B, coordination with NOAA under Section C, and Magnuson-Stevens Fishery Conservation and Management Act (MSA) Consultation under Section D of the PES form.

If the project will involve pile driving, structure demolition, explosives, or blasting, or will generate other forms of underwater noise, a Bio-Acoustic Evaluation, to assess the effects of this noise or sound pressure levels on fish, diving bird, and other underwater species, will be required. Check Bio-Acoustic Evaluation under Section B, coordination with NOAA Fisheries under Section C, and approval by Caltrans under Section D of the PES form. The NES (Minimal Impacts), NES or BA shall be prepared according to the guidance set forth in the SER, Chapter 14, "Biological Resources," provided at:

<http://www.dot.ca.gov/ser/vol1/sec3/natural/Ch14Bio/ch14bio.htm>

Templates for the NES (Minimal Impacts), NES and BA and Quality Control guidance for Standard Biological Technical Documents and Reports are provided at:

<http://www.dot.ca.gov/ser/forms.htm>

16. Does the project have the potential to directly or indirectly affect migratory birds or their nests or eggs (such as vegetation removal, box culvert replacement/repair, bridge work and so forth)?

Note: The Migratory Bird Treaty Act implements various treaties between the United States and Canada, Mexico, former Soviet Union, Japan protecting migratory birds by making it unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, or kill said species. The law applies to the removal of nests (such as swallow nests on bridges) occupied by migratory birds during the breeding season.

If "No," check the "No" box next to Question #16 in Section A of the PES form. No further study is required.

If "Yes," or "To Be Determined," check the appropriate box next to Question #16 in Section A of the PES Form and indicate under Section B of the PES form that a NES (Minimal Impacts), NES, BA or BE will be prepared.

Coordinate with Caltrans district biologist under Sections C & D.

The NES (Minimal Impacts), NES, BE or BA shall be prepared according to the templates provided at:

<http://www.dot.ca.gov/ser/forms.htm>

and guidance set forth in the SER, Chapter 14, "Biological Resources," provided at:

<http://www.dot.ca.gov/ser/vol1/sec3/natural/Ch14Bio/ch14bio.htm>

17. Is there a potential for wetlands to occur within or adjacent to the construction area?

Begin by reviewing National Wetland Inventory (NWI) maps available through the appropriate Natural Resource Conservation Service (NRCS) field office(s). Where NWI maps indicate a potential for wetlands, a biologist, or someone with knowledge of wetlands should field review the project area. If a biologist is not available, photos of the project area should be taken and submitted with the completed PES form. Is there potential for wetlands?

If "No," check the "No" box next to Question #17 in Section A of the PES form. No further study is needed. Indicate the soil classification in the "Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form." Attach a copy of the relevant NWI map, showing location of project relative to wetland designations and include any field notes from the site visit and photographs of project area with project limits delineated.

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #17 in Section A of the PES form. Further study will be required to determine the exact boundary of the wetland (based on the ACOE three-parameter definition 330 CFR 323.2[c]), and to quantify the project related impacts on the wetland. Check Wetlands and Wetland Delineation (WD) and Assessment under Section B, check coordination with Caltrans and USACE under Section C, and check approval of assessment by Caltrans, Wetland Verification by USACE, and Wetlands Only Practicable Alternative Finding by Caltrans under Section D.

The Wetland Delineation shall be prepared according to the guidance set forth in the SER, Chapter 15, “Wetlands and Other Waters of the U.S.,” provided at:

<http://www.dot.ca.gov/ser/vol1/sec3/natural/ch15wetland/ch15wetland.htm#recmethod>

18. Is there a potential for agricultural wetlands to occur within or adjacent to the construction area?

Note: The 404 Regulatory Program covers discharges of dredged or fill material to wetlands on agricultural lands and requires authorization by the ACOE (either an individual permit or NWP) unless the activity has a CWA statutory exemption, or the area is prior converted cropland. Field staff of the NRCS determines whether an agricultural site is a wetland.

Review relevant maps and information available from the appropriate National Resources Conservation Service field office to determine if any agricultural wetlands are present within the project area.

If “No,” check the “No” box next to Question #18 in Section A of the PES form. No further study is needed. Indicate the types of land uses immediately surrounding the project area and whether all work will occur within existing right of way, and so forth, in the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form.” Attach a copy of any field notes from the site or any photographs of project area with project limits delineated.

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #18 in Section A of the PES form. Further study will be required to determine the exact boundary of the agricultural wetland (based on the ACOE three-parameter definition 33 CFR 323.2[c]) and to quantify the project related impacts on the agricultural wetland. Check Wetlands and Wetland Delineation (WD) and Assessment under Section B, check coordination with Caltrans and NRCS under Section C, check approval of the WD and Assessment by Caltrans and Agricultural Wetland Verification by NRCS under Section D.

The WD shall be prepared according to the guidance set forth in the SER, Chapter 15, Wetlands and Other Waters of the U.S., provided at:

<http://www.dot.ca.gov/ser/vol1/sec3/natural/ch15wetland/ch15wetland.htm#recmethod>

19. Is there a potential for the introduction or spread of invasive plant species?

Note: Presidential Executive Order 13112 prohibits the use of federal-aid for construction, revegetation or landscaping activities that purposely include the use of known invasive plant species. This Order is concerned with plant material being used in revegetation, and with the spread of invasive from or to a project area. If the project area is infested with Star Thistle, for example, the project needs to include measures to ensure that material is not being spread to other areas by disposal off-site or by tracking seed on equipment. Also, if equipment/material is being brought in from areas of invasive plants, this must be identified to ensure that invasive plants are not inadvertently being spread to the project area.

Review the California official noxious weed list and the California Invasive Plant Council (Cal-IPC) Invasive Plant Inventory at: <http://www.cal-ipc.org/> to determine if invasive plants are in the project area, or if any plants proposed for project landscaping are included on the list.

If “No,” check the “No” box next to Question #19 in Section A of the PES form. No further action regarding invasive plants is needed. In the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form” clearly states that the project will not involve construction, revegetation or landscaping activities that use known invasive plant species. If landscaping is proposed, list plant species proposed for use, or if invasive plants exist within the project area, list those plants in the “Preliminary Environmental Investigations Notes to Support the Conclusions of the PES Form.”

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #19 in Section A of the PES Form. Check “Invasive Species” and “Discussion in ED Only” under Section B, check coordination with Caltrans in Section C, and check “Approval” (of Discussion in ED) under Section D. If an NES is being prepared for impacts to biological species, noxious weed management and invasive species would be addressed in the NES. An NES template is provided at: <http://www.dot.ca.gov/ser/forms.htm>

Sections 4(f) and 6(f)

20. Are there any historic sites or publicly owned public parks, recreation areas, wildlife or waterfowl refuges (Section 4(f)) within or immediately adjacent to the construction area?

Review right of way and parcel maps prior to conducting a site visit to determine property ownership. During the site visit note all land uses surrounding the project limits. If “No,” check the “No” box next to Question #20 in Section A of the PES form. No further study is needed. In the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES” list all surrounding land uses. Attach Project Footprint Map.

If “Yes,” or “To Be Determined,” check the appropriate box next to question #20 in Section A of the PES form. Further study will be required. Check Section 4(f) in Section B and write in specific Programmatic Section 4(f) Evaluation, if applicable. Consult with the DLAE and district SEP (or designee) to determine whether a Programmatic Section 4(f) Evaluation, or an Individual Section 4(f) Evaluation is appropriate, or if the action constitutes a Temporary Occupancy, or qualifies for a de minimis finding. Programmatic and Individual Section 4(f) Evaluations shall be prepared.

Do not begin the Section 4(f) Evaluation until after the PES form is fully signed. The consultant contract for the Evaluation shall be prepared according to the guidance and procedures set forth in the LAPM, Chapter 10, “Consultant Selection,” provided at:

http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/p10consult.pdf

Guidance on determining de minimis impacts to Section 4(f) properties, or on preparing an Individual Section 4(f), or one of the five (5) Programmatic Section 4(f) Evaluations:

- Parklands, Recreation Areas and Wildlife and Waterfowl Refuges
- Minor Involvement with Historic Sites
- Historic Bridges
- Bikeways and Walkways
- Projects that have a Net Benefit to Section 4(f) properties

Refer to SER, Chapter 20, Section 4(f) and Related Requirements, at:

<http://www.dot.ca.gov/ser/vol1/sec3/special/ch204f/chap20.htm>

21. Does the project have the potential to affect properties acquired or improved with Land and Water Conservation Fund Act (Section 6(f)) funds?

To determine whether Land and Water Conservation Fund (L&WCF) money was involved in the acquisition or improvement of a Section 4(f) property within or adjacent to your project area, go to the Land and Water Conservation Fund website at : <https://waso-lwcf.nrc.nps.gov/public/index.cfm>, and click on "Detailed Listing of Grants-With County Totals". Select California (CA) and click on submit button. Find your county in the left margin and click on the name of the county. List of parks or other recreational resources that have used federal funds from the LWCF should appear. You can see the date the grant was awarded and the amount of LWCF funds awarded.

If “No,” check the “No” box next to Question #21 in Section A of the PES form. No further study is needed. In the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form” list all surrounding land uses. When one of the surrounding land uses is a park, identify ownership.

If “Yes,” (L&WCF funds were utilized for acquisition or improvement), further study will be needed and all practical alternatives to the proposed conversion must be evaluated.

Check the “Yes,” or “To Be Determined,” box next to Question #21 in Section A of the PES form. Check Section 6(f) in Section B, check coordination with Agency with Jurisdiction under Section C, and if the project will result in the conversion of the Section 6(f) property, check coordination with National Park Service (NPS) under Section C, and check Approves Conversion under Section D. The NPS Regional Office must concur that all environmental review requirements related to the proposed project have been met.

Section 6(f) study procedures are outlined in the SER, Chapter 20, provided at:

<http://www.dot.ca.gov/ser/vol1/sec3/special/ch204f/chap20.htm#consider>

Approval of a Section 6(f) conversion/replacement property shall be documented in the Section 4(f) Evaluation and Environmental Document.

Visual Resources

22. Does the project have the potential to affect any visual or scenic resources?

Refer to the Visual Impact Assessment (VIA) Guide in the SER, provided at:

http://www.dot.ca.gov/hq/LandArch/via_outlines/questionnaire.htm

Consider each of the ten (10) questions and select the response that most closely applies to the project in question. *Refer to Preliminary Design Information provided on the first page of the PES form when answering questions.* Each response has a corresponding point value. After the checklist is completed the total score will indicate the potential for impact and the level of detail needed to adequately address visual impacts in the PES form.

Note: This scoring system should only be used as a preliminary guide and should not be used as a substitute for objective analysis on the part of the user. Although the collective score may direct the user toward a certain level of analysis, circumstances associated with any one of the ten question-areas may necessitate elevating the VIA to a greater level of detail.

Scores between 6-9 indicate a low potential for the project to affect a visual or scenic resource. When this is the case, check the “No” box next to Question #22 in Section A of the PES form. No further analysis is required. Print out a copy of the completed questionnaire. In the “Preliminary Environmental Investigation Notes to Support the Conclusions of the **PES Form**” indicate the score and attach a copy of the questionnaire.

Scores between 10-14 require that the Local Agency prepare a brief **Technical Memo** providing clarification for the two or three highest scores on the questionnaire.

Scores between 15-19 require the preparation of an abbreviated VIA report consistent with the **Minor VIA Annotated Outline**.

Scores between 20-24 require the preparation of a VIA report consistent with the **Moderate VIA Annotated Outline**.

Scores between 25-30 require the preparation of a VIA report consistent with the **Advanced/Complex VIA Annotated Outline**.

When a Minor, Moderate or Advanced/Complex VIA report is required, check the appropriate box next to Question #22 in Section A of the PES Form and indicate under Section B of the PES form whether a VIA Technical Memorandum, Minor VIA, Moderate VIA or Advanced/Complex VIA will be prepared.

Relocation Impacts

23. Will the project require the relocation of residential or business properties?

Note: The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 provides important protections and assistance for people affected by federally funded projects. This law was enacted by Congress to ensure that people whose real property is acquired, or who move as a result of projects

receiving federal funds, will be treated fairly and equitably and will receive assistance in moving from the property they occupy. Responsibility for the enforcement of this Act has been delegated to the FHWA and is carried out by the Office of Real Estate Services. Title 49: Transportation, Part 24—Uniform Relocation Assistance And Real Property Acquisition For Federal and Federally Assisted Programs, Section 24.205, Relocation Planning, Advisory Services and Coordination, requires that during the early stages of development, an agency shall plan federal and Federally Assisted Programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations.

Will the project require the relocation of residential or business properties?

If “No,” check the “No” box next to Question #23 in Section A of the PES form. No further study is needed.

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #23 in Section A of the PES form. Under Section B of the PES form indicate whether a Relocation Impact Memo, Relocation Impact Study or Relocation Impact Report will be prepared. Consult with the DLAE and district SEP (or designee) when determining which level of analysis will be necessary based on the scope of the project. Indicate coordination with and approval by Caltrans under Section C and P of the PES form.

The Relocation Impact Study or Report shall be prepared according to the guidance provided in the SER, Chapter 24, “Community Impacts” at:

<http://www.dot.ca.gov/ser/vol1/sec3/community/ch24cia/chap24cia.htm#laws>

Land Use, Community and Farmland Impacts

24. Will the project require any right of way, including partial or full takes? Consider construction easements and utility relocations.

Note: As mentioned earlier, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 provides important protections for people whose real property is acquired as a result of projects receiving federal funds.

If “No,” check the “No” box next to Question #24 in Section A of the PES form. Also check “No” next to Right of Way Acquisition under Preliminary Design Information on the first page of the PES form.

In the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES form” indicate that “all work (such as, trenching, slope stabilization, etc.), if applicable, will occur within existing right of way” next to #23.

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #24 in Section A of the PES form. Further study will be needed. Indicate under Section B of the PES form whether a Community Impact Assessment (CIA), Technical Memorandum, or Discussion in ED Only will be prepared. Consult with the DLAE and district SEP (or designee) when determining which level of analysis is appropriate based on scope of project and potential for impacts. Under Sections C & D of the PES form indicate that coordination with and approval by Caltrans will be required.

On the first page of the PES form, under Preliminary Design Information, check the “Yes” box next to Right of Way Acquisition and attach a map showing all affected APNs. On the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form” indicate the total acreage to be acquired and the purpose for the acquisition next to Question #23.

The Relocation Impact Study or Report shall be prepared according to the guidance provided in the SER, Chapter 24, “Community Impacts” at:

<http://www.dot.ca.gov/ser/vol1/sec3/community/ch24cia/chap24cia.htm#laws>

Note: 23 CFR 771.111(h)(2)(iii) requires one or more public hearings or the opportunity for a public hearing for any federal-aid project which requires significant amounts of right of way, substantially changes

the layout or functions of connecting roadways, or if the facility being improved has a substantial adverse impact on abutting properties.

25. Is the project inconsistent with plans and goals adopted by the community?

Note: NEPA requires that when a proposed federal action, normally classified as a CE, involves an unusual circumstance, such as "...likely to cause substantial division or disruption of an established community, disrupt orderly and planned development, or is likely to be not reasonably consistent with plans or goals that have been adopted by the community...", the project shall be the subject of an EA or EIS.

Check comprehensive development plan, general plan or community plan and goals adopted by the community. Is project inconsistent?

If "No," check the "No" box next to Question #25 in Section A of the PES form. No further study is needed. In the "Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form" indicate steps taken to ensure consistency with local plans.

If "Yes," or "To Be Determined," check the appropriate box next to Question #25 in Section A of the PES form. Additional study will be needed. Under Section B, Land Use and Community Impacts, indicate whether a CIA, Technical Memorandum, or Discussion in ED Only will be prepared. Consult with the DLAE and district SEP (or designee) when determining which level of analysis will be necessary based on the scope of the project and potential for impact.

The CIA shall be undertaken according to the guidance provided in the SER, Chapter 24, "Community Impacts" at:

<http://www.dot.ca.gov/ser/vol1/sec3/community/ch24cia/chap24cia.htm#laws>

26. Does the project have the potential to divide or disrupt neighborhoods/communities?

Note: The U.S.DOT Order clarifies and reinforces Title VI responsibilities as well as addresses effects on low-income populations. The goal of the U.S.DOT Order is to ensure that programs, policies, and other activities do not have a disproportionately high and adverse effect on minority or low-income populations. This goal is to be achieved, in part, by implementing both Title VI and NEPA during the development and implementation of transportation activities. All reasonably foreseeable adverse social, economic, and environmental effects on minority populations and low-income populations must be identified and addressed. As defined in the Appendix of the DOT Order, adverse effects include, but are not limited to the "destruction or disruption of community cohesion or a community's economic vitality."

Consult demographic data (that is, age, ethnicity, and income) from most recent census, consider:

- sense of neighborhood and community cohesion relative to project
- community resources (parks, churches, shopping, schools, emergency services, libraries) travel patterns
- types of housing and businesses
- employment and tax base

Does the project have the potential to divide or disrupt neighborhoods?

If "No," check the "No" box next to Question #26 in Section A of the PES form. No further study is needed. In the "Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form" briefly describe the steps taken to support a "No" answer and briefly describe surrounding land uses.

If "Yes," or "To Be Determined," check the appropriate box next to Question #26 in Section A of the PES form. Additional study will be needed. Under Section B, Land Use and Community Impacts, indicate whether a CIA, Technical Memorandum, or Discussion in ED Only will be prepared. Consult with the DLAE and district SEP (or designee) when determining the most appropriate level of analysis based on the scope of the project and potential for impact.

The CIA shall be undertaken according to the guidance provided in the SER, Chapter 24, Community Impacts, at:

<http://www.dot.ca.gov/ser/vol1/sec3/community/ch24cia/chap24cia.htm#laws>

27. Does the project have the potential to disproportionately affect low-income or minority populations?

Note: The U.S.DOT Order clarifies and reinforces Title VI responsibilities as well as addresses effects on low-income populations. The goal of the U.S.DOT Order is to ensure that programs, policies, and other activities do not have a disproportionately high and adverse effect on minority or low-income populations. This goal is to be achieved, in part, by implementing both Title VI and NEPA during the development and implementation of transportation activities. When the project will affect a Minority or Low-Income Community, Presidential E.O. 12898 (on Environmental Justice) requires federal agencies to assure that their actions do not result in disproportionate adverse environmental impacts on minority or low-income populations.

Check the Census to see which census tracts the project goes through and see if they are identified as “minority” or “low-income.”

If the project does not go through “minority” or “low-income” census tracts, no further study will be needed. Check the “No” box next to Question #27 in Section A of the PES form. In the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form” state the date of the Census consulted.

If the project does go through “minority” or “low-income” census tracts, then further study may be required. Check the “Yes” or “To Be Determined” box next to Question #27 in Section A of the PES form and consult with the DLAE and district SEP (or designee) to determine the appropriate level of analysis needed based on the scope of the project and the potential for impact. Under Sections C and D of the PES form, indicate that coordination with Caltrans according to the guidance provided in the SER, Chapter 24, “Community Impacts” at:

<http://www.dot.ca.gov/ser/vol1/sec3/community/ch24cia/chap24cia.htm#laws>

28. Will the project require the relocation of public utilities?

Note: Relocation of public utilities can disrupt public services to an established community. NEPA requires consideration of impacts associated with disruption of established communities. Additionally, the LAPM, Chapter 14, “Utility Relocations,” requires that the E-76 include a list of every utility facility anticipated to be adjusted along with the utility company name and best available estimate of the total local agency costs involved.

Review public services and utilities presently available to the project area and determine whether relocation will be necessary.

If “No,” check the “No” box next to Question #28 in Section A of the PES form. If “Yes,” or “To Be Determined,” check the appropriate box next to Question #28 in Section A of the PES form. Under Section B indicate whether a CIA, Technical Memorandum or Discussion in ED Only will be prepared. Consult with the DLAE and district SEP (or designee) when determining the appropriate level of analysis based on the scope of the project and the potential for impact. Under Sections C and D of the PES form, indicate that coordination with Caltrans and approval by Caltrans is required.

The CIA shall be undertaken according to the guidance provided in the SER, Chapter 24, “Community Impacts,” at:

<http://www.dot.ca.gov/ser/vol1/sec3/community/ch24cia/chap24cia.htm#laws>

29. Will the project affect access to properties or roadways?

Note: 23 CFR 771.111(h)(2)(iii) requires consideration of potential impacts associated with any federal-aid project which substantially changes the layout or functions of connecting roadways or of the facility being improved, or has a substantial adverse impact on abutting properties. One or more public hearings of the opportunity for a public hearing may be required when substantial adverse impacts result.

If “No,” check the “No” box next to Question #29 in Section A of the PES form. No further study will be needed. In the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form,” briefly list adjacent land uses and proposed access to those land uses during project construction.

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #29 in Section A of the PES form. Under Section B, indicate whether a CIA, Technical Memorandum or Discussion in ED Only will be prepared. Consult with the DLAE and district SEP (or designee) when determining the appropriate level of analysis based on the scope of the project and the potential for impact. Under Sections C and D of the PES form, indicate that coordination with Caltrans and approval by Caltrans is required.

The CIA shall be undertaken according to the guidance provided in the SER, Chapter 24, “Community Impacts” at: <http://www.dot.ca.gov/ser/vol1/sec3/community/ch24cia/chap24cia.htm#laws>

*Keep in mind that the Administration has determined (23 CFR 771.135, Section 4[f][49 U.S.C. 303]) that a Section 4(f) Constructive Use occurs when: (iii) the project results in a **restriction on access**, which substantially diminishes the utility of a significant publicly owned park, recreation area, or a historic site.*

30. Will the project involve changes in access control to the State Highway System?

Note: 23 CFR 771.117 includes in the definition of an “Action” activities such as joint and multiple use permits and changes in access control which may or may not involve a commitment of federal funds.

A change in access control can come about from either:

- New connection to mainline freeway lanes.
- Addition of entrance or exit ramps that complete basic existing interchange.
- Major reconstruction where existing interchanges are being modified and/or dislocated ramps are being added or deleted.
- Removal of existing connection points.

Where the change in access control occurs on an interstate, FHWA concept approval will be needed. Where the change in access control occurs on a non-interstate, no FHWA involvement is needed.

If the project will not involve a change in access control to the SHS, check the “No” box next to Question #30 in Section A of the PES form. No further study is needed. Briefly discuss project’s location relative to the SHS in the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form.” Include a Vicinity Map to showing the project’s relationship to the SHS.

If the project will involve a change in access control, check the “Yes” or “To Be Determined” box next to Question #30 as appropriate in Section A of the PES form and consult the DLAE regarding the process for obtaining FHWA concept approval.

31. Will the project involve the use of a temporary road, detour, or ramp closure?

If “No,” check the “No” box next to Question #31 in Section A of the PES form. No further study is needed.

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #31 in Section A of the PES form. Additional study will be needed to determine whether:

- Provisions have been made for access by local traffic.
- Through-traffic dependent business will be adversely affected.
- The detour or ramp closure will interfere with a local special event or festival.
- The temporary road, detour or ramp closure will substantially change the environmental consequences of the action.
- There is a substantial controversy associated with the temporary road, detour or ramp closure.

Under Section B of the PES form, indicate whether a CIA, Technical Memorandum or Discussion in ED Only will be prepared. Consult with the DLAE and district SEP (or designee) when determining the appropriate level of analysis based on the scope of the project and the potential for impact. Under Sections C and D of the PES form indicate that coordination with Caltrans and approval by Caltrans is required.

The CIA shall be undertaken according to the guidance provided in the SER, Chapter 24, “Community Impacts,” at:

<http://www.dot.ca.gov/ser/vol1/sec3/community/ch24cia/chap24cia.htm#laws>

Keep in mind that the Administration has determined (23 Section 4[f] [49 U.S.C. 303]) that a Section 4(f) Constructive Use occurs when: (iii) the project results in a restriction on access which substantially diminishes the utility of a significant publicly owned park, recreation area, or a historic site.

32. Will the project reduce available parking?

If “No,” check the “No” box next to Question #32 in Section A of the PES form. In the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES form” briefly describe parking within the construction area and quantify the number of parking spaces that will be temporarily impacted during project construction. Delineate location of parking spaces on Project Footprint Map.

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #32 in Section A of the PES form. Further study will be required. Under Section B of the PES form, indicate whether a CIA, Technical Memorandum or Discussion in ED Only will be prepared. Consult with the DLAE and district SEP (or designee) when determining the appropriate level of analysis based on the scope of the project and the potential for impact. Under Sections C and D of the PES form, indicate that coordination with Caltrans and approval by Caltrans is required.

The CIA shall be undertaken according to the guidance provided in the SER, Chapter 24, “Community Impacts” at:

<http://www.dot.ca.gov/ser/vol1/sec3/community/ch24cia/chap24cia.htm#laws>

Section 4-6.7 of the *Environmental Handbook Volume 4*, “Community Impact Assessment” provides guidance on Parking Impacts at: <http://www.dot.ca.gov/ser/vol4/envhb4.pdf>

33. Will the project construction encroach on state or federal lands?

If “No,” check the “No” box next to Question #33 in Section A of the PES form.

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #33 in Section A of the PES form. For Construction/Encroachments on State Lands, check the box next to State Lands under Section B of the PES form and indicate the agency with jurisdiction (that is, SLC, Caltrans, or SP), check coordination with the respective agency under Section C, and mark the appropriate box under Section D indicating the action that the agency will take.

For Construction/Encroachments on Federal Lands, check the box next to Federal Lands under Section B of the PES form. Under Section C, check the box next to Federal Agency with Jurisdiction, indicating the need for ongoing coordination throughout the NEPA process. Under Section D check the box beside Encroachment Permits, indicating the action the federal agency with jurisdiction will take.

Note: Early and continued coordination with other agencies is crucial for smoothing the process of completing projects in a timely and efficient manner. Chapter 16 of the FHWA, Office of Real Estate Services Project Development Guide, provides guidance on coordination with other state and federal agencies. The guide is provided at: <http://www.fhwa.dot.gov/realestate/coordnt.pdf>

34. Will the project convert any farmland to a different use or impact any farmlands?

Consult maps provided at: http://www.consrv.ca.gov/DLRP/fmmp/pubs/Order%20Form_1-4-07.pdf

If “No,” check the “No” box next to Question #34 in Section A of the PES form. No further study will be needed. List surrounding land uses in the “Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form” or attach field notes from site visit, indicating surrounding land uses (that is, farmlands).

If “Yes,” or “To Be Determined,” check the appropriate box next to Question #34 in Section A of the PES form. Further study will be required. Check the appropriate study to be undertaken (such as, CIA, Technical Memorandum, Discussion in ED Only, Form AD 1006). Consult with the DLAE and district SEP (or designee) when determining the appropriate level of analysis.

No technical reports are mandated by state or federal law concerning farmlands. However, it may be appropriate to prepare a separate CIA if any farmland will be affected by the proposed project. Guidance on preparing the farmland section of a CIA is provided at:

<http://www.dot.ca.gov/ser/vol1/sec3/community/ch23farm/chap23farm.htm>. Otherwise, a Technical Memorandum and/or Discussion in the ED Only addressing the following should suffice: (1) Identification of impacts on agricultural lands and on prime or unique farmland in the project area; (2) Form AD-1006 evaluation, if appropriate; (3) Evidence of coordination with USDA or California Department of Conservation (CDOC), as appropriate; and (4) Identification of possible mitigation measures for significant impacts. Under Section C of the PES form check coordination with Caltrans, NRCS or CDOC and under Section D check action the respective agency will take.

Local agency should complete Parts I and III of U.S. Department of Agriculture [Form AD 1006](#), "Farmland Conversion Impact Rating," and submit it with maps showing location of alternatives to the appropriate Natural Resources Conservation Service field office for verification of prime and unique farmlands.

Are lands subject to the Farmland Protection Policy Act? If "No," no further study will be required. If "Yes," any conversions to non-agricultural use will require coordination with the ACOE. Check coordination with ACOE under Section C of the PES form. Document results of the Form AD 1006 in the "Preliminary Environmental Investigation Notes to Support the Conclusions of the PES Form."

Note: Regarding the Farmland Conversion Impact Rating Form (AD-1006), sites with the highest combined scores are regarded as most suitable for protection and sites with the lowest scores, least suitable. Sites receiving a total score of less than 160 need not be given further consideration for protection and no additional sites need to be evaluated. Sites receiving scores totaling 160 or more shall be given increasingly higher levels of consideration for protection.

Cultural Resources

35. Is there National Register listed or potentially eligible historic properties or archaeological resources within or immediately adjacent to the construction area?

All federal-aid transportation projects require screening by a district professionally qualified staff (PQS) in order to satisfy the requirements of Section 106 Programmatic Agreement, which became effective on January 1, 2004.

For this reason, there is no need for local agencies to undertake any research on the potential presence of historic or cultural resources unless advised to do so by the district PQS. A completed PES form (including a detailed Project Description, Preliminary Design Information and Sections A and B) is needed by the PQS in order to perform the Section 106 screening.

The district PQS will indicate on the PES form whether a record search, an APE map or technical studies are needed. The local agency should not initiate cultural studies until such time that the district PQS has determined the appropriate study areas for archaeology and historic architecture. The APE must be finalized and signed by the DLAE and district PQS prior to the completion and submittal of the Section 106 documentation. The local agency should request the DLAE to schedule an Early Coordination Meeting to discuss required format and content of required cultural reports.

36. Is the project adjacent to, or would it encroach on Tribal Land?

Note: According to the 6004 MOU and Section 106 PA, the FHWA reserves any responsibility for all government-to-government consultation with Indian tribes as defined in 36 CFR 800.16(m). However, notice from the state to an Indian tribe advising the tribe of a proposed activity is not considered "government-to-government consultation" within the meaning of this MOU.

If the state adequately resolves any project-specific tribal issues or concerns, then the FHWA's role in the environmental process shall be limited to carrying out any government-to-government consultation process, if needed.

If "No," check the "No" box next to Question #36 in Section A of the PES form. No further coordination is needed.

If "Yes," or "To Be Determined," check the appropriate box next to Question #36 in Section A of the PES form and consult with the DLAE, district SEP (or designee) and district PQS on the most current procedures/guidance pertaining to encroachments on Tribal Land. Provide to the FHWA any information

necessary in order for the FHWA to carry out its consultation, evaluation, or decision-making activities stipulated in the 6004 MOU, Section II(B)(1).

Sections B, C, & D

Section B: Section C: Section D: Check action, approval or permit coordinating agency will provide.

B. Required Technical Studies and Analyses

Local agency considers the results of the preliminary environmental investigation and the responses to the questions under Section A of the PES form. Additional technical studies or documentation will be necessary for each “Yes” or “To Be Determined” response in Section A. Consult with the DLAE and district SEP (or designee) when determining the appropriate level of analysis under Section B.

C. Coordination

Local agency checks appropriate Coordinating Agency for each required study.

D. Anticipated Actions/Permits/Approvals

The local agency checks action, approval or permit needed. Note that a list of permits is provided at the bottom of Section D. The permit issuing agency will be the Coordinating Agency (in Section C) listed adjacent to the permit (in Section D). Consult the [California Permit Handbook](#).

E. Preliminary Environmental Document Classification (for NEPA)

Based on the answers provided in Section A through D of the PES form, the local agency makes a preliminary recommendation as to the appropriate NEPA class of action.

Environmental Impact Statement: When the action has the potential to significantly affect the environment an EIS should be prepared. Examples of actions that normally require an EIS include:

- a new controlled access freeway
- a highway project of four or more lanes on a new location
- new construction or extension of fixed rail transit facilities
- new construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility

Complex Environmental Assessment: An action involving one or more of the following should be classified as a Complex EA:

- multiple location alternatives
- debate related to purpose and need
- strong public controversy
- issues of logical termini or independent utility
- individual Section 4(f) determinations
- complex Endangered Species Act issues
- numerous cumulative impacts
- high mitigation costs

Routine Environmental Assessment: An action that cannot be classified as a CE and yet it does not clearly require preparation of an EIS, or an action in which the significance of the environmental impact is not clearly established.

Categorical Exclusion with or without required technical studies: Review the list of activities provided at 23 CFR 771 (c), 23 CFR 771 (d) and Appendix A of the Section 6004 MOU to find the activity most closely resembling the project. Place a check mark next to the list that contains the similar activity and indicate the specific activity number.

Section 6005

The Section 6005 Pilot Program MOU, in addition to assigning Caltrans the authority to approve EISs and EAs, also assigned Caltrans approval of those CE activities not covered under the provisions of Section 6004 MOU. The district SEP will ultimately determine the applicable MOU under which the CE determination shall be made.

Public Hearing and Public Availability

Local agency indicates whether a Public Hearing or Public Availability may be required. When determining whether a public hearing is necessary, note that all draft EISs require a public hearing, and NEPA requires a public hearing on EDs when there is:

- Substantial environmental controversy concerning the proposed action.
- Substantial interest in holding a hearing.
- A request for hearing by another agency with jurisdiction over the action.

Public Involvement for other federal environmental processes includes:

- Section 106 - notification to potentially interested parties if the project will affect a historic property
- E.O. 11990 (Wetlands) - a public notice, if the project will affect a wetland
- E.O. 11998 (Floodplain) - a public notice, if the project involves a of floodplain encroachment
- E.O. 12898 (Environmental Justice) - a public notice, if the project will adversely affect a minority or low-income community

G. Signatures:

Local Agency Staff or Consultant Signature: This is the name and telephone number of the person that performed the preliminary environmental investigation and completed the PES form.

Local Agency Project Engineer Signature: This is the name of the local agency representative (typically the person having responsible charge for the project, that is, Public Works Director or City Engineer).

They sign the PES form when they are satisfied that the form and all supporting documentation is “complete and sufficient.”

Caltrans District Professionally Qualified Staff (PQS) Signature: The district PQS will indicate the results of their screening in the PQS signature block of the PES form, indicate appropriate response to Question 35 under Section B of the PES form, complete Sections C, D, and E, (regarding Section 106), and sign the PES form for all projects.

Caltrans District Senior Environmental Planner (or Designee) and DLAE (or Designee) Signatures: A Caltrans District Environmental signature is required on the PES forms for all projects. Their signature means the submittal is complete and sufficient and that they concur with the studies to be performed and the recommended NEPA Class of Action. The DLAE or designee must also sign all PES forms when they are satisfied that the form and supporting documentation are complete and sufficient, and when they concur with the studies to be performed and the recommended NEPA Class of Action.

Headquarters Environmental Coordinator Signature: The Headquarters (HQ) DEA (Regional) Environmental Coordinator concurrence is a required attachment to the PES form when the recommended NEPA Class of Action is an EA or an EIS. The HQ DEA Environmental Coordinator concurrence means that they have reviewed the PES form and concur with the recommended NEPA Class of Action. The HQ DEA Environmental Coordinator will concur via email to the district SEP (or designee), who shall attach the email to the PES form and check the box below and enter the date of concurrence on the PES form.

Distribution: The original signed PES form and appropriate guidance memo shall be maintained in the DLAE’s project file. A copy of the signed PES form shall be retained by the local agency project manager, and the district SEP (or designee). Additional copies of the PES form may be retained by the district SEP (or designee) and the district PQS

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EXHIBIT 6-C TABLE 2 -EXEMPT PROJECTS**CODE OF FEDERAL REGULATIONS****TITLE 40 -- PROTECTION OF ENVIRONMENT***§ 93.126 Exempt projects.*

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 of this section are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 of this section is not exempt if the MPO in consultation with other agencies (see § 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation. Table 2 follows:

TABLE 2. -- EXEMPT PROJECTS**SAFETY**

Railroad/highway crossing.
 Projects that correct, improve, or eliminate a hazardous location or feature.
 Safer non-Federal-aid system roads.
 Shoulder improvements.
 Increasing sight distance.
 Highway safety improvements program implementation.
 Traffic control devices and operating assistance other than signalization projects.
 Railroad/highway crossing warning devices.
 Guardrails, median barriers, crash cushions.
 Pavement resurfacing and/or rehabilitation.
 Pavement marking.
 Emergency relief (23 U.S.C. 125).
 Fencing.
 Skid treatments.
 Safety roadside rest areas.
 Adding medians.
 Truck climbing lanes outside the urbanized area.
 Lighting improvements.
 Widening narrow pavements or reconstructing bridges (no additional travel lanes).
 Emergency truck pullovers.

MASS TRANSIT

Operating assistance to transit agencies.
 Purchase of support vehicles.
 Rehabilitation of transit vehicles¹.
 Purchase of office, shop, and operating equipment for existing facilities.
 Purchase of operating equipment for vehicles (for example, radios, fare boxes, lifts, and so forth).
 Construction or renovation of power, signal, and communications systems.
 Construction of small passenger shelters and information kiosks.

Reconstruction or renovation of transit buildings and structures (for rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights of way.
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet¹.
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR Part 771.

Air Quality

Continuation of ride-sharing and van-pooling promotion activities at current levels.
Bicycle and pedestrian facilities.

Other

Specific activities which do not involve or lead directly to construction, such as:
Planning and technical studies.
Grants for training and research programs.
Planning activities conducted pursuant to titles 23 and 49 U.S.C.
Federal-aid systems revisions.
Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.
Noise attenuation.
Emergency or hardship advance land acquisitions (23 CFR 710.503).
Acquisition of scenic easements.
Plantings, landscaping, etc.
Sign removal.
Directional and informational signs.
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

¹ In PM [10] nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

[58 FR 62246, Nov. 24, 1993; 62 FR 43780, 43816, Aug. 15, 1997; 69 FR 40004, 40081, July 1, 2004]

[EFFECTIVE DATE NOTE: 69 FR 40004, 40081, July 1, 2004, amended Table 2, effective Aug. 2, 2004.]

EXHIBIT 6-D TABLE 3 - EXEMPT PROJECTS

[Code of Federal Regulations]
[Title 40, Volume 19]
[Revised as of July 1, 2004]
From the U.S. Government Printing Office via GPO Access
[CITE: 40CFR93.127]

[Page 583]

TITLE 40--PROTECTION OF ENVIRONMENT**CHAPTER I--ENVIRONMENTAL PROTECTION AGENCY (CONTINUED)****PART 93 _ DETERMINING CONFORMITY OF FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS--Table of Contents****Subpart A _ Conformity to State or Federal Implementation Plans of****Sec. 93.127 Projects exempt from regional emissions analyses.**

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 of this section are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM10 concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. The local effects of projects with respect to PM10 and PM2.5 concentrations must be considered and a hot-spot analysis performed prior to making a project-level conformity determination, if a project in Table 3 also meets the criteria in 93.125(b)(1). These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 of this section is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see Sec. 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows:

Table 3--Projects Exempt From Regional Emissions Analyses

Intersection channelization projects.
Intersection signalization projects at individual intersections.
Interchange reconfiguration projects.
Changes in vertical and horizontal alignment.
Truck size and weight inspection stations.
Bus terminals and transfer points.

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INSTRUCTIONS FOR FIELD REVIEW FORM

The Applicant shall complete the Field Review Form in accordance with Chapter 7, “Field Review” of this manual. The District Local Assistance Engineer (DLAE) should be consulted for clarification. If Caltrans or other interested parties are to be involved in meetings, to assist in completion, the applicant should fill out the form as completely as possible prior to any meeting(s). The form must be completely filled out prior to submission of the PES Form.

Item 1. PROJECT LIMITS

Briefly describe the physical limits or nature of project. Attach a list, as needed, for multiple or various locations. Indicate length of project to nearest one-tenth of mile. Use 0.1, if a spot location. Also, indicate whether the project is located on National Highway System (NHS). Include additional sheets, if needed, to clearly define the project location or scope of work.

Item 2. WORK DESCRIPTION

Briefly describe major components of the proposed work, e.g., signals, bridge replacement, ridesharing, pedestrian features, etc.

Item 3. FUNCTIONAL CLASSIFICATION

For a roadway project, check appropriate functional classification category. See the discussions of specific fund programs in the *Local Assistance Program Guidelines* (LAPG) for system eligibility. Indicate N/A for projects not related to a specific road or street system.

Item 4. STEWARDSHIP CATEGORY

For roadway projects, indicate whether project is FHWA Project of Division Interest (PoDI) per Stewardship Agreement. With some exceptions, projects on the State Highway System are subject to Caltrans Oversight, and Project of Division Interest (PoDI) projects are subject to FHWA oversight; otherwise, the project is subject to DLAE oversight.

Item 5. CALTRANS ENCROACHMENT PERMIT REQUIRED

An encroachment permit is required for projects encroaching within the state highway right of way. The applicant should contact the District Permit Officer early in the process.

Item 6. STATE ONLY FUND

If the project is entirely funded by the state, indicate if it is state-only funded.

Item 7. COST BREAKDOWN ESTIMATE

List estimated breakdown of all project phases and indicate phases for which federal participation will be requested. Include all known costs, but include each cost in only one group. Check whether “Value Engineering Analysis” is required for this project. (For structures-related projects financed with Highway Bridge Program [HBP] funds, the current HBP operating procedures limit preliminary engineering costs including environmental costs to twenty-five (25%) percent of the total construction cost. Any exceptions must be approved in writing by the HBP program manager.)

Item 8. PROJECT ADMINISTRATION

Indicate name of agency that will be responsible for administering each project phase. Also indicate the use of a consultant for any phase.

Item 9. SCHEDULES

The local agency should indicate their proposed advertisement date. This will give the involved parties a date for scheduling. However, the discussion of requirements and time frames may require adjustment of the advertisement date. Critical dates in the schedule should be noted in the remarks.

Item 10. PROJECT MANAGER'S CONCURRENCE

The local agency project manager shall sign and date the project review form to signify agreement on the parameters proposed for development of the project. The DLAE and FHWA representative shall sign the document when attending project reviews. This document is then a guidance reference for further development of the project to assure that it adheres to the programmed concept, or that any changes is approved by the manager (and/or DLAE and FHWA, if appropriate).

Item 11. LIST OF ATTACHMENTS

The first two items are appropriate for all reviews. Others to be added depend on the type of project. For required field reviews, all applicable attachments must be submitted. For optional field reviews, see the "[]" notations for attachments required for specific types of projects. All existing federal, state, or local Americans with Disabilities Act (ADA) deficiencies, if not identified on other Attachments, should be listed here

Item 12. FIELD REVIEW NOTES

Attach the minutes of the field review meetings to the PS&E package. If issues or unusual aspects of the projects need to be explained, provide such explanations on the meeting minutes or on a separate page.

Note: The Federal Damage Assessment Form (DAF) shall be used as the field review document for Emergency Relief projects.

EXHIBIT 7-B FIELD REVIEW FORM

Please complete information required in the shaded boxes

Local Agency		Field Review Date	
Project Number		Locator (Dst/Co/Rte/PM)	
Project Name		Bridge No.(s)	
1. PROJECT LIMITS (see attached list for various locations)			
Net Length (miles)		On NHS?	Yes No
2. WORK DESCRIPTION			
ITS project or ITS element (Signal, electronics, communication and information processing will be ITS projects)	Yes	No	
If yes, choose:	High-Risk (formerly "Major") ITS	Low-Risk (formerly "Minor") ITS	Exempt ITS
3. FUNCTIONAL CLASSIFICATION			
On the Federal-aid System		Off the Federal-aid System	
Principal Arterial – Freeway or Expressway		Rural Minor Collector	
Other Principal Arterial		Local	
Minor Arterial		Bike/ Ped paths not on existing road	
Major Collector			
Urban Minor Collector			
4. STEWARDSHIP CATEGORY	Is a Project of Division Interest (PoDI) project?	Yes	No
5. CALTRANS ENCROACHMENT PERMIT	Is it required?	Yes	No
6. STATE ONLY FUND	Is State-Only Funded?	Yes	No

7. COST ESTIMATE BREAKDOWN							
(Including Structures)			(\$1,000'S)		Federal Participation		
PE	Environmental Process				Yes		No
	Design				Yes		No
	ITS System Manager or Integrator				Yes		No
CONST	Const. Contract				Yes		No
	Const. Engineering				Yes		No
R/W	Preliminary R/W Work				Yes		No
	Acquisition				Yes		No
	No. of Parcels				Yes		No
	Easements				Yes		No
	Right of Entry				Yes		No
	RAP (No. Families)				Yes		No
	RAP (No. Bus)				Yes		No
	Utilities (Exclude if included in contract items)				Yes		No
TOTAL COST							
7a. Value Engineering Analysis Required?					Yes	No	
(Yes, if total project costs are \$50M or more on the NHS, or \$40M or more for bridges on the NHS)							
8. PROJECT ADMINISTRATION							
			Agency	Consultant	State		
PE	Environmental Process						
	Design						
	System Manager/Integrator						
R/W	All Work						
CONST ENGR	Contract						
CONSTRUCTION	Contract						
MAINTENANCE							
9. SCHEDULES		Proposed Advertisement Date:					
Other Critical Dates							

10. PROJECT MANAGER'S CONCURRENCE		
Local Entity Representative:		Date
Signature:		Phone
Title:		
Date of Field Review:		
(If not performed please attached justification to this form)		

Caltrans (District) Representative: (Attendance required if project is on NHS)	Date	
Signature:	Phone	
Title:		
FHWA Representative:	Date	
Signature:	Phone	
Title:		
11. LIST OF ATTACHMENTS (Including all appropriate attachments if field review is required. See the “[]” Notation for minimum required attachments for non-NHS projects.)		
Field Review Attendance Roster or Caltrans Roster		
Vicinity Map (Required for Construction Type Projects)		
IF APPLICABLE (Complete as required depending on type of work involved)		
Roadway Data Sheets [Req'd for Roadway projects]		
Typical Roadway Geometric Section(s) [Req'd for Roadway projects]		
Major Structure Data Sheet [Req'd for HBP]	Signal Diagram	
Railroad Grade Crossing Data Sheet	Collision Diagram	
Sketch of Each Proposed Alternate Improvement	CMAQ/RSTP State STIP Match	
Existing Federal, State and Local ADA deficiencies not included on other Attachments		
System Engineering Review Form (SERF) Req'd for High-Risk (formerly “Major”) and Low-Risk (formerly “Minor”) ITS projects		

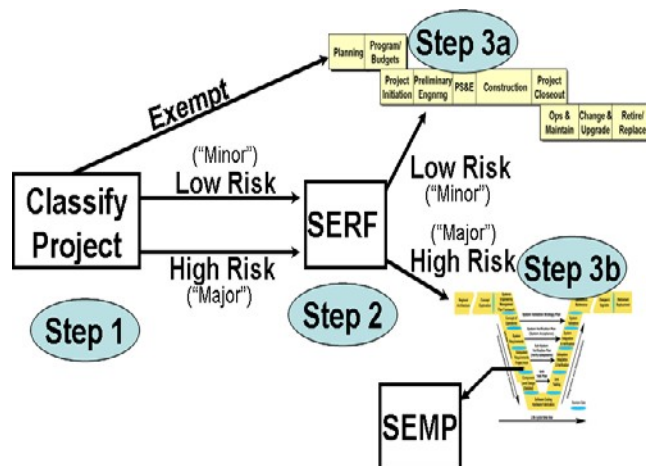
12. FIELD REVIEW NOTES

- A. MINUTES OF FIELD REVIEWS (See Attachment)
- B. ISSUES OR UNUSUAL ASPECTS OF PROJECT (See Attachment)

Distribution: Original with attachments – Local Agency
Copy with attachments (2 copies if HBP) – DLAE

EXHIBIT 7-I SYSTEMS ENGINEERING REVIEW FORM (SERF) Part 1. General Project Information

SERF is normally submitted as part of the E-76 package when initial funding is requested. A full description of funding steps for ITS projects appears in [Section 13.1](#) of the LAPG. The SERF must be filled out for **all** ITS projects unless they are “**Exempt**.” For definitions of an Exempt ITS project, see LAPG [Section 13.2](#). A full discussion of how a local agency uses the SERF during the programming and funding steps is in LAPG [Section 13.4](#), in the section titled “[Local agency \(include consultants in project management role\)](#)”. That process is summarized in the figure at the right.



Please provide the following background information. In most cases, 1-3 sentences will be sufficient for each item, but you may include as much as you feel needed. If you need more space, the field will expand automatically.

Local Agency			
Project Number		Locator (Dst/Co/Rte/PM/Agency)	
Project Name		Bridge No.(s)	

A. Project Contact – Name, position, phone, email.

B. Project Objectives – What is the purpose of the project? What needs (deficiencies) are being addressed?

C. Project Summary – What solutions will address the needs? What major elements will be installed? What major function(s) will be performed?

D. Work to Date – Any preliminary planning, investigation of options, associated internal or external systems examined, etc.?

E. Risk Assessment Guidance – Although this assessment is not a regulatory requirement, the answers to these questions will help you understand the extent of risk involved in this project. A full discussion of risk factors is available in LAPG Section 13.2, with a summary in [Table 13-1](#).
For each question, check Yes or No or Not Sure.

If all of the above are Yes, that is a preliminary indication that your project is **Low-Risk**.

Please answer each question briefly (often one paragraph is enough). If the question cannot be fully answered now, but will be answered during the project implementation, please indicate the step at which it will be answered. As you respond to each question on this form, the field will expand as you type. Examples of SERF's can be found at: <http://www.fhwa.dot.gov/cadiv/segb/examples/del.htm> (then click on "FHWA Rule/FTA Policy Compliance Documents").

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6. Analysis of alternative system configurations and technology options to meet requirements:**7. Procurement options:**

Comments or Additional Information (if needed):

Note: If you were able to answer all seven questions above completely and with certainty, then please self-certify this project as “Low-Risk” in the E-76. Otherwise, it should be classified as “High-Risk.” However, if you feel this is not justified, you may request a review of this SERF by Caltrans and FHWA.

ITS Risk Classification:

Local Agency	High Risk <input type="checkbox"/>	Low Risk <input type="checkbox"/>
Name:	Signature:	Date:
Caltrans DLAE	High Risk <input type="checkbox"/>	Low Risk <input type="checkbox"/>
Name:	Signature:	Date:

solution of problems. The open forum hearing also occurs during circulation of the draft environmental document prior to making any commitment to a specific design alternative or location. The public notices of the hearing and a hearing record are required as in the formal hearing process. [Caltrans Project Development Procedures Manual \(PDPM\) Chapter 11: Public Hearing](#) outlines the general concept and features for the two types of hearings. A review of these sections may assist the local agency in deciding which type is most appropriate for its project.

8.2 NECESSITY FOR A PUBLIC HEARING

Federal Regulations

The agency shall hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency (40 CFR 1506.6(c)). The criteria shall include whether there is:

- Substantial environmental controversy concerning the proposed action,
- Substantial interest in holding the hearing, or
- A request for a hearing by another agency with jurisdiction over the action, supported by reasons why a hearing will be helpful.

Categorical Exclusion

Projects processed with a Categorical Exclusion (CE) are actions which will not have any significant social, economic, or environmental effects, and therefore, do not require a public hearing. However, joint Categorical Exemptions/Categorical Exclusions (CE/CE) are often posted at the County Clerk's Office for public review.

Environmental Assessment

Projects processed with an Environmental Assessment (EA), must involve environmental agencies, applicants and the public to the extent practicable (40 CFR 1501.4(b)). 23 CFR 771.111(h) requires that one or more public hearings or opportunities for hearings be provided for any federal-aid project which:

- Requires significant amounts of right of way
- Substantially changes the layout or functions of connecting roadways or the facility being improved
- Has a substantial adverse impact on abutting property
- Otherwise has a significant social, economic, environmental or other effect, or
- For those projects that Caltrans (under National Environmental Policy Act (NEPA) Assignment) determines a public hearing is in the public interest

Environmental Impact Statement

A public hearing is required during the circulation period of all Draft Environmental Impact Statements (EIS) when it is determined to be in the public interest. [PDPM Chapter 11: Public Hearing](#) sets forth Department policy and procedures regarding public hearings. The manual provides explicit information and instructions regarding when public hearings are necessary how to conduct a public hearing; Title V1 compliance documentation, open forum versus

formal hearing, coordination with DED availability; public notices and publicity; map showings; hearing room arrangements; presiding officers, briefings; presentations; handouts; exhibits and interpreters, and hearings for local projects. Refer to the guidelines and samples for public hearing notices, PDPM Appendix HH.

Exception to the Public Hearing Process

Compliance with the public hearing process is not required for emergency opening work on disaster assistance projects (see [Local Assistance Program Guidelines \(LAPG\) Chapter 11: Emergency Relief](#))

8.3 OPPORTUNITY FOR HEARING AND WITHDRAWAL OF REQUEST FOR HEARING

If there is reason to believe that the project is noncontroversial and that it is unlikely that a hearing would be requested, either by the public or any agency, a Notice of Opportunity for a Public Hearing may be utilized rather than directly scheduling a hearing.

When only a small number of requests for a hearing are received, it is permissible to meet with the parties at a convenient time and location, explain the project and answer any questions. These meetings shall be very carefully documented and made a part of the project record. If satisfied, the requesting party may withdraw the request for a hearing in writing. If the requesting party does not wish to withdraw the request, a hearing shall be held.

8.4 PUBLIC NOTIFICATION

Public notices are published as a means to inform the public of various proposals and to invite public participation. Methods of public notification include:

- Paid public notice in a local newspaper
- Supplemental news releases and special paid notices
- Flyers or bulk rate circulars distributed to residents
- Notices on bulletin boards in public places such as city halls, libraries, supermarkets
- Television and radio
- Distribution of notices through schools and service clubs
- Indication in the draft environmental document that a hearing will be held or a notice of opportunity for a hearing will be published.
- Electronic media such as websites, email, Blogs, etc.

40 CFR 1506.6(b) requires that a public notice of NEPA related hearings, public meetings, and the availability of environmental documents be provided to inform those persons and agencies who may be interested or affected. This includes groups, agencies or individuals who:

- Have requested notification, or
- By nature of their function, interest, or responsibility may be interested in or affected by the proposal

In all cases where non-English speaking people are affected by the proposal, the local agency determines if the language barrier is of such magnitude as to warrant special publicity in the

If a draft EIS is to be considered at a public hearing the agency shall make the statement available to the public at least 15 days in advance of the hearing (unless the purpose of the hearing is to provide information for the draft EIS (40 CFR 1506.6(c)(2)).

In addition to the items noted in the above Content of the Notice, each notice of public hearing shall specify:

- The date, time, and place of the hearing
- That tentative schedules for right of way and construction will be discussed
- That relocation assistance programs will be discussed
- That written statements and exhibits may be submitted up to a specified date at least 10 days after the hearing with the procedure for submissions

On projects of particular local interest or great complexity, the local agency may wish to consider the use of bulk-rate type circulars in addition to the published notices. In addition, the local agency may use other forms of communication such as electronic mail and websites.

The local agency shall furnish the District Local Assistance Engineer (DLAE) with a clipping or legible copy (identify newspaper and date published) of the notice of public hearing at the time of first publication. Copies of all notices shall be incorporated into the hearing record.

- A sample public hearing notice is shown in [Exhibit 8-A: Sample Notice of Public Hearing](#).

Notice of Opportunity for Public Hearing

The notice of opportunity for public hearing shall explain the procedure and specify the deadline for requesting a public hearing. The deadline for requesting a public hearing shall not be less than 21 days after the date of publication of the first Notice, or less than 14 days after the date of publication of the second notice.

The local agency shall furnish the DLAE with a clipping or legible copy (identify newspaper and date published) of the Notice of Opportunity for Public Hearing at the time of first publication.

A sample notice of opportunity is shown in [Exhibit 8-B: Sample Notice of Opportunity for Public Hearing](#)

8.5 JOINT PUBLIC HEARINGS

The local agency shall cooperate with State and other local agencies to the fullest extent possible to reduce duplication between NEPA, State and local requirements unless the agencies are specifically barred from doing so by some other law (40 CFR 1506.2). This procedure provides for concurrent compliance with the public review requirements, including joint public hearings of both NEPA and CEQA. If a joint NEPA and CEQA environmental document is being prepared for a local agency project, and it has been determined that the criteria for deciding whether to hold a hearing has been met (40 CFR 1506.6(c)), a combined public hearing should be considered.

- A discussion on the requirements for California Transportation Commission approval of any proposed new connections to freeways, where applicable.
- A discussion on tentative right of way requirements, the schedule of acquisition, the estimated number of families, business and other concerns to be relocated, housing availability, and the relocation assistance program.
- A discussion on the tentative time schedule for construction noting any significant items that may affect the schedule.
- A discussion of any other items that may be informative because of the particular conditions of the proposal.

8.8 RECORD OF PUBLIC HEARING

Whenever a formal or open forum public hearing is held, a Record of Public Hearing is prepared to provide documentation of the proceeding. The Record of Public Hearing includes a title page, table of contents, resume of the hearing, index of speakers, a verbatim transcript, reproductions of displays, documents submitted for the record, reproductions of publicity items (including public hearing notices) and a list of invitations. The open forum hearing record shall also include a synopsis of the comments, concerns and questions discussed with the public but not entered into the formal verbatim transcript.

Copies of the Record of Public Hearing shall be forwarded to the DLAE. Additional copies may be requested by the DLAE. Requests for additional copies normally are made at the time of the hearing.

8.9 REHEARING

The findings and conclusions of the public hearing are valid only as long as the conditions surrounding the original hearing remain constant.

Federal regulations (40 CFR 1502.9 (c)) require that the local agency prepares supplements to either draft or final environmental impact statement if:

- The agency makes substantial changes in the proposed action that are relevant to environmental concerns, or
- There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (e.g., substantial unanticipated development in the area affected by the proposal)

A new public hearing or opportunity for a public hearing is required under either of the above scenarios. The local agency is responsible for reassessing changes in project location and design features and changes in the surrounding area and shall prepare, circulate, and file a supplement to an environmental impact statement in the same fashion (exclusive of scoping) as a draft and final statement, and schedule rehearing as necessary.

8.10 LOCATION AND DESIGN APPROVAL

Caltrans District Director's approval of the final environmental document constitutes location and design approval for projects on SHS.

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Exhibits

Exhibits applicable to this chapter can be found at:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

[*Exhibit 10-A: A&E Consultant Financial Document Review Request*](#)

[*Exhibit 10-B: Suggested Consultant Evaluation Sheet*](#)

[*Exhibit 10-C: A&E Consultant Contract Reviewers Checklist*](#)

[*Exhibit 10-G: Individual A&E Task Order DBE Utilization*](#)

[*Exhibit 10-H: Sample Cost Proposal \(Example#1 thru #4\)*](#)

[*Exhibit 10-I: Notice to Proposers DBE Information*](#)

[*Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System*](#)

[*Exhibit 10-01: Consultant Proposal DBE Commitment*](#)

[*Exhibit 10-02: Consultant Contracts DBE Commitment*](#)

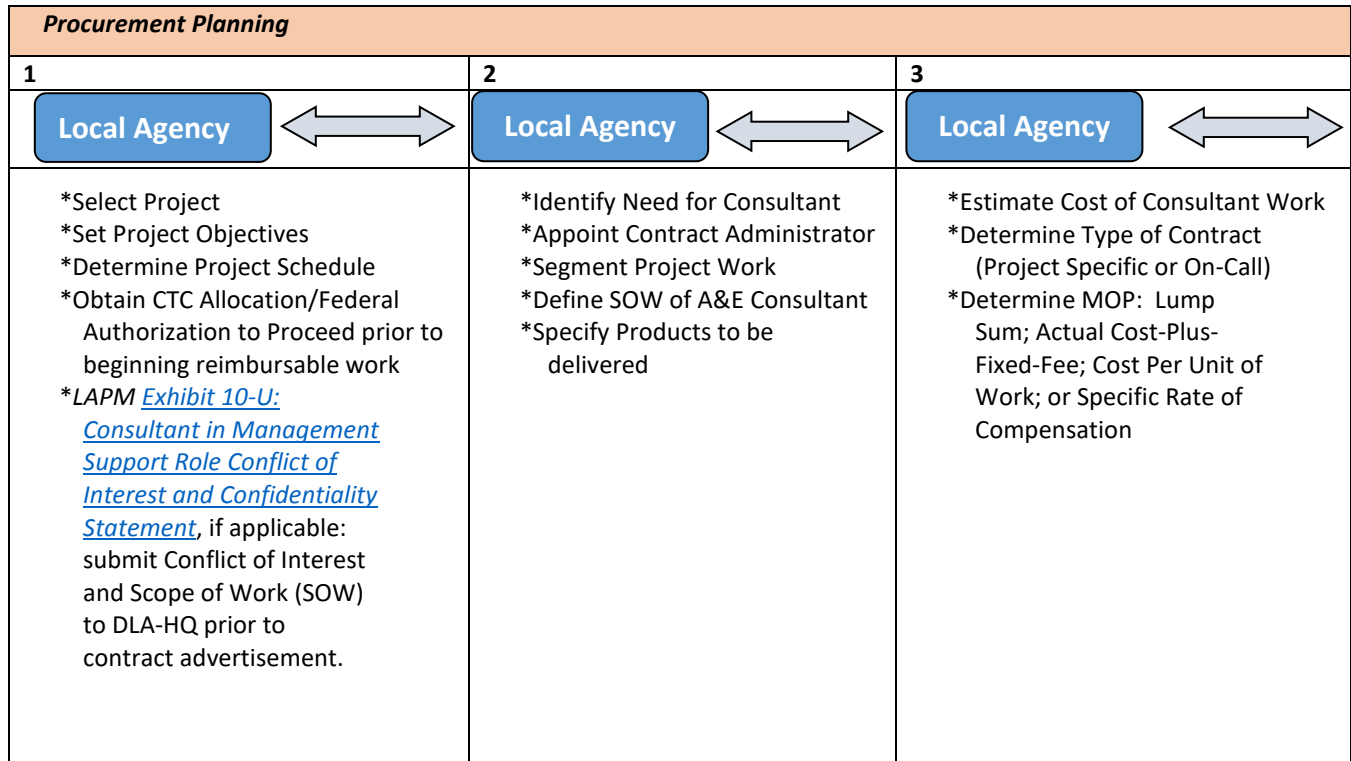
[*Exhibit 10-Q: Disclosure of Lobbying Activities*](#)

[*Exhibit 10-R: A&E Sample Contract Language*](#)

[*Exhibit 10-S: Consultant Performance Evaluation*](#)




[*Exhibit 10-T: Conflict of Interest & Confidentiality Statement*](#)

[*Exhibit 10-U: Consultant in Management Support Role Conflict of interest and Confidentiality Statement*](#)

SECTION 10.1: FEDERALLY FUNDED A&E CONTRACTS

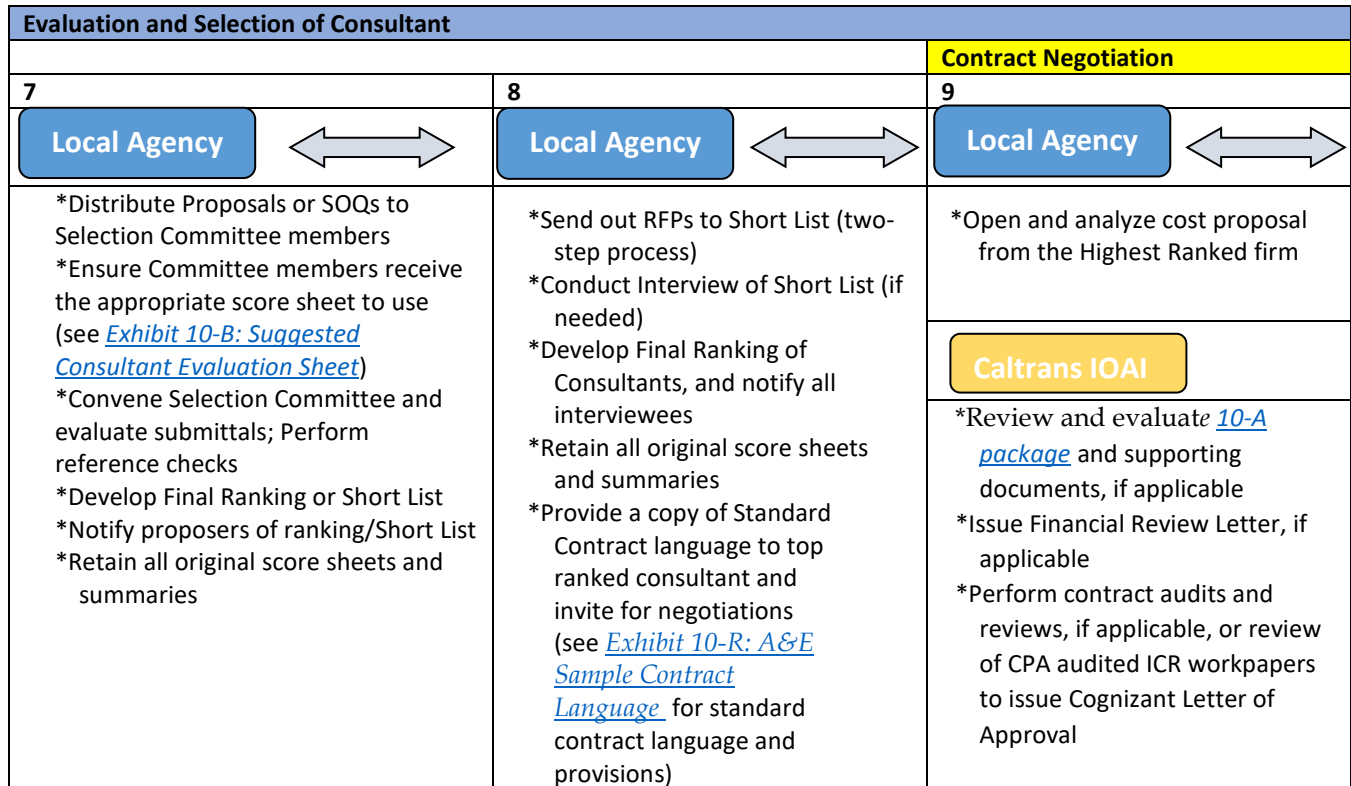
A&E = Architectural and Engineering
IOAI = Caltrans Independent Office of Audits and Investigations
CT = Caltrans
DBE = Disadvantaged Business Enterprise
DLA = Division of Local Assistance
DLAE = District Local Assistance Engineer
DLA-HQ = Division of Local Assistance-Headquarters
LAPG = Local Assistance Program Guidelines
LAPM = Local Assistance Procedures Manual
MOP = Method of Payment
RFP = Request for Proposal
RFQ = Request for Qualifications
SOQ = Statement of Qualifications
SOW = Statement/Scope of Work

Figure 10-1: A&E Contract Procurement Process Workflow Diagram

Solicitation Documents and Advertisement		
4	5	6
		
<ul style="list-style-type: none"> *Determine Solicitation Document; RFP or RFQ *Appoint Consultant Selection Committee *Collect signed Conflict of Interest forms and Confidentiality Statements (see Exhibit 10-T: Conflict of Interest & Confidentiality Statement) from all members involved in process *Determine Procurement Schedule *Develop Technical Criteria with level of importance (weights) for Evaluation of Proposals or the SOQ 	<ul style="list-style-type: none"> *Prepare RFP or RFQ documents *Include SOW, evaluation process/criteria, DBE goals, MOP and cost proposal format (see Exhibit 10-H: Sample Cost Proposal) minimum requirement of Proposal or SOQ, Notice to Proposers DBE Information (see Exhibit 10-I: Notice to Proposers DBE Information), submittal deadline *Advertise RFP or RFQ on public forum (newspaper, technical publications, Web Hosting Site, other local websites) *Issue RFP or RFQ (direct mailing, web posting) 	<ul style="list-style-type: none"> *Prepare to respond to RFP/RFQ questions *Conduct Proposers Conference, if applicable *Receive Proposals or SOQs

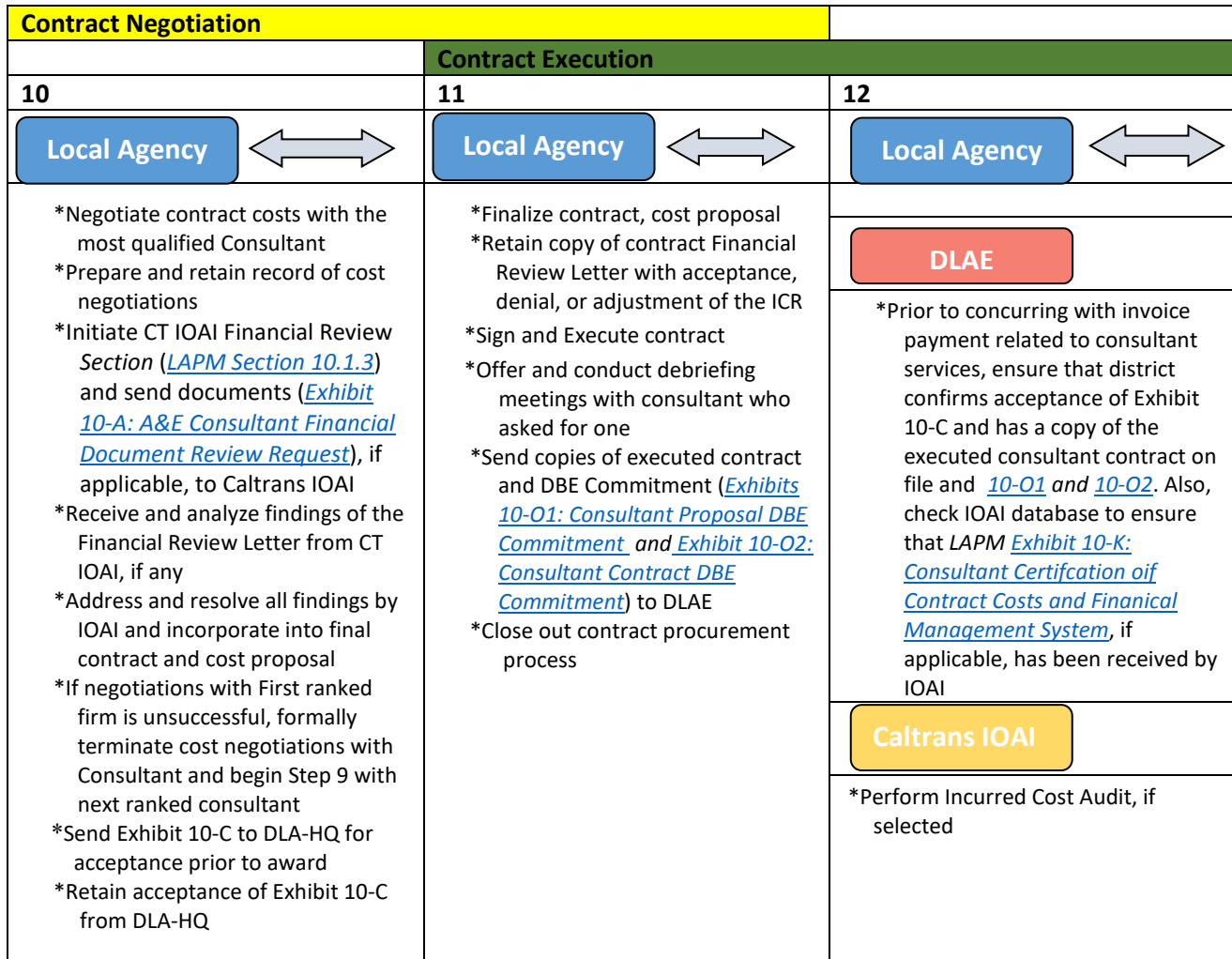
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Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued



A&E = Architectural and Engineering
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DBE = Disadvantaged Business Enterprise
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Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued



A&E = Architectural and Engineering
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LAPG = Local Assistance Program Guidelines
LAPM = Local Assistance Procedures Manual
MOP = Method of Payment
RFP = Request for Proposal
RFQ = Request for Qualifications
SOQ = Statement of Qualifications
SOW = Statement/Scope of Work

Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued

10.1.1 GENERAL

Introduction

A local agency may engage consultants to perform architectural, engineering, and related services to develop a federal-aid funded project. Local agencies requesting federal funds to reimburse A&E Consultants must follow the selection and contracting procedures detailed in this chapter.

Definition of an Architectural and Engineering Consultant

23 Code of Federal Regulations §172 and CA State Law further defines A&E services and includes those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or program management are termed Architectural and Engineering (A&E) Consultants.

Architectural and Engineering Consultants

The Brooks Act (40 USC, Section 1104) requires local agencies to award federally funded engineering and design related contracts based on fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 Code of Federal Regulations (CFR), Part 172), at a fair and reasonable price (48 CFR 31.201-3).

Cost proposals submitted to the local agency must be sealed and shall not be included as a criterion for rating such consultants. After ranking, cost negotiations may begin with the most qualified consultant and only their cost proposal will be opened. Should negotiations fail or result in a price that the local agency does not consider fair and reasonable, negotiations must be formally terminated and the local agency must then undertake negotiations with the second most qualified consultant.

If the negotiations with the second most qualified firm are not successful, negotiations must be formally terminated and the local agency must then undertake negotiations with the third most qualified consultant, and so on, until the price is determined to be fair and reasonable by the local agency.

In selecting an A&E consultant, a detailed technical proposal or qualifications proposal, and a proposed contract will be required.

Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages (Federal Payment of Predetermined Minimum Wage applies only to federal-aid construction contracts). Prevailing wages will apply if the services to be performed will involve land surveying (such as flag persons, survey party chief, rodman or chainman), materials sampling and testing (such as drilling rig operators, pile driving, crane operators), inspection work, soils or foundation investigations, environmental hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations websites below:

Consultants will need to provide their Prevailing Wage Policy if their participation on the project includes prevailing wage work. The policy will include information on the accounting

treatment of delta base and delta fringe, and verify the accounting treatment is consistent every year.

- [DIR FAQ](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html) website:
http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html
- [DIR Wage Determination](http://www.dir.ca.gov/oprl/DPreWageDetermination.htm) website:
<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>
- [Caltrans Prevailing Wage Interpretive Guidance](http://www.dot.ca.gov/hq/audits/documents/prevailing-wage-interpretive-guidance.pdf):
<http://www.dot.ca.gov/hq/audits/documents/prevailing-wage-interpretive-guidance.pdf>

Non-A&E Consultants

Consultants other than A&E consultants may be selected using cost, cost and qualifications (best value) or other critical selection criteria. The procedures outlined in this chapter can be modified for selecting non-A&E consultants by adding a cost item to the contract proposal.

For more details on non-A&E consultants, see Section 10.3 *Non-A&E Contracts* of this chapter.

Selecting the Project

The local agency is responsible for selecting and initiating a federal-aid financed transportation project. The decision to begin project development is influenced by the project needs, its acceptability, the timing of studies, financing, and construction. The local agency must identify the project's objectives including the general level of improvement or service, operating standards, maximum cost and the target date for project completion before commencing any consultant selection process.

Subcontracted Services

The consultant is responsible for performing the work required under the contract in a manner acceptable to the local agency. The consultant's organization and all associated consultants and subconsultants must be identified in the proposal. If the consultant wishes to use a subconsultant not specified in the proposal, prior written approval must be obtained from the local agency. The subcontract must contain all required provisions of the prime contract. All subawards must include adequate oversight, management, and administration of engineering and design related consultant services and be administered in accordance with State laws and procedures specified in 23 U.S.C. 106(g)(4) 2 CFR 200.331.

Organizational and Consultant Conflicts of Interest

In the procurement of contracts for engineering services by private consulting firms using federal-aid highway funds, local agencies must take all the steps necessary to prevent fraud, waste, and abuse. The local agency must develop and maintain a written code of conduct governing the performance of its employees (including the contract administrator) engaged in the award and administration of federal-aid highway funded contracts, including the prevention of conflicts of interest in accordance with 23 CFR 172.7(b)(4)

A conflict of interest occurs when a public official's private interests and his or her public duties and responsibilities diverge or are not consistent. Conflicts of interest may be direct or indirect (e.g., as result of a personal or business relationship). The appearance of a conflict of interest should be avoided as an apparent conflict may undermine public trust if not sufficiently mitigated.

Federal Regulation Governing Conflict of Interest (23 CFR 172.7(b)(4)) Requires that:

- Local agency shall maintain a written code of standards of conduct for employees engaged in the award and administration of engineering and design service contracts;
- No contracting agency employee who participates in the procurement, management, or administration of federal funded contracts or subcontracts shall have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract;
- No person or entity performing services for a contracting agency in connection with a federal funded project shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project;
- No person or entity performing services for a contracting agency in connection with a federal-aid highway funded project shall have, directly or indirectly, any financial or other personal interest in any real property acquired for the project;
- No contracting agency employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to subagreements;
- Local agency shall disclose in writing any potential conflict of interest to FHWA

Consultants Performing Work on Multiple Phases of Federal-aid Projects

Local agencies sometimes wish to hire the same consultant firm to perform construction engineering and/or inspection services on the same project on which the firm also performed design services. This can cause project delivery efficiencies, as the design firm is well-suited to verify that the project is being constructed in accordance with the design and can resolve issues related to the design on behalf of the contracting agency. However, this may also pose a potential conflict of interest if the firm has a vested financial interest in failing to disclose deficiencies in its design work product and seeks to insulate itself from pecuniary liability in subsequent phases of the project, such as minimizing or ignoring design errors and omissions, rather than serving the best interests of the contracting agency and the public. Procuring a different firm from the design firm to provide the construction engineering and/or inspection services provides another level of review and reduces the risk of, or potential for, a conflict of interest.

Although federal regulations do not expressly prohibit the same firm from providing services on subsequent phases, the local agencies are responsible for ensuring the public interest is maintained throughout the life of a project and that a conflict of interest, real or apparent, does not occur or is sufficiently mitigated by appropriate public agency controls. Prior to allowing a consulting firm to provide services on subsequent phases of the same project, the contracting agency must establish appropriate compensating controls in policies, procedures, practices, and other safeguards to ensure a conflict of interest does not occur in the procurement, management, and administration of consultant services.

When design and construction phase services are procured under a single solicitation, the selection of the consulting firm must be based on the overall qualifications to provide both design and construction phase services, which require different skill sets, experience, and resources. Procuring these services under different solicitations may result in selection of a more qualified firm to perform services in each phase, as the most qualified firm to perform design phase services may not be the most qualified firm to provide construction phase services. Similarly, the qualifications and capacity of a firm may change over time. As such, it may not be appropriate to contract with a consulting firm to provide construction phase services at the outset of a design phase, knowing that these services may not be needed for an extended period until the preconstruction phase of the project is complete and construction funding authorized. The contract with a consulting firm providing design phase services on a project may not be amended to include construction phase services unless the desired construction phase services were included within the original advertised scope of services and evaluation criteria of the solicitation from which a qualifications based selection was conducted. All consultants acting in a management support role must complete [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) (see [Section 10.1.9: Miscellaneous Considerations](#) in this chapter) and retain it in the local agency files.

Miscellaneous Considerations Authorization to Proceed

The Federal Highway Administration (FHWA) must give the local agency an Authorization to Proceed (E-76) with the work prior to performing of any work for which federal reimbursement is to be requested, (see the [LAPM Chapter 3: Project Authorization](#)). For state funded projects see [Section 10.2: State-Only Funded A&E Contracts](#) and the [Local Assistance Program Guidelines \(LAPG\), Chapter 23: Local Agency State Transportation Improvement Program Projects](#), for guidance on when work may proceed.

Copies of the Authorization to Proceed and the consultant contract must be retained in the local agency project files for future audit.

10.1.2 IDENTIFYING & DEFINING A NEED FOR CONSULTANTS

The need for a consultant is identified by comparing the project's schedule and objectives with the local agency's capabilities, its staff availability of the required expertise, and its funding resources. If the local agency does not have sufficient staff capabilities, it may solicit assistance from another agency, or use a qualified private consultant to perform the required work.

If the local agency determines that there is a need to solicit assistance from another local agency, or to use a consultant, the District Local Assistance Engineer (DLAE) should be notified if federal-aid funds are to be requested for the project segment to be contracted out.

Appointing the Contract Administrator

The Contract Administrator is responsible for ensuring the quality of consultant contract products or services. The Contract Administrator is appointed as soon as the need for consultant services is identified. The Contract Administrator is involved throughout the development of the selection process and the contract provisions, and in the administration of the consultant's work. The Contract Administrator must be a qualified local agency employee or have staff that is qualified to ensure the consultant's work is complete, accurate, and consistent with the terms and conditions of the consultant contract. On federal-aid contracts, the Contract Administrator or staff members must be a full-time employee and familiar with the work to be contracted out and the standards to be used. The Contract Administrator must also abide by the laws, regulations and policies required as part of accepting federal or state funding for their project. Non-compliance with the laws, regulations, and policies may result in loss of project funding.

The Contract Administrator's duties are listed in 23 CFR 172.9(d)(1) and include:

- Contract negotiation, contract payment, and evaluation of compliance performance, and quality of services provided by the consultant;
- Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;
- Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel;
- Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;
- Documenting contract monitoring activities and maintaining supporting contract records as specified in 2 CFR 200.333;
- Provides direction to ensure the proposed work is advertised properly;
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used;
- Prepares the draft contract;
- Arranges for preparation before an independent estimate of the value of the work to be contracted out;
- Ensures that the selection procedures are followed;
- Analyzes the selected/best-qualified consultant's cost proposal;
- Ensures contract audit and review procedure is followed;

- Ensures that fee/profit negotiation is conducted and keeps records;
- Serves as the local agency's primary contact person for the successful consultant;
- Monitors the consultant's progress and provides direction;
- Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;
- Identifies other local agency staff for the consultant to contact, if needed;
- Closes out the contract at completion, by processing the final invoice; completing a mandatory consultant evaluation, and final DBE utilization reports ([*Exhibit 17-F: Final Report Utilization of Disadvantaged Business Enterprises \(DBE\) and First-Tier Subcontractors*](#)).

Segmenting Consultant Work

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable. Preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives, as is needed to produce a sound EA or EIS (see [LAPM Chapter 6: Environmental Procedures](#) and [Standard Environmental Reference \(SER\) Chapters 31: Environmental Assessment \(EA\) and Finding of No Significant Impact \(FONSI\)](#) and [Chapter 32: Environmental Impact Statement \(EIS\)](#)). Final design shall not begin until NEPA environmental approval has been received if federal reimbursement is desired.

Refer to Figure 10-2: Segmenting Consultant Work below, which illustrates several satisfactory ways to segment consultant activities.

	Well-structured Projects With Simple Right of Way Requirements	Well-structured Projects With Complex Right of Way Requirements	More Difficult Projects	Very Complex Projects
Preliminary Engineering				
Environmental Analysis				
Plans, Specifications & Estimates				
Right of Way Activities				
Utility Relocation				
Construction Engineering				

Figure 10-2: Segmenting Consultant Work

Specify Products to be Delivered

The Contract Administrator identifies the products and services to be delivered as a result of consultant contract work, and minimum qualification of consultant professionals and staff. These vary depending upon the type of projects and the phase of project development being addressed.

Scope of Consultant Work

The scope of work, which the contract must include, is a detailed description of the products or services the consultant is to provide. From a detailed scope of work, consultants respond to a project advertisement; determine personnel and time requirements; and develop a technical proposal. Therefore, the scope of work must be clear, concise, complete, and describe the deliverables, standards for design and other work, quality control measures, acceptance criteria and deadlines.

Non-Discrimination Clause

The Non-Discrimination Clause ([Exhibit 10-R: A&E Boilerplate Agreement Language](#), Article XVI Statement of Compliance) must be included in each consultant contract. The consultant must include the non-discrimination and compliance provisions of the Non-Discrimination Clause in all subcontracts to perform work under the contract.

Disadvantaged Business Enterprise (DBE) Participation

When administering federal-aid projects, federal regulations (49 CFR, Part 26) require a local agency to comply with the DBE program, and take necessary steps to ensure that DBE firms have the opportunity to participate in the projects. Refer to *Chapter 9: Civil Rights and Disadvantaged Business Enterprises* for DBE requirements for A&E Consultant Contracts.

Estimated Cost of Consultant Work

An independent estimate for cost or price analysis is needed for all consultant contracts (23 CFR 172.7(a)(1)(v)(B)) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance of requesting a cost proposal from the top-ranked consultant, so the local agency's negotiating team has a cost comparison of the project to evaluate the reasonableness of the consultant's cost proposal. The estimate, which is specifically for the use of the local agency's negotiating team, is to be kept confidential and maintained for records.

A good cost estimate can be prepared only if the scope of work is defined clearly. The scope of work must include a list of the products or services which the consultant is required to deliver, and a time schedule of when they must be delivered.

It should be stressed that all work to be derived from the consultant services, such as preliminary design, environmental or final design, must be clearly identified in the solicitation of consultant services (RFQ or RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible. Contract modifications are required for any amendments to the terms of the existing contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

Some of the costs estimating techniques are:

Analogous Estimating:

Analogous cost estimating is using the actual cost of a previous, similar contract as the basis for estimating the cost of the current contract. Analogous cost estimating is frequently used to estimate costs when there is a limited amount of detailed information about the project. Analogous cost estimating is generally less accurate and it is most reliable when previous projects are similar in fact, and not just in appearance, and it uses expert judgment.

Parametric Estimating:

Parametric estimating is a technique that uses statistical relationship between historical data and other variables to calculate a cost estimate for an activity resource. This technique can produce a higher level of accuracy depending upon the sophistication, as well as underlying resource quantity and the cost data. A cost example would involve multiplying the planned quantity of work by the historical cost per unit to obtain the estimated cost of the contract.

Bottom-up Estimating:

This technique involves estimating the cost for individual work in the contract with the lowest level of detail. This detailed cost is then summarized or rolled up to determine a total cost of contract. Cost detail should include estimated hours per task, labor hourly cost for professional and non-professional classifications, subconsultant costs, other project direct costs, and profit. Labor costs should be broken down to direct labor and indirect cost rates, if possible.

If more than one project or phase of work is to be developed within the consultant contract, separate cost estimates are required for each project or phase of work. Separate cost estimates are required for each milestone and portion of the work expected to be subcontracted.

For on-call (as-needed) contracts, the cost estimate/analysis should include at minimum, a historical analysis of annual needs for consultant work, professional labor cost and market analysis, and reasonable profit analysis.

Determine Type of Contract

Types of contracts to be used are described as follows:

- Project-specific contract is between the local agency and consultant for the performance of services and a defined scope of work related to a specific project or projects.
- Multi-phase contract is a project-specific contract where the defined scope of work is divided into phases which may be negotiated and executed individually as the project progresses.
- On-call contract is a contract that may be utilized for a number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity is needed for a number of different projects, such as construction engineering, design, environmental analysis, traffic studies, geotechnical studies, and field surveying, etc. Many agencies use these contracts to address peaks in workload of in-house engineering staff and/or to perform a specialized service which the agency does not have. On-call contracts shall specify a reasonable maximum length of contract, not to exceed 5 years, and a maximum total contract dollar amount (23 CFR 172). The maximum dollar amount for all contracts awarded under the solicitation is stated in the solicitation. The maximum dollar amount is the aggregate of the on-call contracts anticipated to be awarded. If the solicitation lists that up to 5 contracts may be awarded, the aggregate amount of these 5 contracts is the maximum contract dollar amount. How many contracts are anticipated to be awarded must be stated in the solicitation. How task orders will be issued must be stated in the solicitation (two options exist: geographically designated areas or additional competitive solicitation to all consultants who provide the same type of service and awarded a contract under the same solicitation).
 - To maintain the intent of the Brooks Act (40 USC 1101-1104) in promoting open competition and selection based on demonstrated competence and qualifications, on-call consultant contracts established through the RFQ process must meet the following requirements:
 - Must define a general scope of work, complexity, and professional nature of services.
 - Specify a task order procedure the local agency uses to procure project specific work under the contract.
 - No task order is valid unless the on-call contract is still enforced. For example, if the on-call contract is expired, all task orders issued after the contract expiration date will become invalid.

- If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services, the number of consultants that may be selected or contracts that may be awarded must be identified.
- Specify procurement procedures in the contracts the local agency will use to award/execute task orders among the consultants:
 - Either through an additional qualification-based selection process (see the Two-Step RFQ/RFQ process later in this chapter), OR
 - On regional basis whereby the region is divided into areas identified in the solicitation, and consultants are selected to provide on-call services for assigned areas only. The RFP may list multiple regions that allow consultants to crossover or be a “backup” to other consultants that for specifically documented reasons are not able to perform the work in their assigned region. Per 23 CFR 172.9 (a)(3)(B)(2). The “backup” option needs to be listed in the respective contracts.
- *An example of acceptable contract wording in multiple on-call contracts for the same type of service:*
- *“Agency has or will enter into three (3) task order contracts for performance of the Scope of Services identified in Exhibit “A”, including this Agreement (“CM Services Task Order Contracts”). The other CM Services Task Order Contracts are [identify other two contracts by agreement numbers and consultant firms]. The total amount payable by Agency for the CM Services Task Order Contracts shall not exceed a cumulative maximum total value of Seven Million, Five Hundred Thousand Dollars (\$7,500,000) (“NTE Sum”). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the CM Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the CM Services Task Order Contracts, the Agency shall send written notification to Consultant and each of the other consultants entering into the CM Services Task Order Contracts. The notice shall identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Agency shall not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant shall not enter into a Task Order that exceeds the NTE Sum.”*

Determining the Project Schedule

The local agency develops a schedule for performance of work and completion of the project. The schedule must include sufficient time to allow for:

- Selecting the consultant;
- Developing the consultant contract;
- Completing the A&E consultant contract audit process;
- Conducting meetings and project reviews.

Determine Method of Payment

The method of payment of contract must be specified. Four methods are permitted depending on the scope of services to be performed reference 23 CFR 172.9(b):

- Actual Cost-Plus-Fixed Fee (see [Exhibit 10-H: Sample Cost Proposal](#), Example #1);
- Cost Per Unit of Work (see [Exhibit 10-H](#), Example #3);
- Specific Rates of Compensation (see [Exhibit 10-H](#), Example #2);
- Lump Sum (see [Exhibit 10-H](#), Example #1).

The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereto. A single contract may contain different payment methods as appropriate for compensation of different elements of work.

The cost plus a percentage of cost and percentage of construction cost methods of payment shall not be used. Both of these methods are explicitly prohibited by Federal Regulations.

Actual Cost-Plus-Fixed Fee

The consultant is reimbursed for actual costs incurred and receives an additional predetermined amount as a fixed fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The determination of the amount of the fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract. The fixed fee dollar amount must be clearly stated in the contract.

This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. The fixed fee limit applies to the total direct and indirect costs. Fixed fees in excess of 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist. The contract shall specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H: Sample Cost Proposal Example #1](#) and [Exhibit 10-R: A&E Sample Contract Language](#), Article V, *Option 1* in this chapter). The contract cost proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved before they incur work on the contract or the costs can be questioned or disallowed.

Cost Per Unit of Work

The consultant is paid based on specific item of work performed. The item of work must be similar, repetitious and measurable, such as geotechnical investigation and material testing. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance, but the extent or quantity of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. The contract shall also specify a reasonable maximum length of

contract period and a maximum total contract dollar amount (see [Exhibit 10-H](#), Example #3 and [Exhibit 10-R](#), Article V Option 2).

Specified Rates of Compensation

The consultant is paid at an agreed and supported specific fixed hourly, daily, weekly or monthly rate, for each class of employee engaged directly in the work. Such rates of pay include the consultant's estimated costs and net fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, fringe benefits, indirect costs, and net fee. Other direct costs may be included, such as travel and equipment rentals, if not already captured in the indirect cost rate.

This method of payment should only be used when it is not possible at the time of procurement to estimate the extent or the duration of the work, or to estimate costs with any reasonable degree of accuracy. This method should not be used for project specific contracts and is recommended for on-call contracts for specialized or support type services, such as construction engineering and inspection, where the consultant is not in direct control of the number of hours worked, and it also requires management and monitoring of the consultant's level of effort and the classification of employees used to perform the contracted work. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H](#), Example #2 and [Exhibit 10-R](#), Article V Option 3.).

Lump Sum or Firm Fixed Price

The consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit. This method of payment is appropriate only if the extent, scope, complexity, character, duration, and risk of the work have been sufficiently defined to permit fair compensation to be determined and evaluated by all parties during negotiations (see [Exhibit 10-H: Sample Cost Proposal, Example #1](#) and [Exhibit 10-R: A&E Sample Contract Language](#), Article V, Option 4). Normally, a lump sum contract will be paid in full at end of the contract when completed. However, a lump sum contract can be negotiated with progress payment if feasible. The progress payment shall be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal shall document the agreed upon progress payment and include the necessary milestones costs, or the percent work complete schedule.

Changes to Exhibit 10-H requiring resubmittal to Independent Office of Audits and Investigations for review:

- Consultant name change
- New participating subconsultant
- Change in ICR rate

10.1.3 A&E CONSULTANT AUDIT AND REVIEW PROCESS

This section outlines the audit and review process for A&E contracts that at any time use state or federal funds. All proposed A&E contracts and supporting documents are

subject to audit or review by Caltrans' Independent Office of Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

Applicable Standards

State and federal requirements listed below, and specific contract requirements, serve as the standards for audits and reviews performed.

Local agencies, consultants, and subconsultants are responsible for complying with state, federal, and specific contract requirements. Local agencies are responsible for determining the eligibility of costs to be reimbursed to consultants.

Applicable standards include, but are not limited to:

- Caltrans Local Assistance Procedures Manual (LAPM);
- State and Federal agreements between local agencies and Caltrans, (i.e. Master Agreements);
- Project Program Supplemental Agreements;
- 23 United States Code (U.S.C.), Section 112 – Letting of Contracts;
- 40 U.S.C., Chapter 11: the Brooks Act;
- 23 CFR, Chapter 1, Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services;
- 23 CFR, Chapter 1- Federal Highway Administration, Department of Transportation;
- 48 CFR, Federal Acquisition Regulation (FAR), Chapter 1, Part 31- Contract Cost Principles and Procedures;
- 48 CFR, Chapter 99 – Cost Accounting Standards (CAS), Subpart 9900;
- 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- United States Government Accountability Office, Government Auditing Standards
 - Generally Accepted Government Auditing Standards (GAGAS);
- California Government Code sections 4525-4529; and
- Proposed contract terms and conditions.

See section [10.10 "References"](#) of this Chapter for links to above referenced standards.

Audit Guidance Available

The American Association of State Highway and Transportation Officials, Uniform Audit & Accounting Guide ([AASHTO Audit Guide](#)), which is referred to frequently in this section, is a valuable tool to guide local agencies, consultants and Certified Public Accountants (CPA) through the requirements for establishing, and audits of FAR compliant Indirect Cost Rates

(ICR). The [AASHTO Audit Guide](#) is used extensively as an industry guide in the audit and review process.

Local agencies may seek accounting assistance from internal audit staff and an independent CPA for compliance. The consultant may seek professional guidance in selecting its independent CPA. See also the [AASHTO Audit Guide](#), Ch 2.5 C. *Selection of CPA Firm as Overhead Auditor* for guidance in the selection process. Training is also offered by FHWA's National Highway Institute (see <http://www.nhi.fhwa.dot.gov/default.aspx>). Courses offered include:

- Using the AASHTO Audit Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Audit Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA- NHI-231029)
- Using the AASHTO Audit Guide for the Auditing and Oversight of A&E Consultant Indirect Cost Rates (FHWA-NHI-231030)

If consultants desire training on how to build an ICR and basic timekeeping, there are Indirect Cost Rate and Timekeeping webinars created by the Washington State Department of Transportation. The link to the webinars is available at <http://www.dot.ca.gov/audits/> (click on Architectural & Engineering Contracts/General A&E Contract Resources/Other State DOT Training Module). For training and additional information provided by Caltrans Local Assistance, visit Caltrans Local Assistance Blog at <http://www.localassistanceblog.com/>. For FHWA's Q&A for ICRs and audits, and A&E related services, visit FHWA at <http://www.fhwa.dot.gov/programadmin/172qa.cfm>.

Allowable Costs

23 USC 112 (b)(2)(B) states that any A&E contract or subcontract awarded, whether funded in whole or in part with Federal-aid highway funds in furtherance of highway construction projects, shall be performed and audited in compliance with the Federal cost principles.

Local agencies are required to perform a cost analysis to ensure all costs are allowable and in compliance with federal and state requirements and retain documentation of negotiation activities and resources. Hourly rate(s) for each key personnel and/or classification of employee(s) proposed in cost proposals must be reasonable for the work performed and actual, allowable, and allocable in accordance with the Federal cost principles. Costs shall be allowable only if the cost is incurred and cost estimates included in negotiated prices are allowable in accordance with the federal and state regulations and procedures, and contract provisions. Examples of Cost Analysis Worksheets are provided at Exhibit 10-H1 through 4.

Local agencies are required to apply Caltrans accepted consultant or subconsultant's ICRs, to contracts. An ICR is valid for the one-year applicable accounting period accepted or audited by Caltrans. Consultants shall update, on an annual basis, ICRs in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles. For further guidance, refer to 23 CFR Part 172.11(b)(1). If the consultant is subject to Cost Accounting Standards (CAS), the consultant must use the applicable ICR for the contract.

A consultant's accepted ICR for its one-year applicable accounting period shall be applied to contracts; however, once an ICR is established for a contract, it may be extended beyond the one-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the one-year applicable period shall not be a condition or qualification to be considered for the work or contract award. The contract must clearly specify the ICR period if it is beyond the one-year applicable period.

Consultants shall account for costs appropriately and maintain records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, and are allowable, reasonable, and allocable to the contract, and comply with Federal cost principles.

IOAI and representatives of the Federal Government have the right to conduct an audit of all contract costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment. For further guidance, refer to 23 CFR Part 172 and 48 CFR Part 31.

Generally, whenever local agencies, consultants and/or contractors are unable to provide requested documentation, it shall be viewed that the services were either not performed or the costs not properly recorded. Retention of all documents is required as it reduces the possibility of audit findings and **disallowed costs**. For more references, refer to Applicable Standards in this chapter.

Approval or Acceptance of Indirect Cost Rates

Cognizant Letters of Approval

A cognizant approved ICR has been audited by a Cognizant agency (a State transportation agency of the State where the consultant's accounting and financial records are located or a State transportation agency to which cognizance for the particular indirect cost rate(s) of a consulting firm has been delegated or transferred to in writing by the State transportation agency where the consultant's accounting and financial records are located) in accordance with generally accepted government auditing standards to test compliance with the requirements of the Federal cost principles (per 48 CFR part 31) and the cognizant agency has either 1) issued an audit report of the consultant's indirect cost rate or 2) conducted a review of an audit report and related workpapers prepared by a certified public accountant and issued a letter of concurrence with the audited indirect cost rate(s). The cognizant agency approves the ICR and a cognizant approval letter is issued.

Caltrans Acceptance of Indirect Cost Rate

When the ICRs have not been established by a cognizant agency, Caltrans shall perform an audit or review of a consultant's and subconsultant's ICR(s) to provide reasonable assurance of compliance with Federal cost principles.

An audit or review of the ICR may consist of one or more of the following:

- Perform a review to determine if the ICR was prepared in accordance with 23 CFR 172, and 48 CFR, Chapter 1, Part 31;
- Perform an audit to determine if the ICR was prepared in accordance with 23 CFR 172, and 48 CFR, Chapter 1, Part 31; and issue an audit report;
- Review and accept an ICR audit report and related workpapers prepared by a CPA or another State Transportation Agency;

The outcome of an audit or review is for Caltrans to approve or accept the ICR so that it can be relied upon for future contracts with the consultant for a given one-year accounting period and for reliance by other contracting agencies using the same consultant. Local agencies shall ensure that only approved or accepted ICRs of consultants for the applicable one-year accounting period be applied to contracts, if rates are not under dispute. Local agencies may check IOAI's website for consultant's approved or accepted ICRs. All approved or accepted ICRs are issued an Acceptance Identification (ID) number by IOAI that is posted to IOAI's website at <http://www.dot.ca.gov/hq/audits/>. This ID number should be referenced on all future contracts that use the same fiscal year ICR. ICR can be fixed for the life of the contract in prior written document or annually updated. Once it has been updated, it must be annually updated and the most current fiscal year of ICR must be used.

ICRs that have not been accepted by Caltrans will not be eligible for indirect cost payment. An ICR approved by a cognizant agency may be used across states for the one-year applicable accounting period, but an ICR accepted by Caltrans may **only** be applied to A&E contracts with Caltrans or local agency contracts using pass-through Caltrans funding. Local agencies include Cities, Counties, Metropolitan Planning Organization, Special Districts, and Regional Transportation Planning Agencies.

Financial Review Performed Prior to Contract Execution

All consultants, including prime and subconsultants, on a proposed contract with a dollar value greater than \$150K are subject to an ICR financial review by IOAI. The financial documents required are detailed in Exhibit 10-A, *A&E Consultant Financial Document Review Request Letter and Exhibit 10-A Checklist*. IOAI will review the ICR financial documents to either accept or adjust the indirect cost rate **prior to contract execution** using a risk-based approach as dictated by factors that include but are not limited to:

- History of satisfactory performance and professional reputation of consultant;
- Prior FAR compliant history and audit frequency;
- Experience of consultant with FAHP contracts;
- General responsiveness and responsibility;
- The approximate contract volume and dollar amount of all A&E contracts awarded to the consultant by Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the consultants indirect cost rate;
- Assessment of consultant's internal control. Responses to internal control questionnaire, see AASHTO Audit Guide, Appendix B;
- For ICRs that have been adjusted by IOAI, the consultant must provide a revised cost proposal that reflects the adjusted ICR.

Local Agencies' Responsibilities

Local Agencies are responsible for obtaining all required ICR supporting documentation from A&E prime consultants and sub-consultants as outlined in Exhibit 10-A (*A&E Consultant Financial Document Review Request*) and the Exhibit 10-A-Checklist. Local Agencies are responsible for forwarding these documents to IOAI for review. Local agencies are also required to ensure that IOAI has copies of the Exhibit 10-K "*Consultant Certification of Contract Costs and Financial Management System*" and Exhibit 10-H "*Cost Proposal*" for all consultants, both prime and sub-consultants. The ICR included in Exhibit 10-H must match the ICR included in the Exhibit 10-K and the consultant's ICR schedule. The proposed ICR, however, can be lower than ICR in Exhibit 10-K and the consultant's ICR schedule if the consultant elects to propose a lower ICR. For contracts spanning more than one year, local agencies are responsible for ensuring the Exhibit 10-K and cost proposals are updated annually unless all concerned parties agree to fix the ICR for the term of contract, and this is clearly specified in the contract. ICR updates are not required to IOAI if the ICR is fixed for the life of the contract. ICR's are only reviewed for consultants that are being awarded a contract, not consultants on a bench or shortlist.

The Exhibit 10-H "*Cost Proposal*" includes contract costs: direct salary or wage rates, fixed fees, other direct costs, indirect costs, total costs, and certification for the costs. Local agencies must perform and retain documentation of activities and resources used to support that a cost analysis has been performed to establish that costs and elements were determined to be fair and reasonable in accordance with Federal cost principles.

All contract supporting documentation must be retained by the local agency in project files for the required retention period. Unsupported costs may be disallowed and required to be returned to Caltrans. Having proper documentation policy and procedures, trained staff and organized project files are essential for demonstrating that costs claimed and reimbursed have been incurred, are eligible, reasonable, allowable, and allocable to the contract and comply with Federal cost principles.

Contracts below \$150,000 are not subject to the Caltrans Financial Document Review but local agencies are required to establish that all costs are in compliance with the Federal cost principles, 48 CFR, Chapter 1, Part 31, and other applicable requirements are met. All documents listed above and cost analysis documents are required to be retained in the project files to demonstrate compliance.

Instructions are provided in the Exhibit 10-A on the requirements for submitting a complete Financial Review packet. Financial packets can be e-mailed to:
conformance.review@dot.ca.gov.

Alternatively, if you do not have Internet access, you can mail Financial Review packets to:

Department of Transportation
Independent Office of
Independent Office of Audits and
Investigations, MS 2 Attention:
External Audit Manager

P.O. Box 942874 Sacramento, CA 94274-0001

Consultants' Responsibilities (Both prime consultants and subconsultants)

A&E prime consultants and subconsultants in contract with local agencies using state or federal-aid highway funds should refer to Exhibit 10-A and the 10-A Checklist for the ICR financial documents required to be submitted to their local agency. Consultants must complete the "Annual Certification of Indirect Costs and Financial Management System" (Exhibit 10-K) that attests that the ICR rate proposed is in compliance with FAR (48 CFR, Chapter 1, Part 31) and that the consultant's financial management system is adequate to accumulate and segregate, reasonable, allowable, and allocable direct and indirect project costs. For all future contracts within a same fiscal year, the consultant needs to only provide a copy of the Exhibit 10-K to the Local Agency. The Exhibit 10-A and 10-K should be submitted to the local agency who will forward a copy to IOAI along with all other related and required financial documents. For guidance see Training Module for Financial Document Requirements for A&E Contracts with Local Agencies on IOAI's website <http://dot.ca.gov/audits/> (click on Architectural & Engineering Contracts/A&E Contracts with Local Agencies/Training Modules).

Consultants must follow all the federal, state, and contract requirements outlined above in the Section above, "*Applicable Standards*". Each contracting consultant must ensure its ICR is not combined with any parent company's or subsidiary's ICR.

ICR schedules for both prime consultants and sub-consultants should be prepared using the accrual basis of accounting and be presented in compliance with the Federal cost principles. Figure 10-3 at the end of this chapter provides an example of a Standard Indirect Cost Rate Schedule that consultants can use when preparing their own.

For public works Prevailing Wage contracts, all workers must be paid the prevailing wage rate determined by the Director of the Department of Industrial Relations according to the type of work and location of the project. <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>. Prime and sub-consultants must include prevailing wage rate information in the cost proposal (*see Exhibit 10-H4 for example*) and provide a Prevailing Wage Rate Policy on company letterhead, signed and dated. The policy must document the accounting treatment for prevailing wage deltas and including the following information:

- Description of types of work that require payment of prevailing wage rates.
- Explanation of how the firm pays prevailing wage deltas (e.g. pay directly to employee as single amount to cover delta base and delta fringe, pay delta base to employee and pay delta fringe amount to a third-party plan, etc.)
- Accounting method used for prevailing wage delta base costs.
- Accounting method used for prevailing wage delta fringe costs.

For guidance see Caltrans' Prevailing Wage Interpretive Guidance and webinar on IOAI's website www.dot.ca.gov/audits.

When determined necessary, IOAI may request additional information, such as a labor distribution summary and Executive Compensation Analysis (ECA). A consultant's labor distribution summary report is a labor expense report that detail all hours worked (paid and unpaid) for a fiscal year, wages earned, and benefits accrued by all the consultant's employees.

The labor summary report should include employee names, salaries, hourly rates, total hours worked segregated by direct hours, indirect hours, paid time off hours, and uncompensated hours and amounts.

An ECA is an evaluation by the consultant to determine the allowability and reasonableness of executive compensation in compliance with Federal cost principles and the AASHTO Audit Guide that can be based on either the National Compensation Matrix or independent compensation surveys.

Independent Office of Audits and Investigations' Responsibilities

After IOAI receives a consultant's complete financial document packet (per Exhibit 10-A and Exhibit 10-A Checklist) from the local agency, IOAI will review the proposed ICR and supporting documents and notify local agencies in writing whether the proposed ICRs are accepted or adjusted.

Contracts will be executed after IOAI either accepts or adjusts the ICR and a revised final cost proposal (if applicable) is received. Correction of the final cost proposal, however, does NOT need to be cleared through Caltrans IOAI before executing the contract. An email notification from IOAI serves as documentation to support an accepted ICR.

Audits and Reviews to be Performed

After contract execution, a consultant's ICR may be subject to further detailed review or audit by IOAI based on certain risk factors. Costs that are determined to be unallowable as a result of the review or audit will be subject to repayment.

Indirect Cost Rate Audits

During an ICR audit, IOAI or an independent CPA will examine the consultant's proposed ICR for a one-year accounting period to ensure that unallowable costs have been removed from the indirect costs, that allowable costs have been correctly measured and properly charged and allocated, and that the ICR has been developed in accordance with the Federal cost principles (as specified in 23 U.S.C. Section 112(b)(2)(B), 23 CFR Part 172.11, 48 CFR Part 31 and other FAR and State requirements). As a result of the audit, the local agency will work with the consultant to adjust the ICR based on audit recommendations.

For guidance regarding the existing policies and procedures set forth in the federal regulations, and acceptable ICR schedules, refer to the AASHTO Audit Guide, Chapter 5, and Figure 10-3 Standard Indirect Cost Rate Schedule in this Chapter. There is also a review program at Appendix A which serves as a guide for CPAs and IOAI when performing ICR audits and can also be used as a resource for consultants when preparing for an ICR audit.

CPA Workpaper Reviews

During a workpaper review of a CPA audit of an ICR, IOAI will review the CPA's audit workpapers to determine whether to issue a Cognizant Letter of Approval for the ICR. The CPA Workpaper Review determines whether: (a) the CPA's audit of the ICR was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), (b) the CPA

adequately considered the auditee's compliance with the Federal cost principles and related federal and state laws and regulations.

Chapter 11 of the AASHTO Audit Guide provides information to the CPA on the required audit disclosures.

IMPORTANT NOTE FOR CPAs: Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing is required. GAGAS provides that auditors may find it appropriate to use lower materiality levels as compared with the materiality levels used in non-GAGAS audits because of the public accountability of government entities and entities receiving government funding, various legal and regulatory requirements, and the visibility and sensitivity of government programs. The AASHTO Audit Guide should be used as a tool for performing audits and attestations of A&E firms.

Contract Audits

During a Contract Audit, auditors will review a consultant's financial management system and contract cost proposal to determine if:

- The consultants' accounting system is adequate to accumulate and segregate costs;
- Costs are reasonable, allowable, allocable and supported adequately;
- The contract contains all required fiscal provisions;
- Proper state and federal procurement requirements were followed.

Incurred Cost Audits

During an Incurred Cost Audit, auditors will review incurred contract costs to determine if:

- Cost data are maintained in an accounting system that adequately gathers, records, classifies, summarizes, and reports accurate and timely financial data for direct and indirect project costs by account;
- Costs are adequately supported, reasonable, allowable, and allocable;
- Costs incurred are in compliance with state and federal laws and regulations;
- Costs incurred are in compliance with the Master Agreement and Supplemental Agreement;
- Costs incurred are in compliance with the fiscal provisions stipulated in the contract; and
- The terms required by the Master Agreement and federal laws and regulations are in the contract.

Audit Findings and Review Deficiencies

If a consultant's ICR is audited or reviewed, local agencies are responsible for ensuring all executed and future contracts reflect the audited and adjusted fiscal year ICR(s). Local agencies should request reimbursement from the consultant for overpayment on rates that were adjusted down.

The local agencies may be subject to sanctions outlined in [LAPM Chapter 20: Deficiencies and Sanctions](#) if the state or federal government determines that any reimbursements to the

consultant are the result of lack of proper contract provisions, unallowable charges, unsupported activities, or an inadequate financial management system.

Example of a FAR Compliant Indirect Cost Rate Schedule - Sample Consulting Company

Statement of Direct Labor, Fringe Benefits, and General Overhead for the Year Ended December 31, 20xx

Description	General Ledger Balance	Unallowable	FAR Reference	Total Proposed	Home Office	Field Office
Direct Labor	\$123,456,789	(\$934,568)	(1)(15)	\$122,522,221	\$85,765,555	\$36,756,666
Fringe Benefits						
Vacation/Paid Leaves	\$17,283,950			\$17,283,950	\$12,098,765	\$5,185,185
Payroll Taxes	\$1,530,864	(\$30,617)	(15)	\$1,500,247	\$1,050,173	\$450,074
Medical Insurance	\$10,864,197			\$10,864,197	\$7,604,938	\$3,259,259
401K Match	\$4,938,272			\$4,938,272	\$3,456,790	\$1,481,481
Incentives and Bonus	\$15,308,642	(\$3,123,456)	(2)	\$12,185,186	\$8,529,630	\$3,655,556
Other Employee Benefits	\$2,515,280	(\$553,433)	(3)	\$1,961,847	\$1,373,293	\$588,554
Total Fringe Benefits	\$52,441,206	(\$3,707,506)		\$48,733,700	\$34,113,590	\$14,620,110
General & Administrative Overhead						
Indirect Overhead Labor	\$72,696,030	(\$4,452,541)	(1)(2)(4)(15)	\$68,243,489	\$65,790,948	\$2,452,541
Purchased Labor/Subconsultants	\$22,433,019	(\$22,433,019)	(5)	\$ -	\$ -	\$ -
Office Rent	\$12,345,679	(\$987,654)	(6)	\$11,358,025	\$11,038,025	\$320,000
Supplies & Utilities	\$5,753,086			\$5,753,086	\$4,027,160	\$1,725,926
Postage and Shipping	\$1,770,000	\$321,456	(5)	\$2,091,456	\$1,464,019	\$627,437
Equipment and Maintenance	\$3,812,346			\$3,812,346	\$2,512,789	\$1,299,557
Depreciation Expense	\$6,202,469	(\$1,345,678)	(7)	\$4,856,791	\$3,205,482	\$1,651,309
Interest	\$123,456	(\$123,456)	(8)	\$ -	\$ -	\$ -
Dues and Subscription	\$123,456	(\$12,345)	(9)	\$111,111	\$77,778	\$33,333
Advertising & Marketing	\$427,406	(\$45,678)	(10)	\$381,728	\$267,210	\$114,518
Vehicles	\$5,896,123	(\$147,403)	(5)(11)(14)	\$5,748,720	\$4,024,104	\$1,724,616
Bad debts	\$12,345	(\$12,345)	(12)	\$ -	\$ -	\$ -
Legal and Accounting Services	\$3,713,580	(\$222,815)	(13)	\$3,490,765	\$3,490,765	\$ -
Fines and Penalties	\$80,000	(\$80,000)	(16)	\$ -	\$ -	\$ -
Total General & Admin. Overhead	\$135,388,995	(\$29,541,478)		\$105,847,517	\$95,898,280	\$9,949,237

Consultant Selection

Total Indirect Costs	\$154,581,216	\$130,011,870	\$24,569,347
Indirect Cost Rates	126.17%	151.59%	66.84%

Figure 10.3: Standard Indirect Cost Rate Schedule**FAR References:**

- (1) FAR 31.202: Uncompensated overtime.
- (2) FAR 31.205-6: Profit distribution and excess of the reasonable compensation.
- (3) FAR 31.205-46, 31.205-14 & 31.205-51: Meals not for valid business purposes and associated with lobbying and lacking adequate support
- (4) FAR 31.201-2: Administrative staff costs billed to projects/clients.
- (5) FAR 31.201-2: Subconsultant labor and other direct costs billed to and paid by contracts/clients.
- (6) FAR 31.205-36 and 31.205-17: Capital lease costs, rent paid in excess of reasonable costs, and idle facilities and capacity costs.
- (7) FAR 31.201-2 & 31.205-6: Costs relates to personal use by employees and luxury vehicles.
- (8) FAR 31.205-20: Interest and other financial costs not allowable.
- (9) FAR 31.201-2: Non-business related dues and subscriptions.
- (10) FAR 31.205-1: Costs for advertisement and public relations costs and trade show expense including labor.
- (11) FAR 31.205-46(d) and 31.205-6(m)(2): Personal use of vehicle and lack of mileage logs and business purpose.
- (12) FAR 31-205-3: Bad debts and collection costs.
- (13) FAR 31.205-27 and 31.205-47: Reorganization and capital raising related costs and costs incurred in connection with violation of a law or regulation by the consultant.
- (14) FAR 31.205-46: Unreasonable costs and costs not supported by documents and lack of business purpose.
- (15) FAR 31.201-6(a) & CAS 405-40: Labor costs associated with unallowable costs.
- (16) FAR 31.205-15: Fines and penalties resulting from violations of laws and regulations.

This section outlines the audit and review process for A&E contracts that at any time use federal and/or state funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

10.1.4 CONSULTANT SELECTION METHODS

Figure 10-4: Consultant Selection Flowchart shows the three methods normally used in selecting a consultant. They are:

- One-Step RFP;
- One-Step RFQ;
- Two-Step RFQ/RFP.

Consultant Selection

The method used depends upon the scope of work, the services required, the project's complexity, and the time available for selection of the consultant.

Beginning with [Section 10.1.5: Consultant Selection Using the One-Step RFP Method](#), each of the selection methods is explained in detail. Regardless of the method used, the local agency shall retain all consultant selection documentation in their project files as required by 23 CFR Part 172.

One-Step RFP

The One-Step RFP method may be used for Project-specific contracts when the scope of work is well defined or for Multi-phased contracts where the defined scope of work is divided into phases. Other considerations include when the consultant's services are highly specialized and there are few qualified consultants.

One-Step RFQ

The One-Step RFQ method is used when the requested services are specialized, or the scope of work is defined broadly and may include multiple projects. Typical services are preliminary engineering, surveying, environmental studies, preparation of Plans Specifications and Estimate (PS&E) and environmental documents, or construction management. This method or the two-step selection process is used for procurement of on-call contract(s). Note that specifications and requirements in the RFQ must cover all aspects of the final need. A RFP specific to the project, task, or service must be included in the solicitation for evaluation of a consultant's specific technical approach and qualifications.

Two-Step (RFQ Followed by RFP)

The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by local agencies that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method is recommended for procurement of multiple on-call contracts, or on-call list, through a single solicitation. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications. For more information, refer to description of on-call contract in [Section 10.1.2: Identifying & Defining a Need for Consultants](#). This method requires substantially more work and time than the other two methods described above.

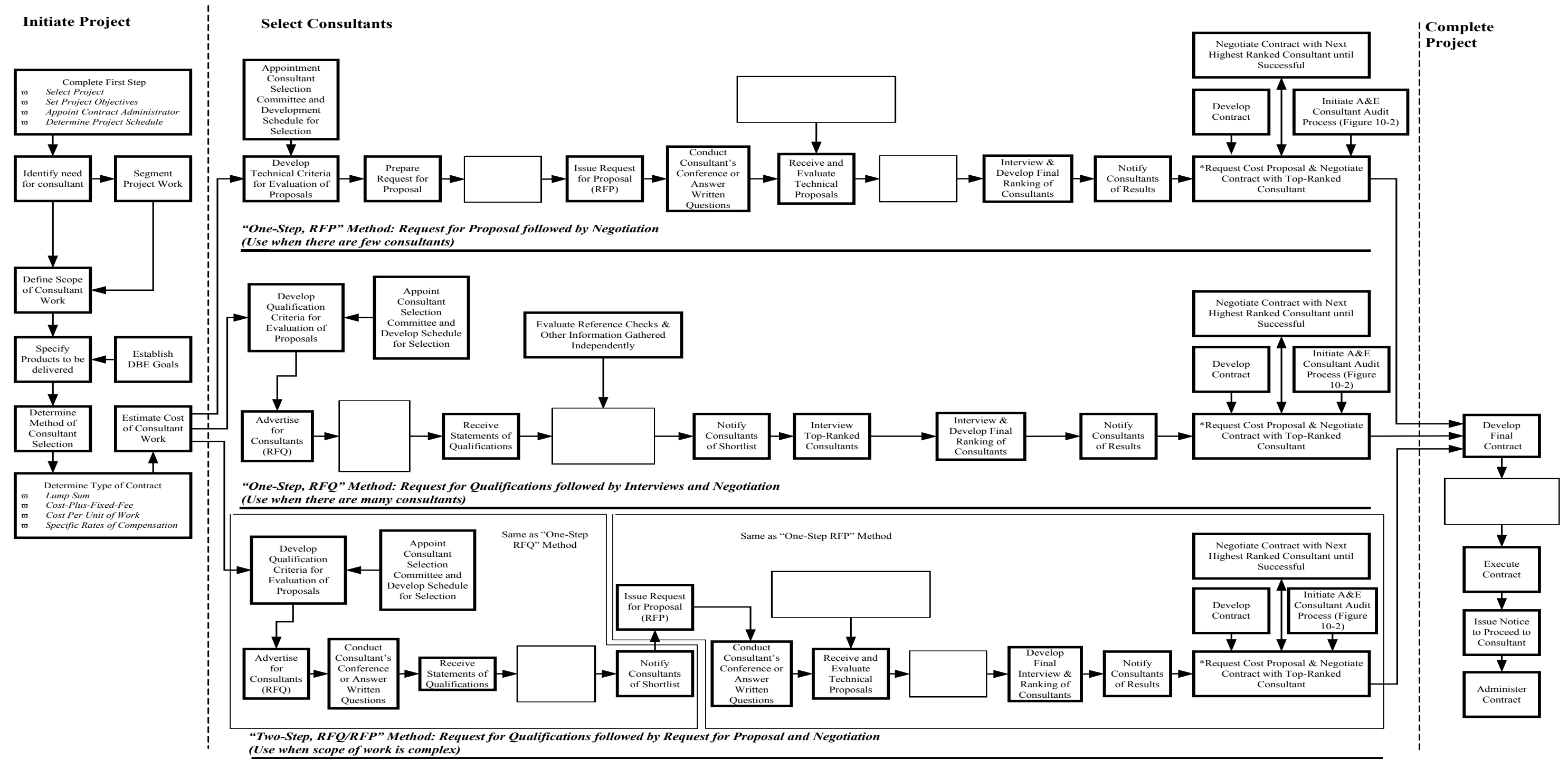


Figure 10-4: Consultant Selection Flowchart

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10.1.5 CONSULTANT SELECTION USING THE ONE-STEP RFP METHOD

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. This procurement procedure usually involves a single step process with issuance of a request for proposal (RFP) to all interested consultants. For non-A&E consulting contracts, a cost proposal shall be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal.

Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the project/segment to be contracted out and with the local agency standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the agency and subject to availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in [Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement](#).

Develop Technical Criteria for Evaluation of Proposals

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals. In-State or local preference shall not be used as factor in the evaluation, ranking, and selection phase. All non-technical evaluation criteria, including DBE participation, shall not exceed 10 percent (23 CFR 172.7(a)(1)(iii)(D)). All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#) is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

Develop Schedule for Consultant Selection

Before the contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm key dates with all selection committee members before completing the schedule.

Prepare RFP

The information required in an RFP solicitation includes the following:

- Description of project;
- Clear, accurate, detailed Scope of work, technical requirements, and qualifications;
- Services to be performed;
- Deliverables to be provided;
- Procurement schedule;
- Applicable standards, specifications, and policies;
- Schedule of work (including estimated start and end dates of the contract);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate concealed format. Cost proposals are requested from the highest ranked firm. If these negotiations are formally terminated, the cost proposal is then requested from the next highest ranked firm. See [Exhibit 10-H: Sample Cost Proposal \(Example 3\)](#) for sample cost proposal formats;
- Contract audit and review process requirements (see [Section 10.3: A&E Consultant Audit and Review Process](#));
- Proposal format and required contents;
- Method, criteria and weighting for selection;
- Requirements for any discussions that may be conducted with three or more of the most highly qualified consultants following submission and evaluation of proposals;
- Specify contract type;
- Special provisions or contracts requirements;
- A DBE contract goal is specified in the solicitation (see [Exhibit 10-I: Notice to Proposers DBE Information](#)), if a federal-aid contract;
- Consultants acting in a management support role requirements [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#);
- Protest procedures and dispute resolution process per 2 CFR Part 200.318(k), 2 CFR 172.5(c)(18).

The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. A minimum of fourteen (14) calendar days is required between the time the RFP is published and time that proposals must be submitted. More time may be required for complex contracts or projects.

Items typically required in a technical proposal include:

- Work plan (specify what is to be covered);
- Organizational chart;
- Schedule and deadlines;
- Staffing plan;
- Proposed Team – complete for prime consultant and all key subconsultants;
- Key personnel names and classifications – key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Names of consultant's project manager and the individual authorized to negotiate the contract on behalf of the consulting firm;
- Consultant DBE Commitment document, see [Exhibit 10-01: Consultant Proposal DBE Commitment](#);
- References.

Financial Management and Accounting System Requirements

The local agency must ensure that consultant contract solicitation and advertising documents (RFPs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

Advertise for Consultants

The solicitation process for consultant services shall be by public advertisement, or by any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of contract. The minimum length of advertisement is 14 calendar days.

Advertisement of the RFP in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting government contract solicitations such as BidSync, Planetbids, or posting the RFP on the local agency's or other widely used websites are all acceptable methods of solicitation.

To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

Issue/Publish RFP

The local agency shall publish the RFP on line and also issue the RFP to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded RFP on line as well as those receiving an RFP through other means, to ensure that any inquiry responses, addendums, or amendments to the RFP are given to all consultants that received the RFP.

Conduct Proposer's Conference or Answer Written Questions

The local agency may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer's conference, or by doing both. The local agency must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

Receive and Evaluate Technical Proposals

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended. The members of the consultant selection committee must evaluate each proposal according to the technical criteria listed in the RFP. Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. The justification should state that the solicitation did not contain conditions or requirements that arbitrarily limited competition per 23 CFR 172(a)(1)(iv) (D) and competition is determined to be inadequate and it is not feasible or practical to re-compete under a new solicitation per 23 CFR 172(a)(3)(iii)(C). If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

Develop Final Ranking and Notify Consultants of Results

The selection committee discusses and documents the strengths and weaknesses of each proposal; interviews the three or more highest ranked consultants (short listed); and develops a final ranking of the highest ranked consultants. All consultants that submitted proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

Negotiate Contract with Top-Ranked Consultant

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as [Exhibit 10-K: Consultant Certification of Contract Costs and financial Management System](#) of Costs and Financial Management System and [Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist](#), whichever is applicable (see [Section 10.1.3: A&E Consultant Audit and Review Process](#)) should be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultants with their technical proposal.

The cost proposal for the most qualified consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations proceeds to the next most qualified consultant. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the local agency. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall be submitted separately from the RFP and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and shall not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be returned unopened or properly disposed of in accordance with the local agency's written policies and procedures.

The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. Items necessary for the independent cost estimate include, hours/detailed work, direct labor costs, indirect labor

costs, other direct costs, and profit/fee. Agencies must retain documentation of how the cost estimate was developed. It can be revised, if needed, for use in negotiations with the next most qualified consultant. A contract audit and review may be required (see [Section 10.1.3: A&E Consultant Audit and Review Process](#) in this chapter). Local agency Contract Administrator ensures that all required documentations are provided to Caltrans IOAI within 10 days of written request, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a Financial Document Review until all required documentation is completed correctly and submitted. Negotiations should be finalized after addressing all deficiencies noted in the Caltrans IOAI Financial Review Letter if applicable. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan;
- Schedule and deadlines (for deliverables and final duration of contract);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fees. Fee is required to be negotiated as a separate element;
- Hours, level of effort by task and/or classification.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. The local agency and the consultant will agree on the final cost proposal and incorporate into final contract. Retain all documentation related to negotiations.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see [Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#)), and adjustment or denial of ICR as identified in the Financial Review Letter has been included in the final cost proposal, if applicable.

Prior to contract award, the local agency must submit a completed [Exhibit 10-C](#) signed by the Contract Administrator for all new or amended federal funded A&E consultant contracts to aeoversight@dot.ca.gov for Caltrans review and acceptance. If there are any changes to the contract after Caltrans acceptance of [Exhibit 10-C](#), the local agency must notify Caltrans and provide a copy of an updated [Exhibit 10-C](#) and all contract amendments to aeoversight@dot.ca.gov. Execution of an A&E consultant contract without Caltrans acceptance may result in ineligibility for reimbursement. Submission of [Exhibit 10-C](#) to Caltrans HQ for acceptance is not required for non-A&E consultant contracts.

10.1.6 CONSULTANT SELECTION USING THE ONE-STEP RFQ METHOD

The RFQ method is used when the services being procured are specialized, or the scope of work is defined broadly and may include multiple projects.

Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews and scores the materials submitted by consultants in response to the RFQ, develops a shortlist of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the scope of work to be contracted out and with the local agency standards that will be used in the contract.

Participation by a Caltrans district representative is at the option of the local agency and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in [Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement](#).

Develop Technical Criteria for Evaluation of Qualifications

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant qualifications. The criteria and relative weights must be included in the RFQ, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#) is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

Develop Schedule for Consultant Selection

Before a contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm target dates with all selection committee members before completing the schedule.

Prepare RFQ

As a minimum, the RFQ generally includes the following:

- General description of the services or project(s);
- Scope of work;
- Schedule of work (including contract begin and end dates);

- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See [Exhibit 10-H: Sample Cost Proposal](#) for sample cost proposal formats;
- Contract audit and review process requirements (see [Section 10.1.3: A&E Consultant Audit and Review Process](#));
- Statement of Qualification (SOQ) format and required content to be submitted;
- Method and criteria and weights for selection;
- A DBE contract goal is specified in the solicitation (see [Exhibit 10-I: Notice to Proposers DBE Information](#)), if a federal-aid contract;
- Consultants acting in a management support role requirements [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#); Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

The RFQ specifies the content of the SOQ, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFQ is published and time that SOQs must be submitted. More time may be required for complex contracts or scope of work.

Items typically required in a statement of qualification include:

- Qualifications of key personnel (including consultant project manager) proposed for the contract. Key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Related projects that key personnel have worked on;
- Qualifications/experience of the firm;
- Organizational chart;
- Forecast or Schedule of work;
- Consultant DBE Commitment document, see [Exhibit 10-O1: Consultant Proposal DBE Commitment](#);
- References.

Financial Management and Accounting System Requirements

The local agency must ensure that Consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

Advertise for Consultants

The solicitation process for consultant services shall be by public advertisement or any other public forum or method that assures qualified in-State and out-of-State consultant are given a fair opportunity to be considered for award of contract. The RFQ must contain sufficient project work information, so that interested consultants can submit an appropriate SOQ.

Advertisements for RFQ may take one of two approaches. The most common is an advertisement or publication of the RFQ in a major newspaper of general circulation, technical publication of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting contract solicitations such as Bid Sync, PlanetBids, or posting the RFQ on other widely used websites. To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

In the second approach, the local agency advertises the availability of the RFQ in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, or through a web hosting or clearing houses known for posting contract solicitations such as BidSync or PlanetBids, and requests that interested consultants send a letter of interest to the local agency for the RFQ. The RFQs shall then be sent to those firms who indicated interest in the RFQ. In some cases, it may be desirable to advertise nationwide for a particular project or service. This approach provides a registry for firms who received the RFQ and therefore facilitates the broadcast of any revisions or addenda to the RFQ, if necessary.

Issue/Publish RFQ

The local agency shall publish the RFQ online and also issue the RFQ to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded the RFQ on line as well as those receiving an RFQ through other means, to ensure that any inquiry responses, addendums, or amendments to the RFQ are given to all consultants that received the RFQ.

Receive/Evaluate Statements of Qualifications and Develop Shortlist

The first step in the evaluation process is to determine that each SOQ contains all forms and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The consultant selection committee reviews the submitted SOQ according to the published evaluation criteria and weighting factors. The committee makes an independent random check of one or more of the consultant's references. This check applies to major subconsultants also. The committee establishes a shortlist of consultants who are considered to be best qualified to perform the contract work. The shortlist includes enough qualified consultants to ensure that at least three consultants are interviewed.

Notify Consultants of Shortlist

All consultants that submitted an SOQ must be notified of the results of the review. The notification also identifies those consultants (short list) that will be requested to attend interviews. Most consultants will request information as to why they were not placed on the shortlist. Therefore, the selection committee should keep notes why a particular consultant was not selected for the shortlist. When a consultant requests a debriefing, the reasons given for not being selected must be objective reasons. Consultants should not be compared with each other during the debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

Interview Top-Ranked Consultants

Each consultant to be interviewed is given a copy of the draft of the proposed contract, defining the detailed scope of work, and/or description of required services, and other information. This should be sent with the initial notification of the interview.

Between the time of the notification of the shortlist and interviews, the local agency may answer any questions concerning the scope of work to be contracted out, if not done earlier during the solicitation. In addition, the local agency may conduct additional reference checks for each consultant to be interviewed. Consultants should submit their questions about the RFQ and receive their answers from the local agency in writing. It is required that all consultants on the shortlist receive the questions and answers and are given the same information.

The committee should evaluate reference checks and other information that is gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks and other information may be discussed with the consultant at the interview.

Interviews are to be structured and conducted in a formal manner. Each consultant shall be allowed the opportunity to make a presentation if desired; however, a time limit should be specified. Interview questions are prepared in advance.

Two types of questions may be asked:

- Questions that are to be asked of all competing consultants, and
- Questions relating to each specific consultant, based upon the reference checks, and the strengths and weaknesses identified during evaluation of the SOQ

The agency can request competing consultants to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process. Additional information requested should be kept at a minimum, that is, only

information required to select the most qualified consultant for the contract. The selection committee or local agency shall not gather additional information concerning the consultants after the interviews are completed.

Develop Final Ranking and Notify Consultants of Results

All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not selected as the most qualified. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective. Consultants should not be compared with each other or provided with information about other consultants during the debriefing.

Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing. The next two sections provide guidance when the RFQ is solicited for specialized services and additional information is required prior to cost negotiations with consultant. For on-call contracts, skip the next two sections and begin Negotiation phase.

Conduct Scoping Meeting

The Contract Administrator meets with the first-ranked consultant's project manager to review the project, and to ensure that the consultant has a complete understanding of the work that is required. The consultant is shown as much material as is available regarding the project. Any technical questions regarding the project are answered for the consultant.

Request Cost Proposal

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

Negotiate Contract with Top-Ranked Consultant

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as [*Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System*](#) and [*Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist*](#), whichever

applicable (see [Section 10.1.3: A&E Consultant Audit and Review Process](#)) will be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short-listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their statements of qualification.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and compares it with the local agency's confidential detailed independent cost estimate and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated.

Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant.

At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall be submitted separately from the RFQ and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and shall not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be returned unopened or properly disposed of by permanently deleting the cost proposals in accordance with local agency's written policies and procedures.

A contract audit and review may be required (see [Section 10.1.3: A&E Consultant Audit and Review Process](#) earlier in this chapter). Local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a Financial Review until all required documentation is completed correctly and submitted. Negotiations may be completed after receipt of the Caltrans IOAI Financial Review Letter. An indirect cost audit may be performed within the record retention period of the contract.

The items typically negotiated include:

- Work plan;
- Staffing plan;
- Schedule (including contract begin and end dates);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;

- Cost items, payments and fee. Fee is required to be negotiated as a separate element.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. For on-call contracts, typically a price agreement is reached based on specific rate of compensation for the term of the contract. The subsequent task orders (or mini agreements for individual project work) is negotiated based on actual cost plus fee, or lump sum, which is derived from the wage rates agreed upon earlier for the on-call contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see [Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#)), and receive Caltrans IOAI's Financial Review acceptance letter, if applicable.

Prior to contract award, the local agency must submit a completed [Exhibit 10-C](#) signed by the Contract Administrator for all new or amended federal funded A&E consultant contracts to aeoversight@dot.ca.gov for Caltrans review and acceptance. If there are any changes to the contract after Caltrans acceptance of [Exhibit 10-C](#), the local agency must notify Caltrans and provide a copy of an updated [Exhibit 10-C](#) and all contract amendments to aeoversight@dot.ca.gov. Execution of an A&E consultant contract without Caltrans acceptance may result in ineligibility for reimbursement. Submission of [Exhibit 10-C](#) is not required for non-A&E consultant contracts.

10.1.7 CONSULTANT SELECTION USING THE TWO-STEP RFQ/RFP METHOD

Combined RFQ and RFP

Selecting consultants using the Two-Step RFQ/RFP method requires combining certain steps from each of the other two methods previously described. The consultants are rated based upon both their qualifications and their technical proposals. This procurement procedure involves a multiphase process with issuance of a request for qualifications (RFQ) whereby responding consultants are evaluated and ranked based on qualifications and an RFP is then provided to three or more of the most highly qualified consultants.

A different process may also be used that includes assessing minimum qualifications of consultants to perform services under general work categories or areas of expertise through a prequalification process whereby annual statements of qualifications and performance data are encouraged. These consultants are not ranked, and an RFP must be submitted to the entire list for evaluation and consideration. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.

The initial steps in this method (up to the development and notification of the shortlist) are similar to the steps followed when using the One-Step RFQ method. At this point, the consultants from the shortlist are issued an additional RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. The combination of these steps is indicated in Figure 10-4: Consultant Selection Flowchart. Because it is a combination of the One-

Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use only when the scope of work is not clearly known, very complex or unusual.

The Two-Step RFQ/RFP is also well suited for procuring multiple on-call contracts through a single solicitation. The outcome of the first step RFQ will be multiple contracts, or on-call list of consultants. For multiple on-call contracts, project work will be procured thru subsequent competition or mini-RFPs amongst the on-call consultants. The mini-RFP or the task order will be negotiated with first ranked firm from each competition. Task order (mini-RFP) cost will be based on wage rates established in the master on-call contract, and the time and deliverable requirements in the task order.

Local agencies may also use this method to develop and maintain a pre-qualified file/list of consultant firms by specific work categories or areas of expertise or to create a bench list of evaluated and ranked consultants. The pre-qualified data file or interest list can be updated annually or every two years. This list contains minimum qualifications and has not gone through the evaluation process. The pre-qualification list must be maintained by the agency.

The mini-RFP contains evaluation criteria that matches the strengths of the qualified firms to the specifics of the known tasks, thereby selecting the most qualified firm for each task. The evaluation can include: availability of personnel, staff capabilities, DBE (10% or less of overall score), completion time, experience of consultant, specialized expertise, and past performance. The overall DBE goal was established at the master on-call contract.

Because it is a combination of the One-Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use when the scope of work is very complex or unusual.

Categorize work

Descriptions of the categories of work, deliverables and the minimum qualification standards for each category must be clearly identified.

The local agency may prequalify consulting firms in the following (or more) categories:

- Roadway Design
- Bridge Design
- Bridge Inspection
- Traffic Engineering
- Environmental Services
- Roadway Construction Inspection and Administration
- Landscape Architecture
- Land Surveying
- Intelligent Transportation System (ITS)
- Federal-aid Highway Project Development Support Services

Establish Minimum Qualifications

In an effort to ensure quality performance and results, a consultant should be required to meet certain minimum qualifications to be eligible for consideration in the pre-qualification process.

General criteria guidelines should be established for consultant selection for a pre-qualified list. The criteria may be established by an individual or a panel of subject matter experts for the specific task of developing the criteria. Some agencies also establish appropriate weights for each criterion. It may be necessary to modify the criteria to fit specific cases. When a RFQ is published, it should state the criteria that will be used in the selection process.

Criteria for evaluating statements of qualifications, may include but are not limited to:

- Special expertise and experience of the firm's key employees
- Proposed staffing (include number of licensed and specialized staff) for the project and previous experience of those identified
- Experience of the firm and their personnel on previous projects similar to the one under consideration
- Consultant DBE Commitment document (see Exhibit 10-O1)
- Professional references by the firm with the local agency
- Understanding of the project by the firm as demonstrated by their approach to organizing and management of the work
- Current workload of the firm and their ability to meet the proposed project schedule
- Quality of previous performance by the firm with the local agency
- Use of sub-consultants to accomplish work on the project
- Equipment the firm has available and proposes to use as compatibility with Computer-Aided Drafting and Design (CADD) and other equipment proposed to be used in accomplishing the work
- Familiarity with federal, state, and local codes, requirements, standards, and procedure
- Examples of minimum qualifications for work categories above are provided here based on Caltrans best practices.

Issue RFQ

The need for services of a consulting firm may be advertised in appropriate national, state, and local publications and web sites. Notices can also be sent to firms known to be qualified to do specific work, to professional societies, and to recognized Disadvantaged Business Enterprises (DBE) organizations. The advertisements and notices seek statements of interest and qualifications from consultants who are interested in the project. The DBE goal is established at the master on-call contract and included in the solicitation document.

The SOQ should list consulting firm details, names of principals, office locations, personnel by discipline, project experience and examples, current workload, types of service the firms are qualified to perform, and previous performance. Also, resumes of key persons, specialists, and other associates that may be assigned to the project or projects should be included. This

information should be the basis for evaluating and placing a consulting firm on a general pre-qualification list.

Federal regulations require that any procedures related to pre-qualifying consultant cannot restrict competition.

Pre-qualification of consultants may be allowed as a condition for submitting a technical proposal for a contract only if the period between the date of the issuance of the RFP and the deadline for submitting a technical proposal affords sufficient time to enable a consultant to obtain pre-qualification status.

Another practice is to qualify consultants on a project-by-project basis. This is accomplished for some agencies by advertising or publishing notices in national, state, and local publications for needed services for specific, individual projects. These notices include a precise project location, a defined preliminary scope of services to be performed, a specific schedule within which the work is to be completed, and a list of products and deliverables to be provided by the consultant. Specific project advertisements usually are published when the proposed project is large and complex, in-house resources are not available, special expertise is required, or the objectivity of an outside authority is desired.

Appropriate Federal-aid requirements should be complied with on Federal-aid projects.

Set-Up Evaluation Process

The first step in the evaluation process is to determine that each SOQ contains all forms, qualifications and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Documentation of when each SOQ was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

If all required information is not provided, a SOQ may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

Local agency must establish a process by which SOQs are evaluated and consultants who are deemed meeting the minimum qualifications are accepted and placed on a pre-qualified list. Whether the Local agency has a “committee” of experts evaluating the SOQs or individuals responsible for the evaluation, the process must be well defined, open and transparent. The pre-qualification process must also allow for consultants to be re-evaluated in cases of denials. The local agency must specify how long the pre-qualified list last, not to exceed two years. Federal regulation recommends refreshing the SOQs on an annual basis.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T.

Evaluate Qualifications and Add Firm to List

All SOQs received should first be reviewed for completeness. Each response must contain all required forms and any other information requested in the advertisement. The response may be considered incomplete and rejected without further evaluation if all required information is not provided or if the submittal is late.

The qualifications of all responding firms are then reviewed according to established evaluation criteria or factors. The agency then establishes a short list of at least three consultants that are determined to be the most highly qualified to perform the required work. Firms not selected should be notified in writing.

Maintain List

Pre-qualification of a consultant expires in two years. Pre-qualified consultants must renew their pre-qualification status every two years. Firms can apply to be on the list at any time. After a period of two years, firms should re-apply (repeat the process of submitting SOQs) to be on the list. In addition to the required two-year renewal process, the consultant should also be required to update the firm's organizational structure within one year when there is a corporate/affiliate change, ownership control, type of work expertise, capacity, or any other major change.

If the consultant does not meet the minimum requirements and their SOQ is rejected, the committee must respond to the consultant explaining the reason for their rejection. The consultant is allowed to reapply to be on the list again provided the reasons for rejection are corrected.

The list of qualified firms can be maintained online through the agency's website. Firms can also apply to be on the list through the agency website for ease of operation.

Issue RFP to Pre-Qualified Consultants on List

An RFP is sent to the short-listed firms. The RFP should indicate the content of the technical proposal, technical review procedures, anticipated schedule of activities, scope of work, project description, where the technical proposals are to be delivered, the number of copies required, and the due date.

Some agencies receive the technical proposal orally as part of an interview conducted for this purpose. In these cases, written documentation may not be required.

Items typically required in a technical proposal include:

- Work plan
- Organization plan
- Schedule for meeting time frame
- Available computer equipment and programs
- Staffing plan and resumes including sub-consultants
- Pre-award audit/financial package information (if deemed appropriate)
- Examples of similar work previously completed
- Sub-consultants, DBE, their proposed participation, and other related information

Conduct Proposer's Conference or Answer Written Questions

The local agency may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer's conference, or by doing both. The local agency must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

Receive and Evaluate Technical Proposals

The Contract Administrator must verify that each technical proposal contains all forms and other information required by the RFP. If all required information is not provided, a technical proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each technical proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The members of the consultant selection committee must evaluate each technical proposal according to the technical criteria listed in the RFP. A minimum of three technical proposals must be received and evaluated.

If only two technical proposals are received, a justification must be documented to proceed with the procurement. If only one technical proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (LAPM Exhibit 12-F) must be documented. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

Develop Final Ranking and Notify Consultants of Results

The selection committee discusses and documents the strengths and weaknesses of each technical proposal, interviews the three or more highest ranked consultants (shortlisted), and develops a final ranking of the highest ranked consultants. All consultants that submitted technical proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others and should not be provided with information about other consultants during this debriefing. Normally, the Contract

Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

Request Cost Proposal and Negotiate Contract with Top-Ranked Consultant

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

Cost proposal (for both prime and all subconsultants) and contract audit and review documents, such as Exhibit 10-K and Exhibit 10-A, whichever applicable (see *Section 10.1.3: A&E Consultant Audit and Review Process*), will be submitted in a separate sealed envelope.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

A contract audit and review may be required (see *Section 10.1.3: A&E Consultant Audit and Review Process*). The local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Conformance Review, if applicable. Negotiations may be completed after receipt of the Caltrans IOAI Conformance Letter. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan
- Schedule and deadlines (for deliverables and final duration of contract)
- Products to be delivered
- Classification, wage rates, and experience level of personnel to be assigned

- Other Direct Cost items, and profit or fee

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency.

The local agency and the consultant will agree on the final cost proposal and incorporate into final contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see *Exhibit 10-C*), and all deficiencies identified in the Conformance Letter have been addressed and resolved, if applicable. The completed checklist is to be signed by the Contract Administrator and the original retained in the project file, one copy is to be sent to the DLAE (for review of completeness) and filing within 30 days after awarding the contract.

10.1.8 COMPLETING THE PROJECT

Develop the Final Contract

The Contract Administrator requests a revised cost proposal from the consultant after: (1) negotiations have been completed, (2) the local agency and consultant have agreed to a fair and reasonable price, and (3) a letter, if applicable, is released by Caltrans IOAI that accepts, denies or makes an adjustment to the proposed ICR. The Contract Administrator should review the revised cost proposal to ensure that all the items and changes discussed during negotiation were included. This revised cost proposal then becomes the final cost proposal, is attached to and made a part of the consultant contract. Sample contract language and format have been included as [Exhibit 10-R: A&E Boilerplate Agreement Language](#).

The Contract Administrator has responsibility to ensure that the final negotiated contract is complete and has verified that all required backup documents have been provided. Copies of the contract are sent to the consultant for signature first.

Review and Approval of Contracts

Proposed contracts for consultant services (including subcontracted work) must be reviewed by the local agency to verify that:

- Compensation is fair and reasonable and includes prevailing wage rates, if applicable;
- Work activities and schedules are consistent with the nature and scope of the project;
- DBE goal *Exhibit 10-O2: Consultant Contract DBE Commitment* is included for all contracts regardless of goal.;
- [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) (for Prime and Subs), and [Exhibit 10-A: A&E Consultant Financial Document Review Request](#) and Checklist and all supporting documents, if applicable (contracts above \$150,000), have been submitted to Caltrans IOAI;

- If applicable, adjustment or denial of the ICR identified in the Financial Review Letter have been included in the final cost proposal;
- [Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#) must be used to ensure that required documentation has been provided;
- A cost proposal (see [Exhibit 10-H: Sample Cost Proposal](#)), must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

Before approving a contract for consulting services, the Contract Administrator must be satisfied that the consultant's organization:

- Is qualified to perform the services required;
- Is in a position, considering other work commitments, to provide competent and experienced personnel to perform the services in the time allowed;
- Is fully aware of all applicable federal and state laws including implementing regulations, design standards, specifications, previous commitments that must be incorporated into the design of the project, and administrative controls including those of Caltrans and FHWA.
- Has an adequate financial management system as required by the applicable federal regulations.
- Is not disbarred or suspended from state or federally funded contracts. Per 23 CFR 172.7(b)(3) "A contracting agency shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or contract in accordance with 2 CFR part 1200 and 2 CFR part 180.

The contract must provide for a defined level of acceptability and a statement to the effect that the consultant may be required to modify its work as necessary; to meet that level of acceptability as defined in the contract. The contract shall provide for local agency reviews at appropriate stages during performance of the work, to determine if any changes or other actions are warranted.

The contract shall provide that the consultant and subconsultants shall maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred. Such materials must be available for inspection and audit by federal, State, and local agency authorized representatives; and copies thereof shall be furnished, if requested.

Following final settlement of the contract accounts with the State or FHWA, such records and documents may be archived at the option of the local agency and shall be retained for a three-year period after processing of the final voucher by FHWA.

Execute Contract and Issue Notice to Proceed to Consultant

The Contract Administrator sends the consultant a fully executed copy of the contract with an original signature and issues a notice to proceed. Funds may not be used to reimburse the agency for any work or costs incurred before the Authorization to Proceed is issued, or for

consultant costs incurred prior to the execution of the consultant contract. All executed contracts shall have a begin and end date. Local agency consultant selection and contract execution costs may be reimbursable.

For on-call contracts, a fully executed copy of the contract with original signatures will be sent to the consultant. Each subsequent task order (for individual project) will be accompanied with a copy of the signed task order and a Notice to Proceed, once it is negotiated and approved. Task order expiration dates may not exceed the Master On-call agreement end date.

Administer the Contract

Project work begins as specified in the contract after the notice to proceed is issued to the consultant. Thereafter, the local agency manages and administers the contract to ensure that a complete and acceptable product is received on time, within standards, and within budget and terms of the contract.

Contract administration activities help to ensure that contractual obligations are completed satisfactorily. Generally, these activities include:

- Monitoring project progress and compliance with contract requirements;
- Receiving, reviewing and assessing reports, plans, and other required products/deliverables;
- Receiving and reviewing state prevailing wages. (See Department of Industrial Relations websites below.
 - [DIR FAQ](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html) website:
http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html
 - [DIR Wage Determination](http://www.dir.ca.gov/oprl/DPreWageDetermination.htm) website:
<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>
- Reviewing invoices to ensure costs claimed are in accordance to the method of payment and contract cost proposal, approving payments;
- If new consultant personnel are added or substituted, labor rates must be verified prior to approving invoices.
- Record keeping and reporting;
- Controlling costs;
- Identifying changes to the scope of work and preparation of amendments (must ensure that any changes to the scope is within the constraints of the original RFP/RFQ;
- Completing the consultant performance evaluations (see [Exhibit 10-S: Consultant Performance Evaluation](#)).

Substitution of Consultant Personnel and Subconsultants

After contract execution the consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or subconsultants without prior written

approval from the local agency. Refer to LAPM Chapter 9: *Civil Rights & Disadvantaged Business Enterprise* and Title 49 CFR 26 for DBE substitution requirements. To do so can result in the costs being ineligible for federal or state reimbursement. The consultant must request and justify the need for the substitution and obtain approval from the local agency prior to use of a different subconsultant on the contract.

The proposed substituted person must be as qualified as the original, and at the same or lower cost. For engineering types of consultant contracts, the consultant's project manager must be a registered engineer in the State of California.

Invoicing (or Progress Payments)

The frequency and format of the invoices/progress payments are to be determined by the contract. Program Supplement Agreements (see [LAPM Chapter 3: Project Authorization](#)) need to have been prepared prior to any payments being requested. Payments to the consultant are to be in arrears. In other words, the consultant must have actually incurred and paid the costs before invoicing the local agency.

For federal reimbursement of consultant costs on a project, the local agency must submit the following to the DLAE, for each consultant or consulting firm used on the project (failure to do so will result in the consultant's invoices for reimbursement being returned to the agency unprocessed):

- Copy of Executed Consultant contract;
- [Exhibit 10-O1: Consultant Proposal DBE Commitment](#)
- [Exhibit 10-O2: Consultant Contract DBE Information](#)

DLAE must confirm that the local agency has submitted copies of [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) (for Prime and Subconsultants) to Caltrans IOAI and received acceptance of [Exhibit 10-C: Consultant Contract Reviewers Checklist](#) from Caltrans.

The local agency is to follow the procedures given in [LAPM Chapter 5: Invoicing](#), to obtain reimbursement of federal or state funds.

Contract Amendments

Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs. Only work within the original advertised scope of services shall be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for federal or state reimbursement (see [Q&As](#) at: http://www.fhwa.dot.gov/programadmin/172qa_01.cfm).

There is no prescribed format for contract amendments. They may take the form of letter-type agreements meeting the legal requirements of the local agency, clearly outlining the changes and containing a mutually agreed upon method of compensation. Such agreements must conform to the requirements of this manual with regard to payment.

A consultant contract may be amended at any time prior to the expiration date of the original contract. The most common amendment is to extend the ending date of the contract. All contract amendments must be fully executed before the ending date of the contract. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement.

For on-call consultant contracts, the amendment is restricted to the work (task order) that has already been started by the consultant and can not include any new work. Task orders are not considered an amendment and therefore not appropriate to extend the terms of the contract.

All contract amendments shall be negotiated following the same procedures as the negotiation of the original contract and must be in writing and fully executed by the consultant and local agency before reimbursable work begins on the amendment. For any additional engineering and design related services outside of the scope of work established in the original solicitation, a contracting agency shall either procure the series under a new solicitation, perform the work itself using agency staff, or use a different, existing contract under which the services would be within the scope of work. Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a cost plus fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost plus fixed fee or lump sum reimbursed contracts. If an emergency exists of such magnitude that a delay cannot be tolerated, the local agency and the consultant may agree on an amendment initiating the work, so that reimbursable work may begin. The initiating amendment is then followed by a final amendment once the full scope of the emergency work is known and agreed to by both parties. In both cases, sufficient funding should be included in the amendments to pay for all work to be performed by the consultant. The final amendment must be executed as quickly as possible. Failure to fully comply with this section may result in the loss of local agency funding. [Section 10.1.3: A&E Consultant Audit and Review Process](#) of this chapter shall apply to the entire contract and must be completed prior to execution of the contract amendment. All amendments shall incorporate any current requirements of the federal regulations including the federal fiscal provisions and submit [Exhibit 10-C: Consultant Contract Reviewers Checklist to aeoversight@dot.ca.gov for review](#) completing Section D for amendments.

Performance Evaluation

Pursuant to 23 CFR §172.9(d)(2) agencies are required to prepare an evaluation of the consultant when the project has been completed. The Contract Administrator evaluates the consultant's performance after the consultant's final report has been submitted, and the Contract Administrator has conducted a detailed evaluation with the consultant's project manager. See [Exhibit 10-S: Consultant Performance Evaluation](#) for a suggested format for use by the local agency.

Project Records

Federal-Aid Highway Program funding recipients and sub-recipients must maintain adequate and readily accessible project performance and financial records, supporting documents, and other records considered pertinent to the grant agreement and in compliance with Federal laws and regulations (e.g., 23 USC 112; 40 USC 1101-1104, 23 CFR 172, 48 CFR 31, and 2 CFR Part

200). These records shall be maintained for a minimum of three (3) years following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters (2 CFR Part 200.333).

For audit purposes, project records and documentation shall be kept for three (3) years after payment of the final federal or state voucher. Among the records to be retained are as follows (not an all-inclusive list):

- Copies of RFPs and RFQs, changes, addendums, etc. and bidder's list;
- Documentation of DBE participation (including [Exhibit 10-O1: Consultant Proposal DBE Commitment](#) and [Exhibit 10-O2: Consultant Contract DBE Commitment](#));
- Solicitation and advertisement records;
- Identification of selection committee members;
- Record of receiving proposals, statement of qualifications;
- Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation (see [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#));
- Independent cost estimate (prepared in advance of requesting a cost proposal from the top-ranked consultant);
- Record of negotiations (to include a separate negotiation of profit in accordance with federal guidelines);
- Financial Review Letter and Cognizant Agency Letter, when applicable;
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any;
- Consultant Certification of Costs and Financial Management ([Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#)) for contracts over \$150,000 or more;
- A&E Consultant Audit Request Letter and Checklist ([Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#)) for contracts over \$150,000 and all supporting documentation.
- Executed consultant contracts, cost proposals and amendments (see [Exhibit 10-R: A&E Boilerplate Agreement Language](#) and [Exhibit 10-H: Sample Cost Proposal](#));
- Contract oversight and progress meeting documents;
- Progress and final payments, and supporting documentation;
- Performance evaluation (see [Exhibit 10-S: Consultant Performance Evaluation](#));
- Consultant contract checklists (see [Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#));

- Accounting records documenting compliance with State and federal administrative requirements;
- Certifications and Conflict of Interest forms ([Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#), all personnel involved in the procurement of the agreement should complete Exhibit 10-T [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) and [Exhibit 10-Q: Disclosure of Lobbying Activities](#), as appropriate). Exhibit 10-Q is included in the solicitation and shall be completed if the consultant needs to disclose any lobbying activities.

Retention Clauses

At the option of the local agency, a retention clause may be included in the consultant contract. A retention clause in the consultant contract is recommended (see [Exhibit 10-R: A&E Boilerplate Agreement Language](#), Article XXXI).

Review of Local Agency Actions

Federal-aid or state reimbursement is contingent on meeting the federal or state requirements and can be withdrawn, if these procedures are not followed and documented. The local agency files are to be maintained in a manner to facilitate future FHWA or Caltrans process reviews and audits. As specified in the Review and Approval of Contracts above, the Contract Administrator must review the proposed consultant contract before execution.

[Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#) is to be completed and signed. A copy shall be emailed to Caltrans at aeoversight@dot.ca.gov prior to contract award for acceptance. This acceptance of [Exhibit 10-C](#) must be retained in the local agency project files.

10.1.9 MISCELLANEOUS CONSIDERATIONS

Agreements with Other Governmental Agencies

Intergovernmental or inter-entity agreements are encouraged if appropriate. If another governmental agency is requested to do work or provide services to an agency, an interagency agreement is needed. See 2 CFR 200 and CA Government Codes 10340 and 11256.

Small Purchase Contracts

Contracts that are less than \$250,000 are considered small contracts in accordance with federal regulations. However, within the State of California, there is not a recognized small purchase procedure. For federal contracts that are less than \$250,000 and are not anticipated to exceed this amount, the agency shall use the *State-Only Funded A&E Contracts: Section 10.2*. If the contract is anticipated to exceed \$250,000, use one of the accepted procurement procedures listed in the previous sections. Small contracts using the simplified acquisition procedure shall not exceed \$250,000 or the additional costs are considered not reimbursable. The entire contract could also be considered ineligible by FHWA depending on circumstances. The scope of work, project phases, and contract requirements shall not be broken down into smaller components to

permit the use of small purchase procedure. DBE requirements apply for all federally funded projects.

Noncompetitive Negotiated Contracts (Sole-Source)

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under sealed bids or competitive proposals (23 CFR 172.7(a)(3)).

FHWA considers these types of contracts as Sole Source contracts and should be used only in very limited circumstances. A Public Interest Finding prepared by the local agency and approved by Caltrans is required before establishing these services (23 CFR 172.7(a)(3); also see [Exhibit 12-F: Cost-Effectiveness/Public Interest Finding](#)).

Conditions under which noncompetitive negotiated contracts may be acceptable include:

- Only one organization is qualified to do the work;
- An emergency exists of such magnitude that cannot permit delay;
- Competition is determined to be inadequate after solicitation of a number of sources.

The local agency shall:

- Follow its defined process for noncompetitive negotiation;
- Develop an adequate scope of work, evaluation factors, and cost estimate before solicitation;
- Conduct negotiations to ensure a fair and reasonable cost.

The local agency must carefully document details of the special conditions, obtain Caltrans approval on a Public Interest Finding and retain all documents in the project files for future Caltrans' or FHWA's review.

A Public Interest Finding (see [Exhibit 12-F: Cost-Effectiveness/Public Interest Finding](#)) is not required for a local agency to be reimbursed for contract administration activities associated with non-infrastructure type projects such as many Safe Routes to School or Transportation Alternatives Program projects.).

Personal Services Contracts

A personal services contract is characterized by the employer-employee relationship created between the local agency and the contract personnel who essentially perform similar duties as the employees. Such services must be under the direction and control of a full-time employee of the local agency in responsible charge. Compensation for construction engineering services should be based on actual costs incurred, plus a fixed fee, or in the case of individual compensation on an agreed-upon hourly or daily rate. Lump sum payments should not be used for construction engineering services.

For personal service contracts, the following information must be documented by the local agency and retained in the project files:

- Explanation of the services needed, and why they cannot be provided by the local agency;
- Name and qualification of the consultant, who provided the services;
- Documentation of the fees showing how the fee was calculated, and that it is reasonable by comparative standards;
- Any other records needed to show compliance with federal-aid program regulations.

Retaining a Consultant as an Agency Engineer or in Management Support Role

A local agency may retain qualified consultants in a management support role on its staff in professional capacities for federal-aid projects such as:

- A City Engineer (or equivalent) who manages the engineering unit for the city, providing oversight of a project, series of projects, managing or directing work of other consultants or contractors on behalf of the City.
- A County Engineer (or equivalent) who manages the engineering unit for the county such as duties described above.
- A Project Manager (or equivalent) who manages and oversees a project, series of projects or the work of other consultants and contractors on behalf of the public agency
- A Program Manager (or equivalent) who manages and oversees an element of a highway program, function, or service on behalf of the public agency

However, typically a consultant in a management support role is not:

- A consultant engineer performing project-specific design, and/or construction contract administration and construction engineering for the public agency
- A consultant providing support to administrative duties such as federal authorization process, labor compliance activities, and other management and administrative tasks.

The use of a consultant in a management support role should be limited to unique or very unusual situations. These situations require a thorough justification as to why the local agency cannot perform the management. Consultants used in management support roles must be selected using the same procedures as those for other consultants specified in this chapter. Consultants in a Management Support Role funded by local or state funds must have approval from FHWA to be considered qualified to manage federal projects or consultants providing services on federal projects.

Eligibility for federal or state reimbursement for a consultant in a management support role requires the following:

- Compliance with the selection procedures specified in this chapter;
- Existence of a contract between the local agency and the consultant specifying the local agency engineering services to be performed;
- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer;

- For a federal-aid project, completion of [*Exhibit 10-T: Conflict of Interest & Confidentiality Statement*](#) by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered;
- Selection of consultants for A&E management positions shall be by the use of qualification based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates not to exceed five (5) years;
- For a federal-aid project, a local agency consultant in a management support role shall not:
 - Participate in, or exercise authority over the A&E selection process, if that consultant's firm is one of the proposing firms, or subconsultant to a proposing firm;
 - Participate in, or exercise authority over management of work performed by the consultant's firm, or to a consultant's firm of which the local agency consultant firm is a subconsultant. This would include, but not be limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables; and approving invoices.
 - Apply for or receive reimbursement of federal-aid funds for the local agency's federal-aid project if either of the foregoing has occurred. However, reimbursement for the construction contract portion of the project will still be allowed provided all other federal-aid requirements have been met.
 - Where benefiting more than a single federal-aid project, allocability of consultant contract costs for services related to a management support role shall be distributed consistent with the cost principles applicable to the contracting agency in 23 CFR 172.7(b)(5).

If engineering services for a project are within the scope of the services described in the retained consultant's contract, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for federal reimbursement for these services require a new consultant contract to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the RFP or RFQ shall not be considered in the selection of consultants for the resulting project specific work.

When engineering or architectural consultants in a management support role are procured with federal-aid funds, the local agency (subgrantee) shall fully comply with the following:

- Subparagraphs of 2 CFR 200.318 maintain a contract administration system and maintain a written code of standards. No employee, officer or agent of the subgrantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.
- Subparagraph of 23 CFR §172.7(b) requires that the local agency shall receive approval from FHWA. In addition, any federal-aid projects designated as Projects of Division Interest may also need approval from FHWA.

- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

For federally funded projects, local agencies that solicit to hire A&E consultant(s) in a management support role must obtain FHWA approval prior to contract execution.

In order for a contract for a consultant in a management support role to be federally eligible, the following are required prior to contract execution:

- The local agency shall submit a request for approval via email, the Scope of Work (SOW) and Conflict of Interest (COI) Policy to the Division of Local Assistance-Headquarters (DLA-HQ) at aeoversight@dot.ca.gov, prior to solicitation.
- Once the local agency receives FHWA's written response, the local agency may need to revise the documents reflecting FHWA's opinions and can proceed with the RFQ.
- After consultant selection, the local agency shall submit the completed [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) to the DLA-HQ at aeoversight@dot.ca.gov. Local agency will receive FHWA's approved [Exhibit 10-U](#) via email.

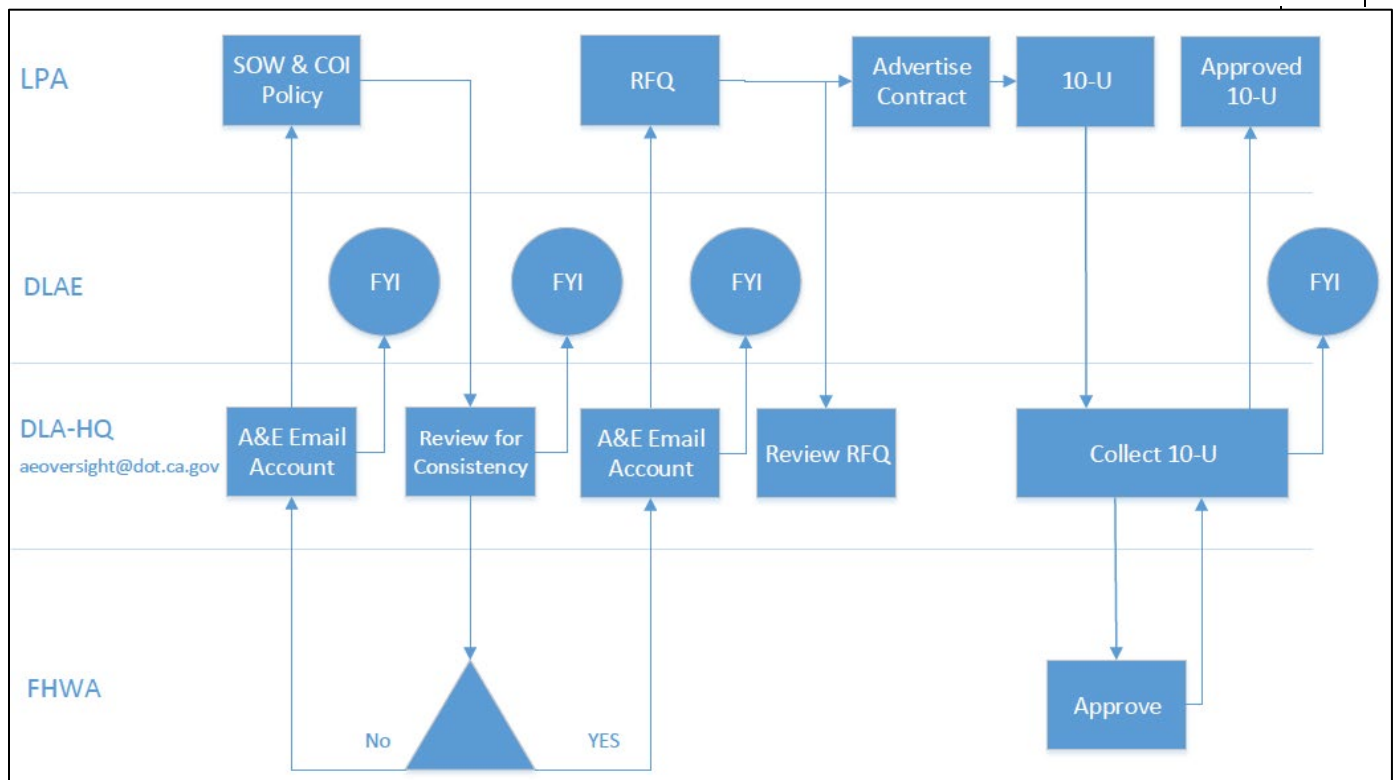


Figure 10-5: Consultant in a Management Support Role Flowchart

Construction Engineering Services

Under federal-aid regulations and state policy, the primary responsibility for general supervision of construction must remain with the local agency. The local agency must also ensure that the work is performed in accordance with the approved plans and specifications, by employing or retaining as a consultant a registered engineer for construction engineering services on the project.

All construction engineering activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is in responsible charge. These activities may include preparation of contract change orders, construction surveys, foundation investigations, measurement, and computation of quantities, testing of construction materials, checking of shop drawings, preparation of estimates, reports, and other inspection activities necessary to ensure that the construction is being performed in accordance with the plans and specifications. The construction engineering consultant's contract defines the relative authorities and responsibilities of the full-time employee of the local agency in charge of the project and the consultant's construction engineering staff.

If a technical inspection consultant is to provide professional assistance to the local agency, a formal consultant contract must be executed which follows this chapter's requirements. The contract shall provide for reviews at appropriate stages during performance of the work to determine if any changes or other actions are warranted. These reviews are to be made by the local agency.

10.1.10 PROGRAM MANAGEMENT

According to 23 CFR §172.5, local agencies are required to adopt written policies and procedures prescribed by Caltrans. The local agency shall adopt Caltrans Local Assistance Chapter 10: *Consultant Selection*. Local agencies are responsible for providing all resources necessary for the procurement, management, and administration of A&E consultant contracts including subcontracts. Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;

- Monitoring the consultant's work and compliance with the terms, conditions, and specifications of the contract;
- Preparing a consultant's performance evaluation when services are completed and using such performance data in future evaluation and ranking of consultant to provide similar services;
- Closing-out a contract;
- Retaining supporting programmatic and contract records, as specified in 2 CFR 200.333 and the requirements of this part;
- Determining the extent to which the consultant, which is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract;
- Assessing administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and providing for such sanctions and penalties as may be appropriate; and

- Resolving disputes in the procurement, management, and administration of engineering and design related consultant services.

An example resolution is located at:

<http://www.dot.ca.gov/hq/LocalPrograms/AE/2018/P&P-Adoption-Resolution.doc>












10.1.11 REFERENCES

- [23 CFR, Part 172](#)
Administration of Engineering and Design Related Service Contracts
<http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3>
- [40 USC, Section 1104](#)
Brooks Act <http://www.fhwa.dot.gov/programadmin/121205.cfm>
- [41 CFR](#)
Public Contracts and Property Management
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl
- [41 USC](#)
Public Contracts
<http://law.onecle.com/uscode/41/index.html>
- [23 USC](#)
Letting of Contracts
<http://www.fhwa.dot.gov/map21/docs/title23usc.pdf>
- [48 CFR, Chapter 1, Part 15.404](#)
<https://www.acquisition.gov/far/html/FARTOCP15.html>
- [48 CFR, Chapter 1, Part 31](#)
<https://www.acquisition.gov/far/html/FARTOCP15.html>
- [Title 48, Part 16 – Types of Contracts](#)
<http://www.elaws.us/subscriber/signin?returnurl=http://federal.elaws.us/cfr/title/4/10/2013/title48/chapter1/part16&IsHistory=1&AspxAutoDetectCookieSupport=1>
- [48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts](#)
<https://www.law.cornell.edu/cfr/text/48/part-27/subpart-27.3>
- [48 CFR 31.201-3](#)
<https://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec31-201-6.pdf>
- [48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900](#)
<https://www.gpo.gov/fdsys/granule/CFR-2002-title48-vol7/CFR-2002-title48-vol7-chap99>

- [2 CFR Part 200](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)
http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- [49 CFR, Part 26](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)
Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl
- [American Association of State Highway and Transportation Officials \(AASHTO\) Uniform Audit and Accounting Guide](http://audit.transportation.org/Pages/default.aspx)
<http://audit.transportation.org/Pages/default.aspx>
- [Caltrans Division of Procurement and Contracts Website](http://www.dot.ca.gov/dpac/index.html)
<http://www.dot.ca.gov/dpac/index.html>
- [California Labor Code, Section 1775](http://law.onecle.com/california/labor/1775.html)
<http://law.onecle.com/california/labor/1775.html>
- [Government Auditing Standards \(GAS\) issued by the United States Government Accountability Office](http://www.gao.gov/yellowbook/overview)
<http://www.gao.gov/yellowbook/overview>
- [Government Code Sections 4525 through 4529.5](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5)
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5>
- [OMB Circular A-110](https://www.whitehouse.gov/omb/circulars_a110)
Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
https://www.whitehouse.gov/omb/circulars_a110
- [Standard Environmental Reference \(SER\)](http://www.dot.ca.gov/ser/)
<http://www.dot.ca.gov/ser/>

FHWA: this is the new State-Only funded section that will be used for state-only funded projects.

10.2: STATE-ONLY FUNDED A&E CONTRACTS

	<i>Division of Local Assistance Minimum Requirements for State-only funded A&E Contracts</i>
	A. Written Procedures
	B. Conflict of Interest
	C. Records
	D. Full & Open Competition
	E. Selection Basis
	F. Publication
	G. Solicitation
	H. Cost Analysis
	I. Negotiations
	J. Audit and Review Process
	K. Exhibit 10-C.2: State-Only Funded A&E Consultant Contracts

10.2.1 GENERAL

Local Agencies are required to follow all applicable local and state regulations including those listed in LAPM Chapter 10 in accordance with their State Master Agreement. Although the requirements listed in this section are minimum requirements, the local agency shall use good engineering judgment and best practices to document their processes and procedures when procuring A&E contracts utilizing qualifications based selections.

All consultants must comply with 48 Code of Federal Regulations (CFR) Part 31: *Contract Cost Principles and Procedures*. Also, consultants and Local Agencies must comply with 2 CFR Part 200: *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, excluding sections §200.318-200.326 *Procurement Standards* (reference Federal Highway Administration December 4, 2014 Memorandum Action: 2 CFR 200 Implementation Guidance, Attachment A).

Agency state-only funded (SOF) agreements must contain the required federal fiscal provisions from 2 CFR 200 in all Division of Local Assistance funded agreements. Exhibit 10-R: *A&E Boilerplate Agreement Language* contains 2 CFR 200 requirements and may also be used in SOF agreements. Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

All proposed A&E contracts and supporting documents (including state-only funded) are subject to audit or review by Caltrans' Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government and required to follow LAPM Section 10.1.3 *A&E Consultant Audit and Review Process*.

For consultant contracts, procured with local or state funds, to provide services for federal-aid projects, or to oversee or manage other consultants providing these services, the Consultant in Management Support Role process must be completed to be eligible for reimbursement. Refer to Chapter 10.1.9 Miscellaneous Considerations: *Retaining a Consultant as an Agency Engineer or in a Management Support Role* <http://www.dot.ca.gov/hq/LocalPrograms/lam/LAPM/ch10.pdf>.

DBE contract goals are not required for state-only funded contracts.

This guidance is for contracts utilizing state funds only. If any federal funds are added or reimbursed, the federal process must be followed.

Non-A&E consultant contracts reference LAPM Section 10.3: *Non-A&E Contracts*.

Reference: *California Government Code Title 1, Division 5, Chapter 10, Contracts with Private Architects, Engineering, Land Surveying, and Construction Project Management Firms §4525-4529.5.*

10.2.2 DEFINITION OF A&E

Architectural, landscape architectural, engineering, environmental, and land surveying services includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

Construction project management means those services provided by a licensed architect, registered engineer, or licensed general contractor. Any individual or firm proposing to provide construction project management services shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

Environmental services mean those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

Reference: *California Government Code §4527*

10.2.3 MINIMUM AUDIT REQUIREMENTS

A. Written Procedures

Local agencies shall follow the minimum requirements listed below in addition to any local laws and regulations.

Reference: *California Government Code §4526*

B. Conflict of Interest

The local agency must develop and maintain a written code of conduct governing the performance of its employees engaged in the award and administration of state funded contracts, including the prevention of conflicts of interest.

References:

California Government Code §4526

California Government Code §1090

California Government Code §4529.12

C. Records

Local agencies shall keep adequate records of all contracts including the procurement, project management, accounting and financial administration.

References:

California Government Code §4529.14

California Government Code §4006

D. Full & Open competition

All A&E contracts shall be procured through a qualifications based selection utilizing open and fair competition. Evaluate at least three consultants using published evaluation criteria and rank these firms in order of preference.

References:

California Government Code §4526

California Government Code §4527

E. Selection Basis

Selection of a firm shall be based on qualifications and the order of ranked preference.

References:

California Government Code §4526

California Government Code §4527

F. Publication

Solicitations for A&E contracts shall be in a manner that is open and competitive.

Reference: *California Government Code §4527*

G. Solicitation

The solicitations shall include published evaluation criteria to rank in order of preference. Clearly define expectations in the solicitation in order to evaluate firms.

Reference: *California Government Code §4527*

H. Cost Analysis

An independent cost comparison to the consultant's cost proposal shall be done in order to ensure the contract is negotiated at a fair and reasonable price.

Reference: *California Government Code §4528*

I. Negotiations

Negotiations must be documented to verify a fair and reasonable contract has been executed using public funds.

Reference: *California Government Code §4528*

J. Audit and Review Process

A&E contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits. All agencies shall follow the Audit and Review Process as stated in LAPM Section 10.3: *A&E Consultant Audit and Review Process*.

<http://www.dot.ca.gov/hq/LocalPrograms/lam/LAPM/ch10.pdf>

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter10/10a.pdf>

Reference: *California Government Code §4529.14*

K. Exhibit 10-C.2: State-Only Funded A&E Contracts

Exhibit 10-C.2: *State-Only Funded A&E Consultant Contract Reviewers Checklist* must be sent to aeoversight@dot.ca.gov for review prior to contract award.

CA Government Code References

California GOV §1090

(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they

are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

California GOV §4006

Plans, specifications, work authorizations describing work to be performed, and all other information referred to in this chapter are open to inspection and examination as a public record.

California GOV §4525

For purposes of this chapter, the following terms have the following meaning:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

(b) "State agency head" means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(c) "Local agency head" means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(d) "Architectural, landscape architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(e) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.

(f) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

California GOV §4526

Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. In order to implement this method of selection, state agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services shall adopt by regulation, and local agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services may adopt by ordinance, procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public

agencies. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837.

In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Section 87100.

California GOV §4527

In the procurement of architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, the state agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(a) When the selection is by a state agency head, statewide announcement of all projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services shall be made by the agency head through publications of the respective professional societies. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him or her, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(b) When the selection is by a local agency head, the agency head may undertake the procedures described in subdivision (a). In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when these employees have a relationship with a person or business entity seeking a contract under this section.

California GOV §4528

(a) When the selection is by a state agency head the following procedures shall apply:

(1) The state agency head shall negotiate a contract with the best qualified firm for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services at compensation which the state agency head determines is fair and reasonable to the State of California or the political subdivision involved.

(2) Should the state agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the agency head determines to be fair and reasonable to the State of California or the political subdivision involved, negotiations with that firm shall be formally terminated. The state agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the state agency head shall terminate negotiations. The state agency head shall then undertake negotiations with the third most qualified firm.

(3) Should the state agency head be unable to negotiate a satisfactory contract with any of the selected firms, the state agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this chapter until an agreement is reached.

(b) When the selection is by a local agency head, the local agency head may undertake the procedures described in subdivision (a).

California GOV §4529

This chapter shall not apply where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest.

California GOV §4529.12

All architectural and engineering services shall be procured pursuant to a fair, competitive selection process which prohibits governmental agency employees from participating in the selection process when they have a financial or business relationship with any private entity seeking the contract, and the procedure shall require compliance with all laws regarding political contributions, conflicts of interest or unlawful activities.

California GOV §4529.14

Architectural and engineering services contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget.

California GOV §4529.20

This act seeks to comprehensively regulate the matters which are contained within its provisions. These are matters of statewide concern and when enacted are intended to apply to charter cities as well as all other governmental entities.

Federal Highway Administration Memorandum 2 CFR 200 Implementation Guidance
12/4/2014

Attachment A: FHWA 2 CFR 200 Uniform Guidance – Questions and Answers

Question 21: “Will the FHWA/USDOT provide a waiver of the requirements in 2 CFR 200.317 for subrecipients to comply with State procurement requirements or other policies and procedures approved by the State (200.317)?”

Answer: Yes. The USDOT requested and received an OMB waiver of the requirements in 2 CFR 200.317 concerning procurement by subrecipients. This waiver provides an exception to the requirement for all subrecipients of a state to follow the procurement requirements in Sections 200.318 through 200.326. The waiver will allow States and subrecipients to continue to use state-approved procurement procedures as they did under part 18 prior to the adoption of the Uniform Guidance.

Figure 10.2 State-Only Funded Procurement Criteria

To comply with CA Government Code (GC) 4525-4529.5, 48 Code of Federal Regulations (CFR) Part 31: Contract Cost Principles and Procedures, 2 CFR Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (excluding sections 200.318-200.326), Caltrans Local Assistance Procedures Manual (LAPM) and other applicable STATE and FEDERAL regulations.

A&E Consultants		
Requirements for LGAs that use State funding		Use State requirements below
A.	Written Procedures	GC 4526
B.	Conflict of Interest	GC 1090, GC 4527(b), GC 4529.12
C.	Records	GC 4529.14, 4006
D.	Full & Open Competition	GC 4526, GC 4527, GC 4529.12
E.	Selection Basis	GC 4526*, 4527
F.	Publication	GC 4527
G.	Solicitation	GC 4527
H.	Cost Analysis	GC 4528
I.	Negotiations	GC 4528
J.	A&I Audit & Review Process	GC 4529.14, LAPM Ch. 10, 2 CFR 200
K.	Exhibit 10-C.2: State-Only Funded A&E Consultant Contracts	LAPM Ch. 10.2

*Mini Brooks Act - State regulation requiring the initial selection of engineering and architecture firms be based upon qualifications and experience rather than by price. Price is then later negotiated.

10.3: NON-A&E CONTRACTS

SCOPE

This section covers the procurement requirements for the services that are not included in Section 10.1 Federal and Section 10.2 State-Only. This guidance is for contracts utilizing federal-aid funds and state funds. Federal regulations refer to state and local regulations for non-A&E type contracts. Although local agencies are required to follow 2 CFR 200: *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* for all contracts, the Procurement Standards section §200.318-200.326 is exempt. The guidance in this section follows the established regulations in the California Public Contract Code. Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

Local agency shall designate one person within the local agency as a contract manager.

(PCC 10348.5)

DETERMINING NON-A&E

After identifying that there is a need for consulting services, the local agency shall determine that the services needed are more of a technical nature and involve minimal professional judgement and that requiring a cost proposal would be in the public's best interest. These type of consultant services that are not directly related to a highway construction project or that are not included in the definition of engineering and design related services are considered non-A&E. The services must not be included in Section 10.2.2 Definition of A&E.

The determining factor is whether the services being procured are related to a specific construction project and whether the services require work to be performed, provided by, or under the direction of a registered engineer or architect.

EXAMPLE OF DETERMINING NON-A&E

Material testing has been requested to ensure quality assurance on a construction project. The service includes only performing the material test and providing material test data. Although the service is related to a construction project, the overall service did not provide an evaluation or a discipline report. In this example, the local agency can determine that the service provided is more of a technical nature and is therefore a non-A&E service.

The following is a list of the more common non-A&E services:

- Right-of-Way Appraisal
- Right-of Way acquisition activities
- Conducting public outreach during environmental clearance or construction
- Active Transportation Program educational and outreach activities
- Intelligent Transportation System (ITS)
- Non-Infrastructure

INTELLIGENT TRANSPORTATION SYSTEM (ITS) PROJECTS

Intelligent Transportation System (ITS) means electronic, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. ITS projects are those that in whole or in part, funds the acquisition of technologies or systems of technologies that provide significant contributions to the provision of one or more ITS user services as defined in the National ITS Architecture.

The federal-aid procurement regulations identify three possible contract procurement procedures for ITS projects including engineering and design related services (A&E), construction, and non-engineering/non-architectural (non-A&E).

If ITS projects include physical installation of field devices and/or communications infrastructure, such as new traffic signals, new controller cabinets, changeable message signs, radio and computers, vehicle detectors, and conduits for cabling in the roadway, then that work and required equipment usually meets the definition of construction. The construction contract must be procured based on competitive bidding. If the ITS project involves software development, system integration, hiring engineers and specialists for ITS design and installation support, inspection, design documentation, training and deployment, it may be considered an engineering and design services contract and the contract must be procured as an A&E consultant contract. If the scope of work is unclear as to whether it is an A&E type of work, contact aeoversight@dot.ca.gov for assistance.

However, if an ITS project does not meet either the definition of construction or engineering and design services, then the contract may be considered to be a non-A&E consultant contract.

Examples of non-A&E consultant contracts are:

- The procurement of hardware and software associated with incident management system;
- Software systems for arterial and freeway management systems;
- Operating the 511 traveler information service;
- Nonprofessional services for system support such as independent validation and verification, testing and specification development;

For more information regarding Intelligent Transportation Systems (ITS) Program procurement requirements, refer to LAPG, Chapter 13 LAPG Chapter 13: Intelligent Transportation Systems.

NON-INFRASTRUCTURE PROJECTS

Non-infrastructure (NI) projects are those transportation-related projects that do not involve either engineering design, Right-of-Way acquisition (for additional guidance refer to LAPM Chapter 13), or the eventual physical construction of transportation facilities.

Procurement of non-A&E consultant contracts associated with non-infrastructure projects must follow Non-A&E procurement procedures described in this chapter. For more information on NI projects, refer to LAPM Chapter 3: Project Authorization.

GOVERNING REGULATIONS AND CODES FOR NON-A&E

When procuring non-A&E services with federal-aid funds, Local agencies must comply with 2 CFR Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, excluding sections §200.318-200.326 Procurement Standards (reference Federal Highway Administration December 4, 2014 Memorandum Action: 2 CFR 200 Implementation Guidance, Attachment A). Local agencies must follow the same policies and procedures that the State uses for procurement with its non-Federal funds. When procuring non-A&E services with federal-aid and state-only funds, the governing procurement code is Public Contract Code 10335-10381.

PROCUREMENT OF NON-A&E CONSULTANT CONTRACTS

All non-A&E procurements contracts must be conducted in a manner providing full and open competition consistent with federal and state standards. Local agency must meet the code of conduct governing the performance of its employees engaged in the award and administration of federal-aid and state-funded contracts, including the preventions of conflict of interest in PCC 10410.

The following are the fundamental rules when procuring a non-A&E consultant contract.

1. The request for proposal (RFP) shall not limit the competition directly or indirectly to any one consultant. The RFP must be publicized and all evaluation factors and their relative importance identified. (PCC 10339)
2. Splitting a single transaction into a series of transactions for the purpose of evading the procurement requirements is not allowed. (PCC 10329)
3. Local agency shall secure at least three competitive proposals for each contract. (PCC 10340)
When receiving less than three proposals, refer to the Cost-Effective/Public Interest Finding in this section as an alternative to re-advertisement.
4. No proposals shall be considered which have not been received at the place, and prior to the closing time as stated in the RFP. (PCC 10344(a))
5. Local agency must have a written procedure for evaluating proposals. (PCC 10344)

RFP BASIC REQUIREMENTS

- A. There are two general types of consulting service contract solicitations:
- B. Request for Proposal using Cost only
- C. Request for Proposal using Cost and Qualifications

The local agency must include the following in the request for proposal:

- A. A clear, precise description of the work to be performed or services to be provided.
- B. Description of the format that proposals shall follow and the elements they shall contain
- C. The standards the agency will use in evaluating proposals. This includes qualifications and certifications if applicable.
- D. The date the proposals are due.

- E. The procurement schedule that the local agency will follow in reviewing and evaluating the proposals.

(PCC 10344)

ADDITIONAL REQUIREMENTS AND EVALUATION CRITERIA

Additional Requirements for Request for Proposal using Cost only

- A. Local agency must require consultants to submit their proposals and cost in a separate, sealed envelope.
- B. Local agency shall determine those that meet the format requirements and the standards specified in the request for proposal.
- C. The sealed envelopes containing the price and cost information for those proposals that meet the format requirements and standards shall then be publicly opened and read.
- D. Contract must be awarded to the lowest responsible consultant meeting the standards.

(PCC 10344(b))

Additional Requirements for Request for Proposal using Cost and Qualifications

- A. Local agency must include in the proposal the description of the evaluation and scoring method. Substantial weight in relationship to all other criteria utilized shall be given to the cost amount proposed by the consultant.
- B. Local agency shall determine those that meet the format requirements specified in the RFP.
- C. Local agency evaluation committee must evaluate and score the proposals using the methods specified in the RFP. All evaluation and scoring sheets shall be available for public inspection after the committee scoring process. Evaluation committee should comply to the prevention of conflict of interest in PCC 10410.
- D. The non-A&E contract shall be awarded to the consultant whose proposal is given the highest score by the evaluation committee.

(PCC 10344(c))

When using RFP (Cost and Qualifications), the criteria used to evaluate the consultant's proposals must have a logical foundation within the scope of work or within other technical requirements contained in the RFP. Each criterion must have a weight or level of importance, and it is recommended that total possible score for the evaluation criteria be one hundred (100) points. The proposed cost should be at least thirty percent (30%) of total points in evaluation criteria.

An example RFP for non-A&E is provided on the Local Assistance website at <http://www.dot.ca.gov/hq/LocalPrograms/AE/2016/RFP-Example-Non-AE.docx> and may be modified.

Submission of *Exhibit 10-C Consultant Contract Reviewers Checklist* to Caltrans HQ for acceptance is not required for non-A&E consultant contracts.

CONSULTANT'S PROPOSAL

The consultant's proposal should include the following information:

- *Consultant Project Manager* – qualifications, roles and responsibilities.
- *Methodology* - description of work and overall approach, specific techniques that will be used and specific administrative and operations expertise to be used.
- *Workplan and Work Schedule* - the technical proposal should include activities and tasks, and their delivery schedule.
- *Personnel* - List of personnel who will be working on the project, and their resumes.
- *Facilities and resources* (If applicable) - Explanation of where the services will be provided and what type of equipment is needed to perform services.
- *Sub-contracts* - Identify all sub-contracts that are to be used, description of each and the work by each sub-consultant/sub-contractor. No work shall be subcontracted unless listed in the technical proposal. Sub-consultant resumes should be provided.
- *References* - The technical proposal should provide at least three (3) clients for whom the proposer has performed work of similar nature to the request.

COST PROPOSAL WORKSHEET

The RFP should provide a standard format for cost proposal that all proposers must include in their proposal. The cost proposal format can be broken down by specific tasks, showing hourly labor rates, level of effort and material, and/or by milestones and deliverables.

Local agency is not required to award a contract if it is determined that the contract price is not reasonable. (PCC 10340(c))

DBE CONSIDERATION

DBE consideration is required on all federal-aid funded contracts including non-A&E.

ADMINISTRATIVE REQUIREMENTS

Advertisement for RFPs may be through the local agency website, local publications, and national publications. Minimum solicitation time is 14 calendar days. The solicitation should inform potential qualified consultants that questions must be submitted in writing to the Agency Contract Manager/Administrator by a specified date and time. All pertinent technical information and answers to consultant's questions shall be provided to all potential consultants. Written responses to all questions will be collectively compiled and provided as an addendum.

A proposal may be considered nonresponsive and rejected without evaluation if all required information is not provided. Proposals without information regarding, or not meeting, the required DBE utilization goal or without a Good Faith Effort documentation, late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

No consultant who has been awarded a consulting service contract may be awarded a subsequent contract for the services or goods which are required as an end product of the consulting service contract, unless the subcontract is no more than 10 percent of the total monetary value of the consulting services contract. Excludes A&E contracts.

(PCC 10365.5)

Contracts may be modified or amended only if the contracts so provide. Amendments must be requested and executed prior to the termination date of the most recently approved original or amended contract. All records of contract activities shall be kept for three years after federal final voucher E-76 or state final voucher for State-Only funds. Costs are reimbursable after state allocation by the California Transportation Commission (CTC) and/or the issuance of the federal E-76. The per diem rate shall not exceed the state rate. Contract Managers are responsible for monitoring expenditures on all contracts and verifying categories of work that require prevailing wage. A person in Responsible Charge of contract management is required for all federally funded projects.

ORAL PRESENTATIONS OPTIONAL

When oral presentations are required by the local agency, the evaluation criteria must include factors/sub-factors and weights used to score the proposers performance at the oral presentation. The evaluation committee will only be able to score each proposer based upon these criteria. The Contract Manager/Administrator should develop a set of questions related to the scope of work or the project to be asked during the evaluation committee question and answer (Q & A) section of the oral presentations. All proposers are asked the same questions for consistency.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

COST-EFFECTIVE/PUBLIC INTEREST FINDING

A minimum of three proposal must be evaluated to establish effective competition. Any agency that has received less than three proposals on a contract shall document the names and addresses of the firms or individuals it solicited for proposals. Prepare an explanation as to why less than three proposals were received. When only two proposals are received, a justification must be documented to proceed with the procurement. When only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) (LAPM Exhibit 12-F: Cost-Effective/Public Interest Finding) must be documented. In either case, the re-advertisement of the RFP should be considered as an option. Retain document as supporting documentation in the contract file.

(PCC 10340(c))

PROTEST/APPEALS/REINSTATEMENT PROCEDURES

Both state and federal regulations require well-defined protest/reinstatement procedures. It is essential that the procedures include a reasonable opportunity for the prospective consultant to present his/her case. The appeals procedures strengthen the process by which the contracting agency reaches its ultimate goal and helps defends its action against a claim of lack of due process. A termination clause and a provision for settlement of contract disputes are required. Protest procedures and dispute resolution processes should be in accordance with PCC 10345.

EXHIBIT 10-A
A&E CONSULTANT FINANCIAL DOCUMENT REVIEW REQUEST
Caltrans Division of Local Assistance

(Completed by Local Agencies, One per Contract)
(For New Proposed A&E Consultant Local Agency Contracts of \$150,000 or Greater)
(For Amendments, use only when there are additional subconsultants or changes in ICR)

EMAIL TO:

California State Department of Transportation
Independent Office of Audits and Investigations
conformance.review@dot.ca.gov
Attention: Audit Manager, External Contracts-Local Agencies

Date: _____
Federal/State Project _____
Number: _____

The following applicable documents are attached for proposed A&E Consultant Contract No. _____ at
a proposed Contract or Amended amount of \$ _____ with _____
(Prime Consultant's full legal name)

The Project Description is **(Identify if an Amendment or a New Contract)**: _____

Participation Amounts for Prime and all Sub-consultants on this contract are:

Consultant's Name	Participation Amount	Category 1, 2, 3, 4, 5 or N/A (see below)	Caltrans ICR Acceptance ID # (if available)

Note: Add pages if necessary.

N/A applies to Consultants with participation amount less than \$150,000

I verify that we have received from the prime & sub-consultants on this contract and are forwarding to A&I, the financial documents that meet A&I's minimum requirements for contracts totaling >= \$150,000* (as listed below) as well as the financial documents required under each Consultant's Category Requirements as specified in the Exhibit 10-A Checklist:

Minimum Requirements

- 1) A&E Consultant Financial Document Review Request Letter (Exhibit 10-A) - Completed for each contract, by Local Agency
- 2) Cost Proposals (Examples at Exhibit 10-H1 through 10-H4) – Completed by Consultants
- 3) Consultant Annual Certification of Indirect Costs and Financial Management System (Exhibit 10-K) - Completed by each Consultant (Except for firms requesting the Safe Harbor Rate)
- 4) Points of contact for Local Agency and Prime Consultant

Name _____ Signature _____

Title _____

Name of Local Agency and Department _____
Address _____

***Consultants with multi-year Contracts that begin at \$150,000 or more, with Indirect Cost Rates (ICR) that change every year are required to follow the same minimum and category requirements for each fiscal year ICR proposed.**

**CALTRANS A&I FINANCIAL DOCUMENT REVIEW REQUIREMENTS
FOR ARCHITECTURAL AND ENGINEERING (A&E) CONSULTANTS
ON LOCAL GOVERNMENT AGENCY CONTRACTS**

All Prime & Sub-consultants must submit the following minimum requirements for contracts totaling \$150,000:

- 1) A&E Consultant Financial Document Review Request Letter (Exhibit 10-A) - Completed by Local Agency for each contract (1)
- 2) Cost Proposals (*Examples at Exhibit 10-H1 through 10-H4*) - Completed by Consultants
- 3) Consultant Annual Certification of Indirect Costs and Financial Management System (Exhibit 10-K) - Completed by each Consultant (*except for firms requesting Safe Harbor Rate*)
- 4) Local Agency and Prime Consultant's Points of Contact

Type of Financial Documents and Information for ICR FYE proposed *	If not Categories 1-3				
	CATEGORY 1: Firms with Cognizant Approval Letter for ICR FYE proposed	CATEGORY 2: Firms with Caltrans Acceptance ID Number for ICR FYE proposed **	CATEGORY 3: Firms Requesting Safe Harbor Rate (SHR)	CATEGORY 4: Contracts >= \$150K to < \$1M and participating amounts >= to \$150K	CATEGORY 5: Contracts >= \$1M and participating amounts >= \$150K
	For all Prime and Sub-consultants				
Cognizant Approval Letter for the FYE proposed (<i>issued by cognizant state, which is based on Location of Accounting Records as stated in AASHTO ICQ</i>)	✓				
Caltrans' ICR Acceptance ID #s for ICR FYE proposed **		✓			
FAR Compliant Indirect Cost Rate (ICR) Schedule including FAR References and Disclosure Notes (2) ★ <i>Prime Consultant must have a CPA Audited ICR Report if contract is >= \$1M, regardless of Prime Consultant's participation amount.(2)</i>				✓	★
Prior Year ICR Schedule					✓
AASHTO Internal Control Questionnaire (ICQ) Appendix B (3)				✓	✓
Post Closing Trial Balance (4)					✓
Vacation/Sick Policy					✓
Bonus Policy					✓
Executive Compensation Analysis (ECA) (4)					✓
Prevailing Wage (PW) Policy for PW contracts (5)	✓	✓	✓ ***	✓	✓
When applicable, additional documents may be requested:					
Supplemental reconciliation schedule (to tie the proposed ICR Schedule to Trial Balance) (4)					
Chart of Accounts					
Income Statement (4)					
Labor Summary Report (6)					
Related Party Rent Analysis (4)					
Vehicle, Equipment, and Other Direct Costs Schedules (4)					
Safe Harbor Rate Documents:					
Consultant Certification of Eligibility of Contract Costs and Financial Management System (Attachment 1R)			✓		
Additional Documents Required	2	2	2	3	8

* ICR FYE = Indirect Cost Rate Fiscal Year End. All items on this checklist may not be all inclusive. A&I reserves the right to request additional documents as deemed necessary.

** Caltrans ICR Acceptance ID # is an identification number issued by Caltrans upon review and acceptance of consultant's indirect cost rate(s) schedule for a specific fiscal year. This ID # can be referenced for use on future contracts using the same FYE ICR.

*** Firms using SHR can be reimbursed for the prevailing wage deltas either as an Other Direct Cost or as an Overhead/Indirect Cost - refer to A&I's PW Interpretive Guidance on www.dot.ca.gov/audits.

- (1) Local Agencies are required to complete Exhibit 10-A and include all applicable required documents upon submission.
- (2) FAR Compliant ICR schedule includes FAR References, and Disclosure Notes. If the Disclosure Notes are not provided, A&I will provide a first year waiver of this requirement; however, the notes will be required on future fiscal year ICR schedules. See AASHTO Guide Chapter 5, 8, and 11 for references. The fiscal year-end indirect cost rate (ICR) to be applied to the Agreement is based on the submission package received by A&I. For financial document packages received from January 1, 2018 to June 30, 2018, the 2016 FYE ICR must be submitted or the FYE 2017 ICR if available. For financial document packages received from July 1, 2018 to December 31, 2018, the 2017 ICR must be submitted.
- (3) Go to AASHTO website @ audit.transportation.org, for Appendix B-Internal Control Questionnaire
- (4) Accounts and balances must match costs proposed on the FAR Compliant ICR schedule, as per 48 CFR Part 31.
- (5) Prevailing Wage (PW) contract requires written PW Policy. It must be on the company's letterhead, signed, and dated by company's official to show accounting methods used on delta base and delta fringe - refer to A&I's PW Interpretive Guidance on www.dot.ca.gov/audits
- (6) Document/Report must summarize total labor costs that agree to total direct labor and total indirect labor amounts included in the fiscal year ICR schedule proposed on the contract. Uncompensated overtime must be presented for salaried/exempt employees that are not compensated for hours worked in excess of 8 hours a day/40 hours per week/2080 hours per year. Refer to Uncompensated Overtime Interpretive Guidance on www.dot.ca.gov/audits.

**EXHIBIT 10-C.2: STATE-ONLY FUNDED
A&E CONSULTANT CONTRACT REVIEWERS CHECKLIST**

(Not applicable for Non A&E Contracts)

Date: _____ **Amendment:** _____ **District:** _____

Agency Name: _____

State Project Number: _____

Local Agency Contract Number/Solicitation Number: _____

Consultant Name: _____

Original Contract Period: _____ **Begin:** _____ **End:** _____

Original Contract Dollar Amount: _____ **Funding:** _____ *State*

No.	DESCRIPTION
A.	PROCUREMENT PLANNING
1	Description of need for consultant: _____
2	Local agency contract administrator information
a	Name: _____
b	Phone: _____ Email: _____
3	Do you have a scope of work?
	Is the schedule specified in the scope of work? _____
4	Cost estimate _____
B.	SOLICITATION DOCUMENTS AND ADVERTISEMENT
1	Consultant selection committee and conflict of interest
a	Was Conflict of Interest form (EXHIBIT 10-T) signed by all? _____
b	Was Conflict of Interest form (EXHIBIT 10-T) dated by all? _____
2	Does the solicitation contain a procurement schedule? _____
3	Evaluation criteria and weights (EXHIBIT 10-B)
	Were weight values assigned to criteria? _____
4	Records of publication for RFP or RFQ
	Was widespread publication used to advertise the RFP/RFQ (EG newspaper, web posting, Planetbids, etc.)? _____
	Specify: _____
5	Records of response to solicitation
a	How many consultants responded to this solicitation? _____
b	Does your agency have a proposal responsiveness checklist? _____
c	Were records of response documented (e.g. log sheet, copies of time-stamped envelopes, other)? _____
	Specify: _____
C.	EVALUATION AND SELECTION
1	Documentation of consultant selection
a	How many consultants were evaluated? _____
b	Was evaluation criteria the same as in solicitation? _____
c	Original score sheets and final rankings
	Was final score sheet(s) signed by each evaluator? _____
2	Develop top ranked consultants

No.	DESCRIPTION
	Did you rank all candidates? _____
3	Cost proposal
a	Is cost proposal in Exhibit 10-H format or equivalent complete and in the correct form based on the method of payment? _____
b	Payment Method: _____
c	Is direct labor cost proposal broken down by job classifications and types of costs and/or rates? _____
d	Is the ICR for current fiscal year? _____
e	Are key personnel identified? _____
f	Are "other direct cost" itemized by items of work quantity, unit price and total for each item (EXHIBIT 10-H)? _____
4	Audit and review documents before contract execution
a	Was proposed ICR submittal sent to A&I for approval (EXHIBIT 10-A)? _____
b	What is A&I's ICR decision? _____
c	Does the final cost proposal reflect the adjusted or accepted ICR? _____
5	Record of cost negotiations
a	Did you perform cost analysis (wage rates, fixed fee, other direct costs, indirect costs and _____
6	Was price used as an evaluation factor? _____
D.	FOR CONSULTANT CONTRACT AMENDMENT ONLY
1	Amendment number: _____
2	Start date: _____ End date: _____
3	What is A&I's ICR decision? _____
4	Amendment amount: _____ Total amended contract amount: _____
5	Description of need for amendment: _____
6	Has the scope of work changed? _____

Note: Please submit EXHIBIT 10-C.2 using fillable PDF along with a signed copy via email.

I certify the information I provided on and in connection with this form is true, accurate and complete and supporting documents are filed in our office filing system. I also understand that any false statements or omissions on this document may be grounds for disqualification from State funding.

Local Agency Contract Administrator

Date

I have reviewed the Exhibit 10-C.2 Consultant Contract Reviewers Checklist but I have not reviewed the supporting documentation in detail. The Exhibit 10-C.2 checklist appears to have been prepared in accordance with Chapter 10 "Consultant Selection" of the Local Assistance Procedures Manual. I have not conducted a comprehensive review of the supporting documentation and cannot, therefore, attest that there are no errors, ambiguities, or omissions in the Exhibit 10-C.2 checklist. Caltrans assumes no liability for any defect in the Exhibit 10-C.2 by virtue of its review of this

Caltrans DLA

Acceptance Date

**INSTRUCTIONS FOR STATE-ONLY FUNDED
A&E CONSULTANT CONTRACT REVIEWERS CHECKLIST
(Not applicable for Non-A&E Contracts)**

Submittal of Exhibit 10-C.2 for new or amended consultant contracts is required for all state-only funded A&E consultant contracts for Caltrans review and acceptance prior to contract award. Complete Sections A, B, and C except for contract amendments. For amendments, complete Section D only. A designated contract administrator must prepare and sign EXHIBIT 10-C.2.

EXHIBIT 10-C.2 must be submitted using fillable PDF along with a signed copy via email to aeoversight@dot.ca.gov in the following format State Project Number/District/Agency/New (or Revised).

A. PROCUREMENT PLANNING

1. DESCRIPTION OF NEED FOR CONSULTANT

Describe need for consultant: How was the need for a consultant justified? Compare the project schedule and objectives with local agency capabilities, staff expertise and availability, and funding resources.

2. LOCAL AGENCY CONTRACT ADMINISTRATOR (NAME & CONTACT INFO)

The Local Agency Contract Administrator must be a qualified local agency employee, or have staff that is qualified to ensure the consultant's work is complete, accurate, and consistent with the terms and conditions of the consultant contract.

- a. Include contact information: name of contract administrator.
- b. Phone and email of contract administrator.

3. SCOPE OF WORK

Indicate if scope of work (SOW) is included in solicitation and contract. SOW means all services, work activities, and actions required of the consultant by the obligations of the contract.

- a. If the contract is for a consultant in a management role it will require approval of the SOW and Conflict of Interest (COI) prior to advertisement by FHWA and approval of Exhibit 10-U by FHWA prior to contract execution in order for the consultant to be considered appropriate to manage or oversee a federal-aid contract.
- b. Schedule of work from work breakdown structure (WBS) helps to determine the schedule of contract delivery and must be included in the scope of work to increase accountability and efficiency of a contract.

4. COST ESTIMATE

A cost estimate is needed for cost analysis and contract negotiation.

B. SOLICITATION DOCUMENTS AND ADVERTISEMENT**1. CONSULTANT SELECTION COMMITTEE AND CONFLICT OF INTEREST**

Consultant selection committee reviews submittals from consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals.

- a. Exhibit 10-T should be completed by all panel members and anyone involved in the procurement process, and include signatures and dates.
- b. Completed Exhibit 10-T includes all applicable boxes checked and the contract administrator's signature verifying no conflicts of interest.

2. PROCUREMENT SCHEDULE

Provide an estimated schedule for the procurement process. Establish a submittal deadline for responses to the RFP/RFQ that provides sufficient time for interested consultants to receive notice, prepare, and submit a proposal. A contract procurement schedule must be completed before advertising the contract and included it in the solicitation document, identifying key dates for consultant selection activities.

3. EVALUATION CRITERIA AND WEIGHTS (EXHIBIT 10-B)

The criteria and relative weights must be included in the RFP/RFQ, and the same criteria and relative weights must be used on the evaluation sheets. See Exhibit 10-B for example criteria. The evaluation criteria **MUST** have weights in order to properly evaluate the submittals. The criteria **MUST** be the same as what was listed in the solicitation document. Any changes not made through an addendum render the contract invalid. Consultants should be initially ranked based on raw data and the final ranking based on the sum of the initial ranking.

4. RECORDS OF PUBLICATION FOR RFP OR RFQ

List the platform that was used to advertise the RFP/RFQ: A public forum must be used. Acceptable advertisements include, although not limited to: public clearinghouse, Planetbids, Public Purchase, and local agency's website.

5. RECORDS OF RESPONSE TO SOLICITATION

- a. A minimum of three proposals must be received and evaluated.
- b. The Contract Administrator must evaluate each SOQ/SOP and verify each proposal contains all of the forms and other information required by the solicitation.
- c. All proposals received should be documented (e.g. log sheet, copies of time-stamped envelopes, etc.), and copies must be kept in agency's files.

C. EVALUATION AND SELECTION**1. DOCUMENTATION OF CONSULTANT SELECTION**

- a. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended. All supporting

documentation must be retained in the project files for the required retention period in the event an audit or review is performed.

- b. Evaluation criteria must be the same as in the solicitation from which a qualifications-based-selection was conducted.
- c. Original score sheets complete with signatures must be in the file. Spreadsheets alone are not an acceptable method of showing evaluation. All evaluators must conduct an independent review and have a signed score sheet for each evaluation (or all evaluations on one sheet per evaluator).

2. DEVELOP TOP RANKED CONSULTANTS AND NOTIFY ALL INTERVIEWEES

Three or more highest ranked consultants (short listed) will be interviewed and a final ranking of the highest ranked consultants must be developed. Notes should be kept explaining why a particular consultant was not selected if requested.

Interviews are optional and should be listed in the solicitation. Interviews are structured and conducted in a formal manner. Each consultant to be interviewed is sent an invitation to the interview, with an agenda and timeline. A copy of the draft proposed contract, defining the standard contract language/boilerplate is also provided. Reference checks shall be completed and other information gathered before the interviews are conducted. All oral interviews must be evaluated including signatures and dates.

3. COST PROPOSAL

- a. All cost proposals need to be in the same format as Exhibit 10-H or equivalent and contain all of the cost components including direct, indirect, other direct, and fee.
See <http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter10/10h.pdf> for sample form for each method of payment.
- b. The method of payment must be specified in cost proposal. Four methods are permitted depending on the scope of services to be performed: Actual Cost-Plus-Fixed Fee; Cost Per Unit of Work; Specific Rates of Compensation; Lump Sum.
- c. Cost proposal must identify classifications to be billed. Labor costs must be broken down to direct and indirect.
- d. ICR must be a given current fiscal year.
- e. All key personnel must be identified in cost proposal.
- f. Cost proposal must include other direct costs and supporting calculations (EXHIBIT 10-H)
- g. The determination of the amount of the fixed fee/profit shall take into account the size, complexity, duration, and degree of risk involved in the work.

4. AUDIT AND REVIEW DOCUMENTS

For contracts equal to or greater than \$150,000, an Exhibit 10-A: *A&E Consultant Audit and request Letter and Checklist* and associated documents (all prime and sub-consultants) must be submitted to A&I for state funded contracts. The firm will be listed on A&I's website, if the firm's annual indirect cost rate has been accepted by A&I and shown with the identification number and the applicable fiscal year.

- a. Proposed indirect cost rate on all contract proposals are subject to review by A&I prior to execution.
- b. The review may result in acceptance, adjustment, or denial of proposed ICR. The final cost proposal must be revised if applicable to reflect the adjusted or denied ICR.
- c. Any findings by A&I need to be resolved prior to contract execution or the contract could be

considered ineligible for state funding.

5. RECORD OF COST/PROFIT NEGOTIATIONS

Selected/best-qualified consultant's cost elements must be analyzed including necessity for and reasonableness (verification of cost or price information not comparing cost or price data). An analysis and negotiation is needed in order to ensure that consultant services are obtained at a fair and reasonable cost.

- a. Cost analysis, i.e., verifying the cost in the cost proposal from the top-ranked consultant and evaluating the specific elements such as direct salary or wage rates, fixed fee, other direct costs, indirect costs and profits. Cost Analysis is the analysis of the separate cost elements of a service to verify proposed costs are reasonable for the work to be performed and in compliant with Federal cost principles. Cost Analysis is used to verify direct cost in consultant's cost proposal to actual costs of labor, products and services and to determine if the costs are reasonable. Price Analysis (comparisons with previous prices) may be included, provided Cost Analysis was performed on the previous prices, reasonableness was determined and the previous contracted work is substantially the same.

6. EVALUATION FACTOR

For A&E contracts, price cannot be used as an evaluation factor. Price should not be considered until negotiations. Only the consultant chosen for negotiations should have their cost proposal opened (all other proposals should be returned to sender unopened or disposed of according to agency policy after contract execution).

D. FOR CONSULTANT CONTRACT AMENDMENT ONLY

1. AMENDMENT NUMBER

Every contract amendment must have an amendment number and that amendment number must be specified in the EXHIBIT 10-C.2.

2. SPECIFY MAXIMUM LENGTH OF CONTRACT AMENDMENT

Specify a reasonable maximum length of consultant contract amendment period by indicating start date of the amendment and end date of the total new-contract period.

All contract amendments must be fully executed before the ending date of the contract. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for state reimbursement.

3. WHAT IS A&I'S ICR DECISION?

For amended contracts equal to or greater than \$150,000, with a change in ICR, addition of consultants, or name change of consultants, an annual Exhibit 10-K: *Consultant Annual Certification of Indirect Cost and Financial Management System* must be submitted to A&I for review. Proposed changes to indirect cost rates on all contract proposals are subject to review by A&I prior to contract award. The review may result in acceptance, adjustment, or denial of proposed ICR. The final cost proposal must be revised if applicable to reflect the adjusted or denied ICR.

4. TOTAL AMENDED CONTRACT AMOUNT

Specify the amendment amount and maximum total amount of amended contract (includes original contract plus amount added) that may be awarded. A&E Consultant Audit and Review Process of LAPM Chapter 10 shall apply to the entire contract and must be completed prior to execution of the contract amendment.

5. DESCRIPTION OF NEED FOR AMENDMENT

Describe need for amendment of the existing project schedule and objectives: How was the need for an amendment justified? How has the original project been handled and why is it required to be modified? (e.g.: Extra time, added work, or increased costs). Only work within the original advertised scope of services shall be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for state reimbursement.

6. HAS THE SCOPE OF WORK CHANGED?

Scope of work and preparation of amendments must be clearly stated in EXHIBIT 10-C.2 and the amendment contract to ensure that any changes to the scope are within the constraints of the original RFP/RFQ.

Only work included within the original advertised scope of services and evaluation criteria of the solicitation from which a consultant was selected based on qualifications to perform may be incorporated into a contract. Necessary or desired services which are outside of the advertised scope from which the qualifications based selection was conducted shall be procured under a new advertisement, accomplished with in-house contracting agency staff, or performed under an existing on-call contract which allows for the desired services, necessary qualifications, costs, and schedule.

INDIVIDUAL A&E TASK ORDER DBE TRACKING SHEET Please fill out form in order

Exhibit 10-G

CONSULTANT NAME	CONTRACT NUMBER	FEDERAL PROJECT NUMBER	TASK ORDER NUMBER
ADDRESS			
CONSULTANT CONTRACT ADMINISTRATOR NAME	PHONE NUMBER	E-MAIL	
PROJECT TITLE:			
PROJECT LOCATION:			
SCOPE OF WORK			
TOTAL MASTER CONTRACT AMOUNT: _____ END OF CONTRACT DATE: _____			
TASK ORDER AMOUNT: <u>\$ 1.00</u> TASK ORDER BEGIN DATE: _____ TASK ORDER END DATE: _____			

TOTAL DBE CONTRACT ESTIMATE OF THIS TASK ORDER

CONSULTANT\SUBCONSULTANT	DESCRIPTION OF WORK	AMOUNT (NON-DBE)	AMOUNT (DBE)	% OF DBE
				0.00%
				0.00%
				0.00%
				0.00%
				0.00%
				0.00%
				0.00%
				0.00%
				0.00%
				0.00%
				0.00%
SUBTOTAL		\$ 0.00	\$ 0.00	0.00%
TOTAL TASK ORDER AMOUNT		\$ 0.00		

COMMENTS ON DBE UTILIZATION DEFICIENCIES (COMMITTED VERSUS MET) AND PLANS TO MEET COMMITTED PERCENTAGES:
(If percent less than master contract goal, briefly state why in 1-2 sentences).

The consultant acknowledges the DBE listed in the DBE Task Order Utilization section above must be used, unless authorized by DLAE.

Approved By:

_____ 11/14/18 _____
 CONSULTANT CONTRACT MANAGERS SIGNATURE DATE LOCAL AGENCY ADMIN SIGNATURE DATE

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
3. Project Description: _____
4. Project Location: _____
5. Consultant's Name: _____ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Local Agency to Complete this Section		11. TOTAL CLAIMED DBE PARTICIPATION	%
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____ 20. Consultant's Ranking after Evaluation: _____ Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. _____ _____ _____		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. 12. Preparer's Signature _____ 13. Date _____ 14. Preparer's Name _____ 15. Phone _____ 16. Preparer's Title _____	

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT**CONSULTANT SECTION**

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Location** - Enter the project location as it appears on the project advertisement.
- 4. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 8. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 10. DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 11. Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 12. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 13. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 14. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 15. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 16. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 17. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 18. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 19. Proposed Contract Execution Date** - Enter the proposed contract execution date.
- 20. Consultant's Ranking after Evaluation** - Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
- 21. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 22. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 23. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 24. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 25. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

EXHIBIT 10-R: A & E BOILERPLATE AGREEMENT LANGUAGE

(For Local Assistance Federal-aid Projects)

NOTE TO LOCAL AGENCY - BE SURE THAT YOUR LEGAL STAFF REVIEWS AND APPROVES ALL CONSULTANT CONTRACTS BEFORE EXECUTION. THIS AGREEMENT LANGUAGE IS RECOMMENDED LANGUAGE. MODIFY AS RECOMMENDED BY YOUR OWN LEGAL STAFF AND TO FIT YOUR PARTICULAR REQUIREMENTS AND PROJECT.

THE FISCAL AND FEDERAL PROVISIONS ARE REQUIRED IN ALL FEDERALLY FUNDED CONTRACTS. THE ORIGINAL INTENT OF THE ARTICLE SHALL REMAIN, IF MODIFIED BY YOUR LEGAL STAFF.

This exhibit contains fiscal requirements from 2 CFR 200 and may be used for state-only funded contracts as well.

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ARTICLE I INTRODUCTION

This AGREEMENT is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the "CONSULTANT" is as follows:

(NAME OF CONSULTANT)

Incorporated in the State of (NAME OF STATE)

The Project Manager for the "CONSULTANT" will be (NAME)

The name of the "LOCAL AGENCY" is as follows:

(NAME)

The Contract Administrator for LOCAL AGENCY will be (NAME)

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONSULTANT's Cost Proposal dated (DATE). The approved CONSULTANT's Cost Proposal is attached hereto (Attachment #) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.
- E. LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and

holds LOCAL AGENCY harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

- G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the Local AGENCY. However, claims for money due or which become due to CONSULTANT from City under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.
- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II CONSULTANT'S REPORTS OR MEETINGS

(Choose either Option 1 or Option 2)

(Option 1 - Use paragraphs A & B below for standard AGREEMENTs)

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY's Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

(Option 2 - Use paragraphs A & B below for on-call AGREEMENTs)

- A. CONSULTANT shall submit progress reports on each specific project in accordance with the Task Order. These reports shall be submitted at least once a month. The report should be sufficiently detailed for LOCAL AGENCY's Contract Administrator or Project Coordinator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator or Project Coordinator, as needed, to discuss progress on the project(s).

ARTICLE III STATEMENT OF WORK

(Insert Appropriate Statement of work including a Description of the Deliverables) *in the following sections. If a section does not apply to the AGREEMENT, state "Not Applicable to this AGREEMENT."*)

A. CONSULTANT Services

Detail based on the services to be furnished should be provided by CONSULTANT. Nature and extent should be verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. Reference to the appropriate standards for design or other standards for work performance stipulated in CONSULTANT AGREEMENT should be included. Describe acceptance criteria, and if the responsible CONSULTANT/engineer shall sign all Plans, Specifications and Estimate (PS&E) and engineering data furnished under the AGREEMENT including registration number.

Environmental documents are not considered complete until a Caltrans District Senior Environmental Planner signs the Categorical Exclusion, a Caltrans Deputy District Director signs the Finding of No Significant Impact, or the Caltrans District Director signs the Record of Decision (see [LAPM Chapter 6: Environmental Procedures](#), and the Standard Environmental Reference).

B. Right of Way

State whether Right of Way requirements are to be determined and shown by CONSULTANT, whether land surveys and computations with metes and bounds descriptions are to be made, and whether Right of Way parcel maps are to be furnished.

C. Surveys

State whether or not the CONSULTANT has the responsibility for performing preliminary or construction surveys.

D. Subsurface Investigations

State specifically whether or not CONSULTANT has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of CONSULTANT, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in the Standard Environmental Reference.

E. Local Agency Obligations

All data applicable to the project and in possession of LOCAL AGENCY, another agency, or government agency that are to be made available to CONSULTANT are referred to in the AGREEMENT. Any other assistance or services to be furnished to CONSULTANT are to be stated clearly.

F. Conferences, Site Visits, Inspection of Work

This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the LOCAL AGENCY, State, and/or FHWA. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.

G. Checking Shop Drawings

For AGREEMENTs requiring the preparation of construction drawings, make provision for checking shop drawings. Payment for checking shop drawings by CONSULTANT may be included in the AGREEMENT fee, or provision may be made for separate payment.

H. CONSULTANT Services During Construction

The extent, if any of CONSULTANT's services during the course of construction as material testing, construction surveys. etc., are specified in the AGREEMENT together with the method of payment for such services.

I. Documentation and Schedules

AGREEMENTs where appropriate, shall provide that CONSULTANT document the results of the work to the satisfaction of LOCAL AGENCY, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the AGREEMENT objectives.

J. Deliverables and Number of Copies

The number of copies or documents to be furnished, such as reports, brochures, sets of plans, specifications, or Right of Way parcel maps shall be specified. Provision may be made for payment for additional copies.

ARTICLE IV PERFORMANCE PERIOD

A time must be set for beginning and ending the work under the AGREEMENT. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the AGREEMENT. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by CONSULTANT, they should be identified and incorporated into the AGREEMENT.

A. This AGREEMENT shall go into effect on (DATE), contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on (DATE), unless extended by AGREEMENT amendment.

B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

Use paragraph C below in addition to paragraphs A & B above for on-call AGREEMENTs. On-call AGREEMENTs shall be 5 years maximum.

C. The period of performance for each specific project shall be in accordance with the Task Order for that project. If work on a Task Order is in progress on the expiration date of this AGREEMENT, the terms of the AGREEMENT shall be extended by AGREEMENT amendment prior to the expiration of the contract to cover the time needed to complete the task order in progress only. The maximum term shall not exceed five (5) years.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

(Choose either Option 1, 2, 3, or 4)

(Option 1 - Use paragraphs A through K below for Actual Cost-Plus-Fixed Fee AGREEMENTs. Use [Exhibit 10-H1: Cost Proposal Format](#))

A. The method of payment for this AGREEMENT will be based on actual cost plus a fixed fee. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT

in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S Cost Proposal, unless additional reimbursement is provided for by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY's approved overhead rate set forth in the Cost Proposal. In the event, that LOCAL AGENCY determines that a change to the work from that specified in the Cost Proposal and AGREEMENT is required, the AGREEMENT time or actual costs reimbursable by LOCAL AGENCY shall be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I" of this Article shall not be exceeded, unless authorized by AGREEMENT amendment.

- B. The indirect cost rate established for this AGREEMENT is extended through the duration of this specific AGREEMENT. CONSULTANT's agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or AGREEMENT award.
- C. In addition to the allowable incurred costs, LOCAL AGENCY will pay CONSULTANT a fixed fee of \$(AMOUNT). The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the scope of work and such adjustment is made by AGREEMENT amendment.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- E. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.
- F. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT.
- G. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.
- H. CONSULTANT will be reimbursed promptly according to California Regulations upon receipt by LOCAL AGENCY's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY including any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR)
(ADDRESS)

- I. The total amount payable by LOCAL AGENCY including the fixed fee shall not exceed \$(Amount).
- J. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by LOCAL AGENCY's Contract Administrator.
- K. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

(Option 2 - For Cost per Unit of Work AGREEMENTs, replace paragraphs A & B of Option 1 with the following paragraphs A, B, and C and re-letter the remaining paragraphs. Adjust as necessary for work specific to your project. Use [Exhibit 10-H3: Cost Proposal Format](#))

- A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONSULTANT for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rate to be paid for vehicle expense for CONSULTANT's field personnel shall be \$(Amount) per approved Cost Proposal. This rate shall be for fully equipped vehicle(s) specified in Article III Statement of Work, as applicable. The specified rate to be paid for equipment shall be, as listed in the approved Cost Proposal.
- C. The method of payment for this AGREEMENT, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. LOCAL AGENCY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by AGREEMENT amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds LOCAL AGENCY approved overhead rate set forth in the approved Cost Proposal. In the event, LOCAL AGENCY determines that changed work from that specified in the approved Cost Proposal and AGREEMENT is required; the actual costs reimbursable by LOCAL AGENCY may be adjusted by AGREEMENT amendment to accommodate the changed work. The maximum total cost as specified in Paragraph "I," of this article shall not be exceeded unless authorized by AGREEMENT amendment.

(Option 3 - Use paragraphs A through P for Specific Rates of Compensation Agreements [such as on-call Agreements]. This payment method shall only be used when it is not possible at the time of procurement to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. The specific rates of compensation payment method should be limited to AGREEMENTs or components of AGREEMENTs for specialized or support type services where the CONSULTANT is not in direct control of the number of hours worked, such as construction engineering and inspection. Use [Exhibit 10-H2: Cost Proposal Format](#)).

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.
- C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders.
- D. After a project to be performed under this AGREEMENT is identified by LOCAL AGENCY, LOCAL AGENCY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project Coordinator. The draft Task Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both LOCAL AGENCY and CONSULTANT.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT.

- F. *(Local agency to include either (a) or (b) below; delete the other one)*
 - (a) Reimbursement for transportation and subsistence costs shall not exceed State rates.
 - (b) Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL

AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.

- J. A Task Order is of no force or effect until returned to LOCAL AGENCY and signed by an authorized representative of LOCAL AGENCY. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by LOCAL AGENCY.
- K. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(NAME OF LOCAL AGENCY/ NAME OF CONTRACT ADMINISTRATOR)
(ADDRESS)

- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this AGREEMENT.
- M. The total amount payable by LOCAL AGENCY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.
- N. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders may not be used to amend the language (or the terms) of this AGREEMENT nor to exceed the scope of work under this AGREEMENT.
- P. The total amount payable by LOCAL AGENCY for all Task Orders resulting from this AGREEMENT shall not exceed \$ (Amount). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT through Task Orders.

(Option 4 - Use paragraphs A through E below for lump sum agreements. Use [Exhibit 10-H1: Cost Proposal Format](#))

- A. The method of payment for this AGREEMENT will be based on lump sum. The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article III Statement of Work. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of work or scope of the project, adjustment to the

total lump sum compensation will be negotiated between CONSULTANT and LOCAL AGENCY. Adjustment in the total lump sum compensation will not be effective until authorized by AGREEMENT amendment and approved by LOCAL AGENCY.

- B. Progress payments may be made monthly in arrears based on the percentage of work completed by CONSULTANT. If CONSULTANT fails to submit the required deliverable items according to the schedule set forth in Article III Statement of Work, LOCAL AGENCY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article VI Termination.
- C. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.
- D. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase. The final invoice must be submitted within sixty (60) calendar days after completion of CONSULTANT's work unless a later date is approved by the LOCAL AGENCY. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(LOCAL AGENCY/NAME OF CONTRACT ADMINISTRATOR)
(ADDRESS)

- E. The total amount payable by LOCAL AGENCY shall not exceed \$(Amount).

ARTICLE VI TERMINATION

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of LOCAL AGENCY.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection A of this section.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT

until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.

- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in Section 11C. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 15, Property of LOCAL AGENCY.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

ARTICLE VIII RETENTION OF RECORD/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

ARTICLE IX AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by Caltrans Audits and Investigation (A&I). Caltrans A&I, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
1. During Caltrans A&I's review of the ICR audit work papers created by the CONSULTANT's independent CPA, Caltrans A&I will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans A&I identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by A&I.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.

- b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
- 2. If Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 - 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if Caltrans A&I is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
 - 4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) Caltrans A&I has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.

- E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.

ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
 - 1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.
 - 2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

ARTICLE XII STATE PREVAILING WAGE RATES

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work

performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.

D. Payroll Records

1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representative's at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.

4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
 5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
 2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
 3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
 4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that

failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:

- a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
 - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
 - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
 6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

2. CONSULTANTs and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII CONFLICT OF INTEREST

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.
- C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV PROHIBITION OF EXPENDING LOCAL AGENCY, STATE, OR FEDERAL FUNDS FOR LOBBYING

(Include this article in all AGREEMENTs where federal funding will exceed \$150,000. If less than \$150,000 in federal funds will be expended on the AGREEMENT; delete this article and re-number the subsequent articles.)

- A. The CONSULTANT certifies, to the best of his or her knowledge and belief, that:
1. No State, Federal, or LOCAL AGENCY appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this AGREEMENT, or with the extension, continuation, renewal, amendment, or modification of this AGREEMENT.
 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this AGREEMENT, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

ARTICLE XVI NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military

and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

ARTICLE XVII DEBARMENT AND SUSPENSION CERTIFICATION

- A. The CONSULTANT's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer or manager:
 - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;

3. Does not have a proposed debarment pending; and
 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to LOCAL AGENCY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. This AGREEMENT is subject to 49 CFR Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”. CONSULTANTs who enter into a federally-funded agreement will assist the LOCAL AGENCY in a good faith effort to achieve California's statewide overall DBE goal.
- B. The goal for DBE participation for this AGREEMENT is %. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in [Exhibit 10-01: Consultant Proposal DBE Commitment](#) , or in [Exhibit 10-02: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the AGREEMENT. If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. CONSULTANT can meet the DBE participation goal by either documenting commitments to DBEs to meet the AGREEMENT goal, or by documenting adequate good faith efforts to meet the AGREEMENT goal. An adequate good faith effort means that the CONSULTANT must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If CONSULTANT has not met the DBE goal, complete and submit Exhibit 15-H: *DBE Information – Good Faith Efforts* to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
- D. DBEs and other small businesses, as defined in 49 CFR Part 26 are encouraged to participate in the performance of AGREEMENTs financed in whole or in part with federal funds. The LOCAL AGENCY, CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the LOCAL AGENCY deems appropriate, which may include, but is not limited to:
- (1) Withholding monthly progress payments;

- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible

- E. A DBE firm may be terminated only with prior written approval from LOCAL AGENCY and only for the reasons specified in 49 CFR §26.53(f). Prior to requesting LOCAL AGENCY consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 CFR §26.53(f). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- F. Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the LOCAL AGENCY's Contract Administrator.
- G. A DBE is only eligible to be counted toward the AGREEMENT goal if it performs a commercially useful function (CUF) on the AGREEMENT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, AGREEMENT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its AGREEMENT with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime CONSULTANT's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. Upon completion of the AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, [Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise \(DBE\) First-Tier Subconsultants](#), certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment

until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.

- L. If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to LOCAL AGENCY's Contract Administrator within thirty (30) calendar days.
- M. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this section.

ARTICLE XIX INSURANCE

(Choose either Option 1 or Option 2)

(Option 1 - for AGREEMENT with a scope of services that may require the CONSULTANT or subconsultant to work within the operating state or Local Agency Highway Right of Way; where there would be exposure to public traffic or construction operations).

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
 - 1. That the insurer will not cancel the insured's coverage without thirty (30) calendar days prior written notice to LOCAL AGENCY.
 - 2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.
 - 3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.
- C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.

(Option 2 - for AGREEMENTs with a scope of services that will not require the CONSULTANT or subconsultant to work within the operating state or Local Agency Highway Right of Way where there would be exposure to public traffic or construction CONSULTANT operations).

CONSULTANT is not required to show evidence of general comprehensive liability insurance.

ARTICLE XX FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXI CHANGE IN TERMS

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY's Contract Administrator.

ARTICLE XXII CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXIII DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five

(45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

(Choose either Option 1 or Option 2)

(Option 1 - Use paragraphs A through C below for all AGREEMENTs without PS&E submittal)

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and (Insert Department Head or Official), who may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) calendar days after completion of all work under the AGREEMENT, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

(Option 2 - Replace Paragraph B, above, with the following for AGREEMENTs requiring the submission of PS&E)

- B. Not later than thirty (30) calendar days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

ARTICLE XXIV INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

(Add the following paragraph to all AGREEMENTs, which may require trenching of five feet or deeper)

- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

ARTICLE XXVI OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

ARTICLE XXVII CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL

AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.

- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXVIII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.

(For PS&E contracts add paragraph F, below, to paragraphs A through E, above)

- E. All information related to the construction estimate is confidential, and shall not be disclosed by CONSULTANT to any entity, other than LOCAL AGENCY, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

ARTICLE XXIX NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXX EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

ARTICLE XXXI RETENTION OF FUNDS

(LOCAL AGENCY to include either B, C, or D below; delete the other two)

- B. No retainage will be withheld by LOCAL AGENCY from progress payments due the CONSULTANT. Retainage by the CONSULTANT or subconsultants is prohibited, and no retainage will be held by the CONSULTANT from progress due subconsultants. Any violation of this provision shall subject the violating CONSULTANT or subconsultants to the penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT and subconsultants.
- C. No retainage will be held by the LOCAL AGENCY from progress payments due the CONSULTANT. Any retainage held by the CONSULTANT or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within thirty (30) calendar days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR §26.29) requires that any delay or postponement of payment over thirty (30) calendar days may take place only for good cause and with the LOCAL AGENCY's prior written approval. Any violation of this provision shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified in Business and Professions Code §7108.5. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT and subconsultants.
- D. The LOCAL AGENCY shall hold retainage from the CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by LOCAL AGENCY, of the AGREEMENT work, and pay retainage to CONSULTANT based on these acceptances. The CONSULTANT, or subconsultant, shall return all monies withheld in retention from a subconsultant within thirty (30) calendar days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the AGREEMENT work by the LOCAL AGENCY. Federal law (49 CFR §26.29) requires that any delay or postponement of payment over thirty (30) calendar days may take place only for good cause and with LOCAL AGENCY's prior written approval. Any violation of this provision shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified in Business and Professions Code §7108.5. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment

by the CONSULTANT, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT and subconsultants.

ARTICLE XXXII NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

(CONSULTANT)

(NAME) _____, Project Manager

(ADDRESS)

LOCAL AGENCY:

(LOCAL AGENCY)

(NAME) _____, Contract Administrator

(ADDRESS)

ARTICLE XXXIII CONTRACT

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

ARTICLE XXXIV SIGNATURES

(Name of LOCAL AGENCY)

(Name of CONSULTANT)

(Signature)
(Name of Signer)

(Signature)
(Name of Signer)

Date: _____

Date: _____

EXHIBIT 10-T CONFLICT OF INTEREST AND CONFIDENTIALITY STATEMENT

RFP/RFQ PROCUREMENT NUMBERS: _____

PROJECT NAME:

APPLICABILITY: Applicable to local agency consultant procurements which will contain Federal or State funds in the consultant contract.

- ☐ I am an employee of the local agency that is involved in this procurement.
- ☐ I am an employee of a consultant under contract to the local agency that is responsible for this procurement but I am not in a management position with the local agency.
- ☐ I have a personal, financial, or business interest in past employment activity or a personal relationship regarding the firms (including subconsultants) that are the subject of this evaluation. A brief description is provided on the back of this form.
- ☐ I certify that I have no current contractual relationship with any of the firms (including subconsultants) that are the subject of this evaluation.
- ☐ I certify that I have no personal or financial interest and no present or past employment activity or personal relationship or prior contractual relationship which would be incompatible with my participation in this solicitation process and I am fully able to give full, fair and impartial consideration to all proposals/bids as an appointee to the related evaluation.
- ☐ I certify that I have read **23 CFR 172.7(b)(4)** below and I agree not to participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

23 CFR 172.7(b)(4)

(4) *Conflicts of interest.* (i) A contracting agency shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of engineering and design related services contracts under this part and governing the conduct and roles of consultants in the performance of services under such contracts to prevent, identify, and mitigate conflicts of interest in accordance with 2 CFR 200.112, 23 CFR 1.33 and the provisions of this paragraph (b)(4).

(ii) No employee, officer, or agent of the contracting agency shall participate in selection, or in the award or administration of a contract supported by Federal-aid funds if a conflict of interest, real or apparent, would be involved. Such a conflict arises when there is a financial or other interest in the consultant selected for award by:

- (A) The employee, officer, or agent;
- (B) Any member of his or her immediate family;
- (C) His or her partner; or
- (D) An organization that employs or is about to employ any of the above.

(iii) The contracting agency's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to subagreements. A contracting agency may establish dollar thresholds where the financial interest is not substantial or the gift is an unsolicited item of nominal value.

(iv) A contracting agency may provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(v) To the extent permitted by State or local law or regulations, the standards of conduct required by this paragraph shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the contracting agency's officers, employees, or agents, or by consultants or their agents.

(vi) A contracting agency shall promptly disclose in writing any potential conflict of interest to FHWA.

- ☐ I fully understand and agree to immediately disqualify myself as soon as I am aware of a conflict of interest that may compromise my fair and impartial consideration of the proposals/bids.
- ☐ I certify that I will hold in the strictest confidence all bids, proposals, correspondence, memoranda, working papers, or any other media which has any bearing on, or disclose any aspect of, any respondent or potential respondent to the RFP/RFQ above. I will not discuss the evaluation process with anyone not involved in the evaluation process until its completion.
- ☐ I fully understand that it is unlawful for a person to utilize any organization name or auxiliary organization information, which is not a matter of public record, for personal gain.
- ☐ I fully understand that any violation of the above is a basis for disciplinary action, up to and including termination or referral to the appropriate authorities for further investigation.
- ☐ I am aware that the following firms and subconsultants/subcontractors have submitted proposals in response to the above referenced solicitation:

List firms including subconsultants/subcontractors:

1.

2.

3.

4.

etc.

Date: _____

Signed: _____

Name: _____

Title: _____

Dept./Local Agency: _____

Employer: _____

CONTRACT ADMINISTRATOR'S REVIEW

I have reviewed the foregoing "Conflict of Interest and Confidentiality Statement" and have determined, according to the information provided, that this individual:

☐ does not have a conflict of interest and can participate in the "Selection Panel"

☐ does have a conflict of interest and cannot participate in the "Selection Panel"

Date: _____

Signed: _____

Name: _____

Title: _____

Dept./Local Agency: _____

Employer: _____

Distribution: Original – Local Agency Consultant File

For further guidance on preparing a Location Hydraulic Study and a Floodplain Evaluation Report, refer to the [Chapter 17, Floodplains of the Standard Environmental Reference](#).

Copies of the Location Hydraulic Study and the Summary of Floodplain Encroachment forms for local projects can be found on Caltrans Local Assistance [NEPA Assignment and Environmental Compliance website](#).

Bicycle and Pedestrian Facilities

Local agencies are encouraged to incorporate designs that help ensure the needs of non-motorized users in all programming, planning, construction, maintenance, operations, and project development activities and products.

Design guidance for bikeway projects is provided in Chapters [100](#), [200](#), [300](#), and [1000](#) of the [Caltrans Highway Design Manual](#) and AASHTO Guide for Development of Bikeway Facilities. Publications such as the National Association of City Transportation Officials (NACTO) Urban Street Design Guide, NACTO Urban Bikeway Design Guide, and the Institute of Transportation Engineers (ITE) Designing Urban Walkable Thoroughfares are resources that can also be referenced when making planning and design decisions on local streets and roads. Alternatives to bikeway design guidance must meet the criteria outlined in Section 891 of the California Streets and Highways Code.

Accessibility and the Americans with Disabilities Act

State and local governments, regardless of whether they receive federal funds, are required to comply with the federal [2010 ADA Standards](#), Title 24 of the California Code of Regulations (which contain California building regulations), or local codes, whichever provides the greatest access. Private-funded improvements within the public right of way are also required to comply with whichever code offers the greatest access or protections to individuals with disabilities. If discrepancies are found between federal, state, or local requirements, the discrepancies should be brought to the attention of the [District Local Assistance Engineer](#). The best practice is for the City or other local public entity conducting the work, the State transportation agency, and FHWA to work together to come to an agreement on reasonable determination, document their policies, and apply that determination consistently in their locality.

Certain types of resurfacing treatments shall be considered an alteration that triggers the requirement to add curb ramps if it involves work on a street or roadway spanning from one intersection to another, and includes overlays of additional material to the road surface, with or without milling. Regardless of whether there is curb-to-curb resurfacing of the street or roadway in general, resurfacing of a crosswalk also requires the provision of curb ramps at that crosswalk.

The following roadway treatments are considered an alteration:

- Open-graded Surface Course
- Cape Seals
- Mill & Fill / Mill & Overlay
- Hot In-Place Recycling
- Microsurfacing / Thin Lift Overlay

- Addition of New Layer of Asphalt
- Asphalt and Concrete Rehabilitation and Reconstruction
- New Construction

Treatments that serve solely to seal and protect the road surface, improve friction, and control splash and spray shall be considered maintenance because they do not significantly affect the public's access to or usability of the road.

The following types of treatments shall be considered maintenance:

- Crack Filling and Sealing
- Surface Sealing
- Chip Seals
- Slurry Seals
- Fog Seals
- Scrub Sealingexhibit
- Joint Crack Seals
- Joint Repairs
- Dowel Bar Retrofit
- Spot High-Friction Treatments
- Diamond Grinding
- Pavement Patching

In some cases, the combination of several maintenance treatments occurring at or near the same time may qualify as an alteration and would trigger the obligation to provide curb ramps.

More information on treatments that are considered an alteration triggering the requirement to add curb ramps can be found at:

<http://www.ada.gov/doj-fhwa-ta-glossary.htm>.

In accordance with Section 4454(b)(a) of the California Government Code, Approval of Plans and Specifications, local agency plans and specifications with pedestrian facilities to be constructed with state funds must be reviewed and approved by the Division of the State Architect (DSA). Local agency plans and specifications of pedestrian facilities within the state highway rights of way, excluding rail and transit systems, can be reviewed and approved (certified) by Caltrans in place of DSA. Approval of the plans and specifications by DSA will require fees be paid directly to DSA. DSA regional offices can be found at this website:

<http://www.dgs.ca.gov/dsa/AboutUs/contact.aspx>

The Accessible Parking and Curb Ramp plans included in [Caltrans Standard Plans](#) are FHWA-approved for the SHS. Refer to the most current version of [DIB-82](#) for further direction and discussion on the use of these standard plans.

The U.S. Department of Justice and the Federal Access Board both have very comprehensive websites committed to accessible design. The websites include ADA design standards and a design guide. The websites are respectively located at: <http://www.ada.gov/> and <http://www.access-board.gov/guidelines-and-standards>.

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- To combine or eliminate otherwise inefficient use of costly parts of the original proposed design for the project
- To completely redesign the project using different techniques, materials, or methods so as to accomplish the original purpose of the project

For bridge projects, the multi-disciplined team shall also include bridge substructure requirements based on construction material and be evaluated as follows:

- On engineering and economic bases, taking into consideration acceptable designs for bridges.
- Using an analysis of life-cycle and duration of project construction. For VA studies of projects on the State Highway System, it is advisable to have Caltrans' participation on the VA team.

This process concludes with a value analysis report that contains the approved recommendations. A copy of this report shall be submitted by the local agency to the DLAE who forwards it to the District Value Analysis Coordinator (DVAC) in Caltrans' Division of Design who is responsible for the project. The DVAC will submit this report to the Value Analysis Branch in headquarters, who will then include it in their annual report to FHWA. As a guide, [PDPM Chapter 19: Value Analysis](#) be used. The DVAC may be consulted for applicable sections.

12.6 PLANS

Plans shall describe the location, design features, and construction requirements in sufficient detail to facilitate the construction, contract control, and estimation of construction costs for the project. A local agency may use the Caltrans [Plans Preparation Manual](#) as a guide for preparing contract plans.

Design Guidance

Guidance for the design of federal-aid highway projects is contained in [LAPM Chapter 11: Design Guidance](#).

Design Decisions

The Public Works Director, or the person to whom approval authority has been delegated, shall sign approval for design decisions. The person with approval authority must be a registered Civil Engineer in the State of California. Additional information is provided in [LAPM Chapter 11](#).

Plan Sheet and Specification Signatures

On local agency federal-aid projects, the title sheets of the plans and specifications must bear the signature and seal or stamp, the date of signing and sealing or stamping, and the expiration date of the licensed professional engineer in the State of California. If signed by a local agency consultant, the title sheets shall also be signed by a full-time employee of the local agency who is responsible for the project. Additional local agency signatures on the title sheet are optional. Plans and specifications for projects advertised, awarded and administered by the local agency do not include the State Engineer's signature, except as required for a state encroachment

permit and/or cooperative agreement. The title sheets of the plans and specifications must also show the federal-aid project number.

Other plan sheets (including typical section sheets) must bear the signature of the professional engineer under whose direction the sheets were prepared. Signature of the sheets may be delegated to a California registered engineer retained by the local agency to prepare the plans.

Standard Plans

Current Caltrans Standard Plans must be used for locally sponsored projects on the SHS.

The following Standard Plans are acceptable for use with local federal-aid projects off the SHS:

- The current edition of the [Caltrans Standard Plans](#)
- The current edition of the Standard Plans for Public Works Construction, developed and promulgated by the American Public Works Association - Southern California Chapter and the Associated General Contractors of California - Southern California Districts

In addition to the above, standard plans that are developed locally for non-federally funded projects may be used on local federal aid projects. The local standard plans shall be signed (with registration number) by the person who is registered in California in the professional field for the type of standard plan being signed. Details included in local standard plans used for projects on the NHS shall meet statewide geometric standards.

Bridge construction details included in local standard plans shall meet Caltrans' bridge design standards. When a local agency requests structure-review assistance from Caltrans, the Caltrans Standard Plans must be used, as appropriate, for the structure portion of the project.

Erosion Control Plans

Erosion control measures and practices shall be taken to inhibit the dislodging and transporting of soil particles by water or wind, including actions that limit the area of exposed soil and minimize the time the soil is exposed. Emphasis shall be placed on erosion control in the preparation of PS&E. All reasonable steps shall be taken to ensure that highway project designs for the control of erosion and sedimentation and the protection of water quality comply with applicable standards and regulations of other agencies.

The [AASHTO Highway Drainage Guidelines](#) are to be followed on all construction projects. These guidelines are not intended to pre-empt any local requirements or State law if such requirements are more stringent. Federal-aid funds shall not be used in erosion and sediment control actions made necessary because of contractor oversight, carelessness, or failure to implement sufficient control measures.

Work Zone Safety and Mobility

Local Agency Policy

23 CFR Part 630-Subpart J Work Zone and Safety and Mobility requires the implementation of a policy by the local agency for systematic consideration and management of work zone impacts on all federal-aid transportation projects. This policy may take the form of processes, procedures and/or guidance, and may vary based on the characteristics and expected work zone impacts of individual projects or classes of projects.

techniques for NHS projects in detail, and is available in the appendix of the FHWA Contract Administration Core Curriculum.

The local agency should strive for the shortest practical duration of traffic interruptions during highway construction. Alternative contracting methods including incentive/disincentive (I/D), lane rental, A+B contracts or other contract provisions for early completion are available to minimize traffic inconvenience and delay. These provisions are available from Caltrans. Alternative contracting should be discussed with the DLAE prior to use. The [FHWA Technical Advisory 5080.10, Incentive/Disincentive for Early Completion](#) describes this technique in detail, and is available in the appendix of [FHWA Contract Administration Core Curriculum](#).

Changed Condition Clauses

The regulation requires the use of three different clauses: Standardized changed condition clauses are required to be included in all contracts. Caltrans' Standard Specifications and the Standard Special Provisions for Public Works Construction (Green Book) contain standard changed condition clauses. If a local agency chooses to use a different standard specifications book, the federal regulations shall still apply.

Differing Site Conditions

This clause provides for the adjustment of the contract terms if the contractor encounters:

- Subsurface or latent physical conditions that differ materially from those indicated in the contract, or
- Unknown physical conditions of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent to the work

Suspensions of Work Ordered by the Engineer

This clause provides for the adjustment of the contract terms if the performance of all or a portion of the work is suspended or delayed by the resident engineer, in writing, for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry). The contractor is required to submit a request for adjustment, in writing, to the resident engineer within 7 calendar days of receipt of the notice to resume work. Recovery of profit on costs resulting from suspensions of work is not allowed.

This clause does not preclude the recognition of constructive suspensions or delays resulting from the contracting agency's actions, without written notification. The local agencies may address constructive delays and suspensions, as they choose, in their standard specifications and contract administration procedures.

Suspensions must be for unreasonable delays and do not include brief, customary suspensions for reasons inherent to highway construction (i.e., material sampling and testing, approval of shop drawings, material sources, etc. and other reasonable and customary suspensions necessary for the supervision of construction by the contracting agency). In addition, an adjustment under this clause is not allowed if the work is suspended for other reasons or if an adjustment is provided for, or excluded, under other terms or conditions of the contract.

4,000,000	8	41,000,000	23
5,000,000	9	45,000,000	24
6,500,000	10	50,000,000	25
8,000,000	11	> 50,000,000	*
10,000,000	12		
12,000,000	13		
14,000,000	14		

* 25, plus 1 additional trainee for every \$5,000,000 over \$50,000,000

3. Using the totals obtained above, determine the number of trainees for each work category from the following table:
4. If the totals for each of the work categories listed under Step 2 above are all less than \$400,000 then no trainees and no Federal Trainee Program special provisions are needed.
5. For any work category equal to or greater than \$400,000, total the trainees obtained for the applicable work categories and include the Federal Trainee Program special provisions. Calculate the contract cost using \$800 per trainee and include Federal Trainee Program under Supplemental Funds of the Engineer's Estimate.

Federal Wage Rates Determinations

The payment of federal prevailing wage rates on federal-aid contracts is derived from the Davis-Bacon Act of 1931 and is prescribed by 23 USC 113. The federal prevailing wage rates must be physically inserted or referenced by an internet website address in the project special provisions and must be physically attached to the project's final contract agreement package signed by the local agency and contractor on all federal-aid highway construction projects exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempted.

The federal prevailing wage rates are available directly from the Department of Labor Home Page under <http://www.wdol.gov>.

For contracts entered pursuant to competitive bidding procedures, local agencies must be in conformance with the **federal 10-day rule**. Local agencies must monitor the minimum federal wage rate determinations posted under <http://www.wdol.gov> to determine if project's applicable federal prevailing wage rates have been modified from the time of initial advertisement to 10 calendar days prior to bid opening. If federal prevailing wage rates are modified, local agencies are required to issue an addendum to incorporate the modified version of the federal prevailing wage rates to the contract.

It is important to ensure the project's applicable federal prevailing wage rates physically be attached as an exhibit to the final contract agreement package prior to its execution by the contractor and local agency. The same provision set forth applies to the contractor's subcontracted works as well.

Relations with Railroad

Where construction of a federal-aid project requires use of railroad properties or adjustments to railroad facilities, there shall be an agreement in writing between the local agency and the railroad company.

failure to complete the project on time. On the other hand, I/D provision is intended to motivate the contractor to complete the work on or ahead of schedule without jeopardizing quality of work. An I/D provision for early completion is defined as a contract provision, which compensates the contractor for each day that identified critical work is completed ahead of schedule and assesses a deduction for each day that completion of the critical work is delayed. The use of I/D provisions is primarily intended for critical projects where it is essential that traffic inconvenience and delays be held to a minimum. It must be emphasized that I/D provisions should not be used routinely.

Quality – Price Adjustment Clauses

Price adjustment clauses and schedules are an important and effective component of quality assurance specifications. Quality Assurance specifications generally include statistically based acceptance plans, require contractor process control testing, and have provisions for pay adjustments based on the degree of compliance with specified requirements. Incentives and disincentives should rationally relate to the gain or loss in service life or performance of the product. Quality assurance specifications and programs may lead to better contractor control of the quality of the product, however, they do not diminish the need for effective construction inspection. The FHWA has traditionally endorsed the use of incentive provisions up to five percent of the unit bid price for improved quality provided they are based on readily measured physical properties that reflect improved performance. Incentives greater than five percent on NHS projects are considered on a case-by-case basis following an analysis of performance data.

For non-NHS projects, consideration for incentives greater than 5 percent is delegated to the local agency. A detailed discussion of the criteria (such as: typical critical physical properties, acceptance plans and pay schedules) to consider when developing price adjustment provisions are provided in FHWA's Contract Administration Core Curriculum.

Alternative Contracting Practices

Neither the FHWA nor Caltrans have any intention of mandating the use of any of the alternative contracting practices cited below on local agencies. However, the FHWA is trying to develop a process nationwide through which states, local agencies and the industry can bring forth alternative contracting practices that they believe could result in worthwhile improvements to our traditional ways of doing business. It is FHWA's intent to try all promising concepts proposed that fall within the flexibility of the federal-aid program requirements

A discussion on the Cost-Plus-Time Bidding (A+B method), Lane Rental, Design/Build Alternative, and Warranty contracting techniques is provided in the FHWA's Contract Administration Core Curriculum

(<https://www.fhwa.dot.gov/programadmin/contracts/cacc.pdf>). Conceptual guidelines have also been developed to be used for project selection criteria and can be found in the Caltrans memorandum Delegation of Authority for Use of A+B Bidding and Incentive/Disincentive (I/D) Provisions at the following website: www.dot.ca.gov/hq/oppd/pdpmb/pdpmbidx.htm
<http://www.dot.ca.gov/design/stp/memo/m061200.pdf>

Exhibit 12-B: Bidder's List of Subcontractors (DBE and Non-DBE) Part 1

As of March 1, 2015 Contractors (and sub-contractors) wishing to bid on public works contracts shall be registered with the State Division of Industrial Relations and certified to bid on Public Works contracts. Please register at: <https://efiling.dir.ca.gov/PWCR/ActionServlet?action=displayPWCRegistrationForm>

In accordance with Title 49, Section 26.11 of the Code of Federal Regulations, and Section 4104 of the Public Contract Code of the State of California, as amended, the following information is required for each sub-contractor who will perform work amounting to more than one half of one percent (0.5%) of the Total Base Bid or \$10,000 (whichever is greater). **Photocopy this form for additional firms.** Federal Project Number: _____

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Sub-contracted	Contractor License Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
				DIR Reg Number			
Name:							<\$1 million
City, State:							<\$5 million
							<\$10 million
							<\$15 million
							Age of Firm: ____ yrs.
Name:							<\$1 million
City, State:							<\$5 million
							<\$10 million
							<\$15 million
							Age of Firm: ____ yrs.
Name:							<\$1 million
City, State:							<\$5 million
							<\$10 million
							<\$15 million
							Age of Firm: ____ yrs.
Name:							<\$1 million
City, State:							<\$5 million
							<\$10 million
							<\$15 million
							Age of Firm: ____ yrs.
Name:							<\$1 million
City, State:							<\$5 million
							<\$10 million
							<\$15 million
							Age of Firm: ____ yrs.
Name:							<\$1 million
City, State:							<\$5 million
							<\$10 million
							<\$15 million
							Age of Firm: ____ yrs.
Name:							<\$1 million
City, State:							<\$5 million
							<\$10 million
							<\$15 million
							Age of Firm: ____ yrs.

Distribution: Original-Local Agency File

Exhibit 12-B: Bidder's List of Subcontractors (DBE and Non-DBE) Part 2

In accordance with Title 49, Section 26 of the Code of Federal Regulations, the bidder shall list all subcontractors who provided a quote or bid, but **were not selected** to participate as a subcontractor on this project. **Photocopy this form for additional firms.**

Federal Project Number: _____

Subcontractor Name and Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Sub-contracted	Contractor License Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
				DIR Reg Number			
Name:							<\$1 million
City, State:							<\$5 million
							<\$10 million
							<\$15 million
							Age of Firm: ___ yrs.
Name:							<\$1 million
City, State:							<\$5 million
							<\$10 million
							<\$15 million
							Age of Firm: ___ yrs.
Name:							<\$1 million
City, State:							<\$5 million
							<\$10 million
							<\$15 million
							Age of Firm: ___ yrs.
Name:							<\$1 million
City, State:							<\$5 million
							<\$10 million
							<\$15 million
							Age of Firm: ___ yrs.
Name:							<\$1 million
City, State:							<\$5 million
							<\$10 million
							<\$15 million
							Age of Firm: ___ yrs.
Name:							<\$1 million
City, State:							<\$5 million
							<\$10 million
							<\$15 million
							Age of Firm: ___ yrs.
Name:							<\$1 million
City, State:							<\$5 million
							<\$10 million
							<\$15 million
							Age of Firm: ___ yrs.

Distribution: Original-Local Agency File

EXHIBIT 12-D PS&E CHECKLIST

Agency _____

Federal Project No. _____

This form is to be completed by the local agency and attached to the PS&E Certification. See Exhibit 12-E for instructions and the referenced attachments.

I. HIGHWAY SYSTEM AND FUNCTIONAL CLASSIFICATION

- A. National Highway System** (Check applicable box. Please refer to FHWA approved NHS maps at: https://www.fhwa.dot.gov/planning/national_highway_system/nhs_maps/)

On the National Highway System (NHS)

Off the NHS

- B. Functional Classification** (Check as many as appropriate. Please refer to Caltrans CRS maps at: https://www.dot.ca.gov/hq/tsip/hseb/crs_maps/)

On the Federal-aid SystemOff the Federal-aid System

Principal Arterial - Fwy or Exprwy

Rural Minor Collector

Other Principal Arterial

Local

Minor Arterial

Major Collector

Urban Minor Collector

II. PROJECT SCOPE OF WORK (Check applicable box)

PS&E is consistent with the scope of work identified in a scoping document or application.

PS&E is consistent with the scope of work that was revised during a later phase of development and appropriate approvals were obtained.

III. TYPE OF CONSTRUCTION (Check applicable box)

New or Reconstruction

Resurfacing, Restoration and Rehabilitation (3R)

Preventive Maintenance

Bridges and Other Structures Only

IV. METHOD OF CONSTRUCTION

- A. Contracting Method** (Check appropriate box)

Competitive bidding

Other than competitive bidding. (If the contracting method is other than competitive bidding, check the appropriate box below).

The project is "Delegated" (subject to minimal FHWA oversight). A Public Interest Finding has been submitted to the DLAE for approval and filed in the contract records justifying the method.

The project is "Projects of Division Interest (PoDI)" (subject to a higher degree of FHWA oversight). A Public Interest Finding justifying the method has been submitted and approved by Caltrans and FHWA.

B. Force Account (Day Labor) (Check appropriate box)

The entire work will be constructed by contract as indicated above.

Some work (incidental to the main purpose of the project) will be constructed by Force Account.

A Public Interest Finding approved by the DLAE is on file in the contract records justifying the work.

The entire project will be constructed by Force Account (Day Labor). (If the entire project will be constructed by Force Account check the appropriate box below).

The project is "Delegated" (subject to minimal FHWA oversight). A Public Interest Finding has been submitted to the DLAE for approval and filed in the contract records justifying the method.

The project is "Projects of Division Interest (PoDI)" (subject to a higher degree of FHWA oversight). A Public Interest Finding justifying the method has been submitted and approved by Caltrans and FHWA.

V. ENVIRONMENTAL ANALYSIS (Check box if requirement is met)

The PS&E is fully responsive to the necessary actions called for by the environmental document, permit conditions, and other agreements.

VI. VALUE ENGINEERING ANALYSIS (VA) (NHS projects only - Check appropriate box)

VA has been performed on this project and a copy of the analysis has been submitted to the DLAE for forwarding to the Caltrans District Value Analysis Coordinator.

The project is not a bridge project. VA has not been performed as the estimated total project cost is <\$50 million.

The project is a bridge project. VA has not been performed as the total project cost is <\$40 million.

VII. GEOMETRIC DESIGN STANDARDS (Complete this section only if project changes existing geometrics)

Current Caltrans Design Standards (on State Highway System)

FHWA-adopted AASHTO Standards (Green Book)

3R Projects – Caltrans DIB 79-03 (on SHS)

3R Projects – Exhibit 11-A Geometric Design Standards for Local 3R Projects (off SHS)

Local Agency approved Design Standards (non NHS only) Date:

VIII. BRIDGE DESIGN PROCEDURES

All bridges have been designed in accordance with the current AASHTO LRFD Bridge Design Specifications with California Amendments.

Not applicable (Bridge construction not included in the project).

IX. STANDARD PLANS

Current Caltrans *Standard Plans*

Standard Plans for Public Works Construction

Local Approved Standard Plans:

_____ Date signed (on behalf of the local agency) by a person in responsible charge and who is a registered professional engineer licensed to practice in the State of California.

X. PROJECT PLANS AND SPECIFICATIONS

Cover sheet of plans and specifications signed and stamped on behalf of the local agency by the person

in responsible charge, and who is a registered professional engineer licensed to practice in the State of California.

Temporary Traffic Control (TTC) Plans or reference to Standard Plan and Signs/Striping Plans in Standard Plan included. (Note: Additionally, Traffic Management Plans are required to be on file for all reconstruction, rehabilitation, and other projects [including projects on the SHS not funded by the State], if significant traffic delays are anticipated, and as a result from project activities).

Erosion Control Plan, if required.

Americans with Disabilities Act (ADA) Compliance Plan, whenever applicable, is being fully complied with including *Federal ADA Standards for Accessible Guidelines for Buildings and Facilities* (ADAAG) Title 24 of the California Code of Regulations and local codes.

XI. STANDARD SPECIFICATIONS

Current Caltrans *Standard Specifications and Standard Special Provisions*

Standard Specifications for Public Works Construction (Green Book)

Local agency approved Standard Specifications

XII. FEDERAL REQUIREMENTS

PAGE NO.*

A. Required Federal Contract Provisions (refer to Exhibit 12-G *Required Federal-aid Contract Language*).

**Note –Embedding unmodified Exhibit 12-G with appropriate information filled into the project’s contract is strongly recommended. Otherwise, indicate page numbers of each federal requirement in space provided.*

1. Disadvantaged Business Enterprise or equivalent provisions are included.....

2. Bid Opening or equivalent provisions are included

3. Bid Rigging or equivalent procedures are included.....

4. Contract Award or equivalent procedures are included.....

5. Contract License or equivalent provisions are included.....

6. Changed Conditions or equivalent provisions are included.....

7. Beginning of Work, Time of Completion and Liquidated Damages or equivalent provisions are included.....

8. Buy America

“Buy America” or equivalent provisions are included.....

A Buy America Waiver was approved by FHWA on

9. Quality Assurance or equivalent provisions are included

10. Prompt Payment of Funds Withheld from Subcontractors or equivalent provisions are included

11. FHWA Form 1273 – The local agency acknowledges that an unmodified copy of FHWA Form 1273 *Required Contract Provisions Federal-aid Construction Contracts* (1273 Revised May 1, 2012) must be physically incorporated into the executed contract.....

All sections of the FHWA Form 1273 apply to this project

Section IV. Davis-Bacon and related Act Provisions does not apply because the

project is not on the Federal-aid System (roads classified as local roads or rural minor collectors) which are exempted, as specified in the special provision on page.....

Section VI. Subletting or Assigning the Contract does not apply since this project is off the NHS, as specified in the special provision on page.....

12. Female and Minority Goals or equivalent provisions are included.....

13. Title VI assurances are included.....

14. Use of United States-Flag Vessels (Cargo Preference Act).....

15. Federal Trainee Program

Federal Trainee special provisions do not apply. Please check applicable sub-box below:

The project is less than 100 working days

The project has 100 working days or more; however, the engineer's estimate is less than \$400,000 in each of the work categories specified in the LAPM Chapter 12, "Federal Trainee Program".

Federal Trainee special provisions do apply and Federal Trainee Program or equivalent special provisions are included.....

The number of trainees or apprentices is _____

B. DBE Goal (Refer to Exhibit 12-E *PS&E Checklist Instruction*)

Local Agency non-zero DBE goal percentage for this contract is: _____

The DBE goal for this contract is zero percent because there are no subcontracting opportunities for DBE participation. Documentation verifying this determination is attached to this PS&E Checklist and is also on file with the local agency. (Refer to Exhibit 12-E, PS&E Checklist Instructions).

This contract has no DBE goal because:

This is an emergency relief project

This contract is "nonprofit"

This contract uses Force Account

Other, specify: _____

Documentation verifying the above "no DBE goal" determination is attached to the PS&E Checklist and is also on file with the local agency. Refer to Exhibit 12-E *PS&E Checklist Instructions*.

C. Certifications/Disclosures (Refer to Exhibit 12-H *Sample Bid*)

Equal Employment Opportunity Certification or equivalent

Noncollusion Affidavit or equivalent

Debarment and Suspension Certification or equivalent

Nonlobbying Certification for Federal-aid Contracts.....

Disclosure of Lobbying Activities

D. Other Required Forms (The following forms are applicable with the above required federal requirements (see Exhibit H *Sample Bid*):

PAGE NO.*

Exhibit 15-G *Local Agency Bidder DBE Commitment (Construction Contracts)* or

Equivalent _____

Exhibit 15-H *DBE Information - Good Faith Efforts* (if DBE Goal not met)..... _____

Exhibit 12-B *Bidder's List of Subcontractors (DBE and Non-DBE)* include data for all subcontractors listed by the prime contractor..... _____

E. Federal Wage Rates

Federal wage rates are physically incorporated into this contract advertising package _____

Local Agencies shall comply with the federal “**10-day rule**” where Local Agencies are required to access the federal wage rates within ten days prior to bid opening to check if updated rates have been posted. If the updated wage rates exist, the revised federal wage rates shall be issued by an addendum by Local Agencies. **The final contract documents signed by the local agency and the contractor must physically include the current federal wage rates.**

Federal wage rates are not physically incorporated in the contract advertising package but are referenced to an Internet web site address on page number _____ of the Special Provisions where the applicable federal wage rates can be found. Local Agencies shall comply with the federal “**10-day rule**” as described above. **The final contract documents signed by the local agency and the contractor must physically include the current federal wage rates.**

Federal Wage Rates are not required since this project is not located on a Federal-aid route.

F. Relations with Railroad

The required provisions are included _____

This project does not involve the use of railroad properties or adjustments to railroad facilities.

XIII. RESTRICTED CONTRACT PROVISIONS (CHECK APPROPRIATE BOX)

A. Indian Preferences

Not included

Included. The project is on or near the _____ Indian Reservation.

B. Bonding and Prequalification

Not included

Included.

Bonding or prequalification, if required, will not be used to restrict competition, prevent submission of a bid by, or prohibit consideration of a bid submitted by any responsible contractor, whether a resident or nonresident of the State of California.

C. Price Adjustment Clauses

Price adjustment clauses are not included.

Price adjustment clauses are included. The federal conditions restricting the use of these clauses have been met and are documented in the project files.

D. Warranty Clauses (Complete this section if project is on the NHS)

Warranty Clauses are not included

Warranty Clauses are included. Documentation of the required conditions on the use of these clauses is in the project files.

E. Proprietary Items

Proprietary Items are not included

Proprietary Items are included. A Public Interest Finding (certification if applicable) justifying the use has been approved and emailed to Proprietary.PIF@dot.ca.gov.

XIV. MATERIALS & EQUIPMENT**A. Publicly Owned Equipment (for use by Contractor).**

Not included.

Included. A Public Interest Finding justifying this use is in project files and the project specifications meet the requirements for federal participation listed in Chapter 12.

B. Equipment Purchases for Local Ownership

Not included.

Included. Amount charged to construction engineering will be limited to amortized equipment cost (over its useful life) attributable to the time the equipment is used on the project.

C. Convict Produced Materials

Not included.

Included. The conditions placed on the use of these materials by the contractor meet federal requirements and are included in the contract specifications.

D. Local Agency Furnished Materials (Check appropriate box)

Local Agency Furnished Materials are not included.

Local Agency Furnished Materials have been acquired on the basis of competitive bidding.

A Public Interest Finding is on file in the contract records justifying another method of acquisition.

XV. PRELIMINARY ESTIMATE (Check all applicable)

Exhibit 12-A or equivalent has been completed and is attached.

The estimate is broken down into items sufficient in detail to provide an initial prediction of the financial obligation to be incurred by the local agency, State and FHWA and to permit an effective review and comparison of the bids received.

Non-participating items of work have been identified and segregated from the estimated cost of work eligible for Federal-aid. (Refer to Item XV of Exhibit 12-E for a list of frequent Federal Non-Participating Items)

The estimate has been segregated by fund types for use in preparing the "Request for Authorization for Construction" (Detail Record) and the Finance Letter.

XVI. Major Projects with Total Cost of \$100 Million to \$500 Million or more

The total cost of this project is Expected to be less than \$100 million. No financial or project management plans are required.

This project is expected to be \$100 million or more. A Financial Plan is required and has been prepared and submitted to the DLAE. Approval Date: _____.

A Project Management Plan has been prepared and submitted to the DLAE. Approval Date: _____

An Annual Financial Plan has been prepared and submitted to the DLAE. Approval Date _____

XVII. Local Agency Signature

This Federal Contract Provisions checklist has been prepared in accordance with Chapter 12 *Plans, Specifications & Estimate* of the Local Assistance Procedures Manual.

Signature: _____ Date: _____
Title: _____

XVIII. CALTRANS ACCEPTANCE

It is the responsibility of Local Agencies to make sure that the PS&E package is complete, adequate for its purpose, accurate, free of defects and inaccuracies, and unambiguous. Caltrans has not conducted a comprehensive review of the PS&E package and does not assume any responsibility or liability of the accuracy, completeness or adequacy of the PS&E package as a result of the Caltrans review of the "PS&E CHECKLIST."

Check appropriate acceptance statement:

I have reviewed this "PS&E CHECKLIST." The PS&E checklist appears to have been prepared in Accordance with Chapter 12 "Plans, Specifications & Estimate" of the *Local Assistance Procedures Manual*. I have not conducted a comprehensive review of the PS&E package and I cannot, therefore, attest that there are no errors, ambiguities, or omissions in the PS&E package. Caltrans assumes no liability for any defect in the PS&E package by virtue of its review of the PS&E checklist.

I have reviewed this "PS&E CHECKLIST." I have verified that the required Federal Contract Provisions are included in the specifications of the PS&E package but I have not reviewed the PS&E package in detail for other purposes. The PS&E checklist appears to have been prepared in accordance with Chapter 12 "Plans, Specifications & Estimate" of the *Local Assistance Procedures Manual*. I have not conducted a comprehensive review of the PS&E package and I cannot, therefore, attest that there are no errors, ambiguities, or omissions in the PS&E package. Caltrans assumes no liability for any defect in the PS&E package by virtue of its review of the PS&E checklist.

Signature: _____ Date: _____
Title: _____

- Distribution:**
- 1) Original with PS&E Certification - DLAE
 - 2) Original "Accepted" copy with PS&E Certification - DLAE file
 - 3) One "Accepted" copy to be returned to Local Agency

EXHIBIT 12-E PS&E CHECKLIST INSTRUCTIONS

The PS&E Checklist is to be completed by the local agency in accordance with the following instructions and attached to the PS&E Certification.

I. HIGHWAY SYSTEM AND FUNCTIONAL CLASSIFICATION**A. National Highway System**

Some PS&E requirements depend on whether the project is on or off the National Highway System (NHS). For FHWA approved NHS maps, see

http://www.fhwa.dot.gov/planning/national_highway_system/nhs_maps/

B. Functional Classification

Federal-aid eligibility, design guidance as well as some PS&E requirements depend on the functional classification of the route the project is on. For more guidance see FHWA's Guidance for the Functional Classification of Highways Website at: <http://www.fhwa.dot.gov/policy/ohpi/hpms/fchguidance.cfm>.

To find the functional classification of the project, please refer to Caltrans CRS maps at http://www.dot.ca.gov/hq/tsip/hseb/crs_maps/.

II. PROJECT SCOPE OF WORK

Scope of work in the PS&E must be consistent with what is identified in the original scoping document or application. Otherwise, appropriate approvals must have been obtained.

III. TYPE OF CONSTRUCTION

Design Guidance as well as some oversight responsibilities depend on the type of construction. See Chapter 11 "Design Guidance" of the Local Assistance Program Manual (LAPM) for definitions. If the project includes bridges and other structures only, check the box for 'Bridges and Other Structures Only'.

IV. METHOD OF CONSTRUCTION**A. Contracting Method**

Unless justified by a Public Interest Finding (Exhibit 12-F *Request for Approval of Cost-Effectiveness/Public Interest Finding*), all Federal-aid construction contracts must be awarded to the lowest responsible bidder of a competitive bid process. See Section 12.4 *Method of Construction* of the LAPM for additional information.

B. Force Account (Day Labor)

A Public Interest Finding (See Section 12.4 *Method of Construction* in the LAPM and Exhibit 12-F *Request for Approval of Cost-Effectiveness/Public Interest Finding*) must justify any force account construction work performed by the local agency. Check the appropriate boxes and process the PIF as required.

V. ENVIRONMENTAL ANALYSIS

The preparation of PS&E must reflect findings of the environmental analysis performed for the project. By checking the box, the agency certifies that the necessary actions called for by the environmental documents have been responded to in the PS&E. Failure to check the box will result in denial of the Request for Authorization. (See Section 12.3 *Environmental Procedures* of the LAPM for additional guidance).

VI. VALUE ENGINEERING ANALYSIS (VA)

A value engineering analysis is required for: (1) all Federal-aid highway projects on the NHS with a total estimated project cost of \$50 million or more, and (2) all bridge projects on the NHS with a total estimated project cost of \$40 million or more. (See Section 12.5 *Value Engineering Analysis* of the LAPM for additional guidance).

VII. GEOMETRIC DESIGN STANDARDS

If the project does not change existing geometrics, Section A and B do not apply and the local agency is not required to check any boxes in these sections. See Chapter 11, “Design Guidance” of the LAPM for additional guidance on geometric design standards.

Geometric Design Guidance Used

New and reconstruction projects on the NHS shall be designed in accordance with Standards as defined in the current edition of *A Policy on Geometric Design of Highways and Streets*, published by the American Association of State Highway and Transportation Officials (AASHTO). The minimum standards for geometric design of local Federal-aid resurfacing, restoration and rehabilitation (3R) projects on the NHS are shown in Exhibit 11-A *Geometric Design Standards for Local 3R Projects*. Local geometric design guidance that have been developed for use on locally funded new and reconstruction, or 3R projects off the NHS, may be used subject to the conditions listed in Chapter 11, “Design Guidance.” Check appropriate box only if this section applies.

VIII. BRIDGE DESIGN PROCEDURES

All bridges shall be designed in accordance with the current edition of the *Caltrans Bridge Design Specifications Manual* and the latest California amendments to the *AASHTO LRFD Bridge Design Specifications*. Check if requirements met, or if the project does not include any bridge construction indicate requirements does not apply.

IX. STANDARD PLANS

For projects off the State Highway System, the local agency may use Caltrans Standard Plans, Standard Plans for Public Works Construction, or subject to the conditions described in Chapter 11 “Design Guidance” and Section 12.6 *Plans* of the LAPM.

X. PROJECT PLANS AND SPECIFICATIONS

Project plans and specifications shall be signed and stamped on behalf of the local agency by the person in responsible charge and who is a registered professional engineer licensed to practice in the State of California. (See Section 12.6 *Plans* of the LAPM).

A temporary traffic control (TTC) plan shall be included in the PS&E for all Federal-aid highway construction projects. If the TTC plan is not included, reference to Signs/Striping Plans pertaining to the project in Standard Plan shall be indicated in the specification.

Check the first two boxes to indicate requirements are met. ***Failure to check both boxes will result in denial of the Request for Authorization.***

Erosion control plans may be required, see Section 12.6 *Plans*, in the LAPM. If required, check box.

Whenever applicable, project plans and specifications will need to comply with the Federal Americans with Disabilities Act (ADA) requirements 28 CFR, Part 35 or Part 36, and the California and Local Building Codes within the project limits. In accordance with 28 CFR Sec. 35.151, curbs ramps must meet current ADA standards if the project includes streets that are to be newly constructed or altered (includes repaving). For ADA requirements, see Chapter 11, “Design Guidance,” and Section 12.6 *Plans* of the LAPM. If ADA requirements apply and will be complied with, check box.

XI. STANDARD SPECIFICATIONS

For projects off the State Highway System, the local agency may use current Caltrans Standard Specifications and Standard Special Provision, the Standard Specifications for Public Works Construction, or subject to the conditions described in Chapter 11 “Design Guidance”.

XII. FEDERAL REQUIREMENTS

- A. Required Federal Contract Provisions** - Ensure Exhibit 12-G *Required Federal-aid Contract Language* or equivalent provisions are in the contract. Inserting unmodified Exhibit 12-G with appropriate information filled, into the project’s contract is strongly recommended. Provide page numbers if using equivalent provisions.

The Form FHWA-1273 must be physically inserted unmodified into the executed contract.

Provisions for liquidated damages shall be included in all Federal-aid contracts on the NHS (see Chapter 12 *Plans, Specifications & Estimate* of the LAPM for requirements).

Current Buy America regulations are discussed in Section 12.8 *Federal Contract Requirements* of the LAPM. Buy America requirements do not apply to minimal use of the material such that the cost, delivered to the project site, is less than \$2,500 or one-tenth-of-one-percent of the contract amount, whichever is greater. Buy America applies if federal dollars are used on any phase of the project.

Section 12.8 *Federal Contract Requirements* of the LAPM includes information for On-the-Job Training.

Please note that among all the federal requirements, the most frequent deficiencies (or missing requirements) are observed from ‘6. Changed Conditions’, ‘12. Female and Minority Goals’, and ‘13. Federal Trainee Program’. Inserting unmodified Exhibit 12-G into the contract is suggested as the best way to mitigate such deficiencies.

B. DBE Goal

Individual DBE contract goals will be established. Complete evaluation documentation is required and shall be retained for each contract (see Chapter 9, “Civil Rights and Disadvantage Enterprise” in the LAPM).

In some cases, the contract DBE goal may be zero due to the extremely limited subcontracting opportunities for DBEs, the lack of certified DBEs willing to work in the geographic area in which work is to be performed, or other reasons. Documentation is required verifying that the local agency has determined that a zero percent DBE goal is appropriate. Documentation must be based on the DBE contract goal methodology with the specific project-related work codes and DBEs highlighted. In some cases there may be no contract goal (which is different than zero percent goal) if, for example, the contract is sole-source or non-profit.

C. Certification/Disclosures

The certification and disclosure forms listed in Exhibit 12-H *Sample Bid* shall be included in all Federal-aid projects. Except for the Disclosure of Lobbying form and instructions, equivalent provisions may be used. See Section 12.8 *Federal Contract Requirements* of the LAPM for more information.

D. Other Required Forms

Two forms, or their equivalents, relating to subcontractors must be included as part of the bid package. Exhibits 15-G *Local Agency Bidder DBE Commitment (Construction Contracts)*, and 12-B *Bidder’s List of Subcontractors (DBE and Non-DBE)*. Exhibit 15-H *DBE Information - Good Faith Efforts* must also be part of the bid package if the DBE goal was not met.

E. Federal Wage Rates

If payment of federal predetermined wages are required per instructions in Subparagraph B.2.a “Section IV. Payment of Predetermined Wages,” they shall be physically incorporated into the final contract documents and in all related subcontracts signed by the local agency and the contractor.

Check appropriate box (i.e., Federal Wage Rates are included in the contract advertising package, referenced by the Internet Web site address, or not required) and indicate page number if applicable.

It must be emphasized that if the Internet Web site address is used in the advertising package, the final contract package upon signed by the local agency and the contractor, must physically contain the Federal Wage Rates as revised by addendums, if any addendums were issued.

By checking the box the local agency is indicating that they are aware of the Federal-aid “10-day rule” for federal wage rates. See Section 12.8 *Federal Contract Requirements* – Federal Wage Rates for local agency requirements under the “10-day rule.”

F. Relations with Railroad

Where construction of a Federal-aid project requires use of railroad properties or adjustments to railroad facilities, there shall be an agreement in writing between the local agency and the railroad company. The pertinent portions of the agreement applicable to any protective services required during performance of the work shall be included in the project specifications and special provisions.

Check appropriate box (i.e., provisions are included or not required). If provisions are included, indicate page number.

XIII. RESTRICTED CONTRACT PROVISIONS

Unless otherwise noted, see Section 12.9 *Restricted contract Provisions* of the LAPM for detailed guidance.

A. INDIAN PREFERENCES

Generally, local agencies may not use local hiring practices. However, SAFETEA-LU permits an Indian employment preference provision for projects on or near Indian reservations or Indian lands. Check the appropriate box.

B. BONDING AND PREQUALIFICATION

Bonding and prequalification procedures are not required for Federal-aid projects. However, any procedures or requirements for bonding, insurance, prequalification, qualification, or licensing of contractors shall not be used which may operate to restrict competition, prevent submission of a bid by or prohibit consideration of a bid submitted by any responsible contractor, whether a resident or nonresident of California. Check appropriate boxes, and if bonding and/or prequalification are used, check the last box to indicate the requirement will be met.

C. PRICE ADJUSTMENT CLAUSES

Price adjustment clauses may be implemented if certain conditions are met. If these clauses are used, the local agency must provide documentation of the required conditions in the project files. Check the appropriate box.

D. WARRANTY CLAUSES

Warranty clauses may be implemented if the conditions described in Section 12.11 *Materials and Equipment* of the LAPM are met. The local agency must provide documentation of the required conditions in the project files. Check the appropriate box.

E. PROPRIETARY ITEMS

The use of proprietary items is restricted as described in Section 12.11 *Materials and Equipment* of the LAPM. If the use does not meet these restrictions, a Public Interest Finding (and Certification, if applicable) justifying the use must be approved by the local agency, emailed to Proprietary.PIF@dot.ca.gov and documented in the project files. Check the appropriate box.

XIV. MATERIALS AND EQUIPMENT

Unless otherwise noted, see Section 12.11 *Materials and Equipment* of the LAPM for details.

A. Publicly Owned Equipment (for use by Contractor)

The use of publicly owned equipment on a project going to bid must be justified with a Public Interest Finding. The local agency may approve the use provided it meets conditions described in Section 12.11 *Materials and Equipment*. Check the appropriate box.

B. Contractor Purchases for Local Ownership

The cost of equipment purchased by the local agency or by the contractor with ownership transferred to the local agency for construction engineering is limited. Check the appropriate box.

C. Convict Produced Materials

Materials produced by convict labor may be used on any Federal-aid project if they meet certain conditions. Check appropriate box.

D. Local Agency Furnished Materials

The use of local agency furnished materials not acquired on the basis of competitive bidding must be supported by a Public Interest Finding justifying the use (see Section 12.12 *Estimates* of the LAPM). The justification must be approved by the local agency and documented in the project files. If these materials are included, check the appropriate box indicating the method of acquisition.

XV. PRELIMINARY ESTIMATE

An estimate of the contract items of work must be prepared in a format which describes the items of work, unit amount, quantity, unit price, amount, a subtotal, contingencies and a total (Exhibit 12-A *Preliminary Estimate of Cost* or equivalent). The estimate must be broken down into items sufficient in detail to meet the stated requirements. Check boxes if these requirements are met.

If non-participating items of work are included in the project, check box. These items can be found at http://www.dot.ca.gov/construction/change-order/docs/fhwa_nonpart_cost_items.pdf

If the project is funded with more than one type of Federal-aid it must be segregated by fund types (see Chapter 3, “Project Authorization,” of the LAPM). Check box if this requirement is met.

XVI. MAJOR PROJECTS WITH TOTAL COSTS EXPECTED TO EXCEED \$100 MILLION OR \$500 MILLION

The federal SAFETEA-LU requires that a local agency receiving an amount of federal financial assistance for “major” projects with an estimated total cost exceeding \$100 million must have a financial plan and projects exceeding \$500 million must also have a project management plan. For details of the required submittal and approval of these two plans, which are required for all “major” projects exceeding the two estimated total costs, refer to Chapter 2 “Roles and Responsibilities” of the LAPM.

XVII. LOCAL AGENCY SIGNATURE

The Federal Contract Provisions Checklist shall be signed by the person preparing the contract specifications. The checklist shall be signed even if prepared by the same person who will sign the PS&E Certification.

XVIII. CALTRANS ACCEPTANCE

Caltrans will indicate the appropriate acceptance statement based on the type of review, as described in Section 12.13 *PS&E Certification* of the LAPM and sign the bottom of the form.

EXHIBIT 12-G REQUIRED FEDERAL-AID CONTRACT LANGUAGE

(For Local Assistance Construction Projects)

The following language must be incorporated into all Local Assistance Federal-aid construction contracts.
The following language, with minor edits, was taken from the Code of Federal Regulations.

MAINTAIN RECORDS AND SUBMIT REPORTS DOCUMENTING YOUR PERFORMANCE UNDER THIS SECTION

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2. BID OPENING.....	5
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FURNISH STEEL AND IRON MATERIALS TO BE INCORPORATED INTO THE WORK WITH CERTIFICATES OF COMPLIANCE. STEEL STEEL AND IRON MATERIALS MUST BE PRODUCED IN THE U.S. EXCEPT:	7
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1. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

Under 49CFR26.13(b):

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49CFR26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49CFR26).

To ensure equal participation of DBEs provided in 49CFR26.5, the Agency shows a contract goal for DBEs.

Make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

Meet the DBE goal shown elsewhere in these special provisions or demonstrate that you made adequate good faith efforts to meet this goal.

It is your responsibility to verify that the DBE firm is certified as DBE at date of bid opening. For a list of DBEs certified by the California Unified Certification Program, go to: http://www.dot.ca.gov/hq/bep/find_certified.htm.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal.

Credit for materials or supplies you purchase from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are obtained from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

You receive credit towards the goal if you employ a DBE trucking company that performs a commercially useful function as defined in 49CFR26.55(d)(1) as follows:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
- The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

a. DBE Commitment Submittal

Submit the Exhibit 15-G *Construction Contract DBE Commitment*, included in the Bid book. If the form is not submitted with the bid, remove the form from the Bid book before submitting your bid.

If the DBE Commitment form is not submitted with the bid, all bidders must complete and submit Exhibit 15-G to the Agency. The DBE Commitment form must be received by the Agency within five (5) days of bid opening.

Submit written confirmation from each DBE stating that it is participating in the contract. Include confirmation with the DBE Commitment form. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract.

If you do not submit the DBE Commitment form within the specified time, the Agency will find your bid nonresponsive.

b. Good Faith Efforts Submittal

Exhibit 15-H: Proposer/Contractor Good Faith Efforts is due to the local agency within five (5) days of bid opening. Days means calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or federal holiday, the period extends to the next day that is not a Saturday, Sunday, or federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next on which the agency is open. Only good faith efforts directed towards obtaining participation and meeting or exceeding the DBE contract goal will be considered.

Submittal of good faith efforts documentation within the specified time protects your eligibility for award of the contract in the event the Agency finds that the DBE goal has not been met.

Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work you have made available to DBE firms. Identify those items of work you might otherwise perform with your own forces and those items that have been broken down into economically feasible units to facilitate DBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to DBE firms.
2. Names of certified DBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the DBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit certified DBEs through all reasonable and available means and provide sufficient time to allow DBEs to respond.
3. Name of selected firm and its status as a DBE for each item of work made available. Include name, address, and telephone number of each DBE that provided a quote and their price quote. If the firm selected for the item is not a DBE, provide the reasons for the selection.
4. Name and date of each publication in which you requested DBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the DBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.
7. List of efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the DBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the DBE assisted, nature of the assistance offered, and date assistance was provided. Provide copies of supporting documents, as appropriate.
8. Any additional data to support demonstration of good faith efforts.

The Agency may consider DBE commitments from other bidders when determining whether the low bidder made good faith efforts to meet or exceed the DBE goal.

c. Exhibit 15-G - Construction Contract DBE Commitment

Complete and sign Exhibit 15-G *Construction Contract DBE Commitment* included in the contract documents regardless of whether DBE participation is reported.

Provide written confirmation from each DBE that the DBE is participating in the Contract. A copy of a DBE's quote serves as written confirmation. If a DBE is participating as a joint venture partner, please submit a copy of the joint venture agreement.

d. Subcontractor and Disadvantaged Business Enterprise Records

Use each DBE subcontractor as listed on Exhibit 12-B *Bidder's List of Subcontractors (DBE and Non-DBE)*, and Exhibit 15-G *Construction Contract DBE Commitment* form unless you receive authorization for a substitution.

The Agency requests the Contractor to:

1. Notify the Resident Engineer or Inspector of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
 - Name and business address of each 1st-tier subcontractor
 - Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier
 - Date of payment and total amount paid to each business (see Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

If you are a DBE contractor, include the date of work performed by your own forces and the corresponding value of the work.

Before the 15th of each month, submit a Monthly DBE Trucking Verification form.

If a DBE is decertified before completing its work, the DBE must notify you in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify you in writing of the certification date. Submit the notifications. On work completion, complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form. Submit the form within 30 days of contract acceptance.

Upon work completion, complete Exhibit 17-F *Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors*. Submit it within 90 days of contract acceptance. The Agency will withhold \$10,000 until the form is submitted. The Agency releases the withhold upon submission of the completed form.

e. Performance of Disadvantaged Business Enterprises

DBEs must perform work or supply materials as listed in the Exhibit 15-G *Construction Contract DBE Commitment* form, included in the Bid.

Do not terminate or substitute a listed DBE for convenience and perform the work with your own forces or obtain materials from other sources without authorization from the Agency.

The Agency authorizes a request to use other forces or sources of materials if the bidder shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. You stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.
3. Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials.
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract

9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. Agency determines other documented good cause.

Notify the original DBE of your intent to use other forces or material sources and provide the reasons. Provide the DBE with 5 days to respond to your notice and advise you and the Agency of the reasons why the use of other forces or sources of materials should not occur. Your request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from you to the DBE regarding the request.
3. Notices from the DBEs to you regarding the request.

If a listed DBE is terminated or substituted, you must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

The contractor or consultant shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor or subconsultant obtains the agency's written consent. Unless the agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the *Exhibit 15-G: Construction Contract DBE Commitment*.

2. **BID OPENING** The Agency publicly opens and reads bids at the time and place shown on the *Notice to Contractors*.
3. **BID RIGGING** The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is (800) 424-9071. The service is available 24 hours 7 days a week and is confidential and anonymous.. The hotline is part of the DOT's effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.
4. **CONTRACT AWARD** If the Agency awards the contract, the award is made to the lowest responsible and responsive bidder.
5. **CONTRACTOR LICENSE**

The Contractor must be properly licensed as a contractor from contract award through Contract acceptance (Public Contract Code § 10164).

6. CHANGED CONDITIONS

a. Differing Site Conditions

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
2. Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the Local Agency, at their option.)

b. Suspensions of Work Ordered by the Engineer

1. If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
2. Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.
4. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

c. Significant Changes in the Character of Work

1. The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.
2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.
3. If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
4. The term "significant change" shall be construed to apply only to the following circumstances:
 - When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
 - When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

7. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Contractor shall begin work within 15 calendar days after the issuance of the Notice to Proceed.

This work shall be diligently prosecuted to completion before the expiration of TEN (10) WORKING DAYS beginning on the fifteenth calendar day after the date shown on the Notice to Proceed.

The Contractor shall pay to the City/County _____ the sum of \$ _____ per day, for each and every calendar days' delay in finishing the work in excess of the number of working days prescribed above.

8. BUY AMERICA

Furnish steel and iron materials to be incorporated into the work with certificates of compliance and certified mill test reports. Mill test reports must indicate where the steel and iron were melted and manufactured. Steel and iron materials must be produced in the U.S. except:

1. Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478 (03/24/1995)];
2. If the total combined cost of the materials does not exceed the greater of 0.1 percent of the total bid or \$2,500, materials produced outside the U.S. may be used.

Production includes:

1. Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending, grinding, and drilling) or chemical composition;
2. Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

9. QUALITY ASSURANCE

The Agency uses a Quality Assurance Program (QAP) to ensure a material is produced to comply with the Contract.

You may examine the records and reports of tests the Agency performs if they are available at the job site.

Schedule work to allow time for QAP.

10. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within seven (7) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency, unless as agreed to in writing by the prime contractor and subcontractor, pursuant to Section 7108.5 of the Business and Professions Code. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section this code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

11. FORM FHWA-1273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONTRACTS

(Excluding ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS)

[The following 10 pages must be physically inserted into the contract without modification.]

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

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- I. General
- II. Nondiscrimination
- III. No segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
- b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

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2. EEO Officer: The contractor will designate and make known to the contracting officers and EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.
- b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

- c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

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7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

- a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
- b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

- a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
- b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

- a. The records kept by the contractor shall document the following:
 - (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.
- b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

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IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and

current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.
- (4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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4. Apprentices and trainees**a. Apprentices (programs of the USDOL).**

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.**d. Apprentices and Trainees (programs of the U.S. DOT).**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
- a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
 - (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
 - (2) the prime contractor remains responsible for the quality of the work of the leased employees;
 - (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
 - (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
- b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

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- (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.
2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
 - (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website

- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which

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(<https://www.epls.gov/>), which is compiled by the General Services Administration.

exceed information of participant is not required to exceed that which is \$100,000 and that all such recipients shall certify and disclose accordingly.

- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and normally possessed by a prudent person in the ordinary course of business dealings.

12. FEMALE AND MINORITY GOALS

To comply with Section II, "Nondiscrimination," of "Required Contract Provisions Federal-Aid Construction Contracts," the following are for female and minority utilization goals for Federal-aid construction contracts and subcontracts that exceed \$10,000:

The nationwide goal for female utilization is 6.9 percent.

The goals for minority utilization [45 Fed Reg 65984 (10/3/1980)] are as follows:

MINORITY UTILIZATION GOALS

Economic Area		Goal (Percent)
174	Redding CA: Non-SMSA (Standard Metropolitan Statistical Area) Counties: CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehama	6.8
175	Eureka, CA Non-SMSA Counties: CA Del Norte; CA Humboldt; CA Trinity	6.6
176	San Francisco-Oakland-San Jose, CA: SMSA Counties: 7120 Salinas-Seaside-Monterey, CA	28.9
	CA Monterey	25.6
	7360 San Francisco-Oakland	
	CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo	
	7400 San Jose, CA	19.6
	CA Santa Clara, CA	
	7485 Santa Cruz, CA	14.9
	CA Santa Cruz	
	7500 Santa Rosa	9.1
177	CA Sonoma	
	8720 Vallejo-Fairfield-Napa, CA	17.1
	CA Napa; CA Solano	
178	Non-SMSA Counties: CA Lake; CA Mendocino; CA San Benito	23.2
	Sacramento, CA: SMSA Counties: 6920 Sacramento, CA	16.1
	CA Placer; CA Sacramento; CA Yolo	
179	Non-SMSA Counties CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba	14.3
	Stockton-Modesto, CA: SMSA Counties: 5170 Modesto, CA	12.3
	CA Stanislaus	
178	8120 Stockton, CA	24.3
	CA San Joaquin	
	Non-SMSA Counties CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Tuolumne	19.8
179	Fresno-Bakersfield, CA SMSA Counties: 0680 Bakersfield, CA	19.1
	CA Kern	
	2840 Fresno, CA	26.1

	CA Fresno Non-SMSA Counties: CA Kings; CA Madera; CA Tulare	23.6
180	Los Angeles, CA: SMSA Counties: 0360 Anaheim-Santa Ana-Garden Grove, CA CA Orange 4480 Los Angeles-Long Beach, CA CA Los Angeles 6000 Oxnard-Simi Valley-Ventura, CA CA Ventura 6780 Riverside-San Bernardino-Ontario, CA CA Riverside; CA San Bernardino 7480 Santa Barbara-Santa Maria-Lompoc, CA CA Santa Barbara Non-SMSA Counties CA Inyo; CA Mono; CA San Luis Obispo	11.9 28.3 21.5 19.0 19.7 24.6
181	San Diego, CA: SMSA Counties 7320 San Diego, CA CA San Diego Non-SMSA Counties CA Imperial	16.9 18.2

For the last full week July during which work is performed under the contract, you and each non material-supplier subcontractor with a subcontract of \$10,000 or more must complete Form FHWA PR-1391 (Appendix C to 23 CFR 230). Submit the forms by August 15.

13. TITLE VI ASSURANCES

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONTRACTOR) agrees as follows:

- (1) Compliance with Regulations: CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- (2) Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONTRACTOR of the CONTRACTOR'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the California Department of Transportation or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information

required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the California Department of Transportation or the FHWA as appropriate, and shall set forth what efforts CONTRACTOR has made to obtain the information.

- (5) Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this agreement, the California Department of Transportation shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
- (a) withholding of payments to CONTRACTOR under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
 - (b) cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONTRACTOR shall take such action with respect to any sub-agreement or procurement as the California Department of Transportation or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONTRACTOR may request the California Department of Transportation enter into such litigation to protect the interests of the State, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

14. USE OF UNITED STATES-FLAG VESSELS (CARGO PREFERENCE ACT)

The CONTRACTOR agrees-

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carries, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
2. To Furnish within 20 days following the date of loading for shipments originating within the United State or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

Federal Trainee Program Special Provisions
(to be used when applicable)**15. FEDERAL TRAINEE PROGRAM**

For the Federal training program, the number of trainees or apprentices is _____.

This section applies if a number of trainees or apprentices is specified in the special provisions.

As part of your equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

You have primary responsibility for meeting this training requirement.

If you subcontract a contract part, determine how many trainees or apprentices are to be trained by the subcontractor.

Include these training requirements in your subcontract.

Where feasible, 25 percent of apprentices or trainees in each occupation must be in their 1st year of apprenticeship or training.

Distribute the number of apprentices or trainees among the work classifications on the basis of your needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, submit to the City/County of _____:

1. Number of apprentices or trainees to be trained for each classification
2. Training program to be used
3. Training starting date for each classification

Obtain the City/County's of _____ approval for this submitted information before you start work. The City/County of _____ credits you for each apprentice or trainee you employ on the work who is currently enrolled or becomes enrolled in an approved program.

The primary objective of this section is to train and upgrade minorities and women toward journeymen status. Make every effort to enroll minority and women apprentices or trainees, such as conducting systematic and direct recruitment through public and private sources likely to yield minority and women apprentices or trainees, to the extent they are available within a reasonable recruitment area. Show that you have made the efforts. In making these efforts, do not discriminate against any applicant for training.

Do not employ as an apprentice or trainee an employee:

1. In any classification in which the employee has successfully completed a training course leading to journeyman status or in which the employee has been employed as a journeyman
2. Who is not registered in a program approved by the US Department of Labor, Bureau of Apprenticeship and Training

Ask the employee if the employee has successfully completed a training course leading to journeyman status or has been employed as a journeyman. Your records must show the employee's answers to the questions.

In your training program, establish the minimum length and training type for each classification. The City/County of _____ and FHWA approves a program if one of the following is met:

1. It is calculated to:
 - Meet the your equal employment opportunity responsibilities
 - Qualify the average apprentice or trainee for journeyman status in the classification involved by the end of the training period
2. It is registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, and it is administered in a way consistent with the equal employment responsibilities of Federal-aid highway construction contracts

Obtain the State's approval for your training program before you start work involving the classification covered by the program.

Provide training in the construction crafts, not in clerk-typist or secretarial-type positions. Training is allowed in lower level management positions such as office engineers, estimators, and timekeepers if the training is oriented toward construction applications. Training is allowed in the laborer classification if significant and meaningful training is provided and approved by the division office. Off-site training is allowed if the training is an integral part of an approved training program and does not make up a significant part of the overall training.

The City/County of _____ reimburses you 80 cents per hour of training given an employee on this contract under an approved training program:

1. For on-site training
2. For off-site training if the apprentice or trainee is currently employed on a Federal-aid project and you do at least one of the following:
 - Contribute to the cost of the training
 - Provide the instruction to the apprentice or trainee
 - Pay the apprentice's or trainee's wages during the off-site training period
3. If you comply this section.

Each apprentice or trainee must:

1. Begin training on the project as soon as feasible after the start of work involving the apprentice's or trainee's skill
2. Remain on the project as long as training opportunities exist in the apprentice's or trainee's work classification or until the apprentice or trainee has completed the training program

Furnish the apprentice or trainee:

1. Copy of the program you will comply with in providing the training

EXHIBIT 12-H SAMPLE BID

CITY / COUNTY OF _____

DEPARTMENT OF PUBLIC WORKS

BID

FOR

(PROJECT DESCRIPTION)

IN

(LOCATION)

Notice to bidders and Special Provisions dated: _____
Project Plans approved: _____
Standard Specifications dated: _____
Standard Plans dated: _____

Contract No. _____

Federal Aid Project No. _____

Bid Opening Date: _____

(DO NOT DETACH)

PROPOSAL TO THE CITY / COUNTY OF _____

DEPARTMENT OF PUBLIC WORKS

CONTRACT NO. - _____

NAME OF BIDDER _____

BUSINESS P.O. BOX _____

CITY, STATE, ZIP _____

BUSINESS STREET ADDRESS _____

(Please include even if P.O. Box used)

CITY, STATE, ZIP _____

TELEPHONE NO: AREA CODE () _____

FAX NO: AREA CODE () _____

CONTRACTOR LICENSE NO. _____

The work for which this proposal is submitted is for construction in conformance with the special provisions (including the payment of not less than the State general prevailing wage rates or Federal minimum wage rates), the project plans described below, including any addenda thereto, the contract annexed hereto, and also in conformance with Current California Department of Transportation Standard Plans, Standard Specifications, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished.

The special provisions for the work to be done are dated (Insert advertisement date) and are entitled:

CITY / COUNTY OF _____
DEPARTMENT OF _____
NOTICE TO CONTRACTORS AND SPECIAL PROVISIONS FOR

(Description of Work)

IN

(Location)

The project plans for the work to be done were approved _____ and are entitled:

CITY / COUNTY OF _____
DEPARTMENT OF _____
PROJECT PLANS FOR _____

(Description of Work)

IN

(Location)

Bids are to be submitted for the entire work. The amount of the bid for comparison purposes will be the total of all items. The bidder shall set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose. In the case of unit basis items, the amount set forth under the "Item Total" column shall be the product of the unit price bid and the estimated quantity for the item.

In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail, except as provided in (a) or (b), as follows:

- (a) If the amount set forth as a unit price is unreadable or otherwise unclear, or is omitted, or is the same as the amount of the entry in the item total column, then the amount set forth in the item total column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price;
- (b) (Decimal Errors) If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, or one-hundredth, etc. from the entered total, the discrepancy will be resolved by using the entered unit price or item total, whichever most closely approximates percentage-wise the unit price or item total in the CITY/COUNTY OF _____'s Final Estimate of cost.

If both the unit price and the item total are unreadable or otherwise unclear, or are omitted, the bid may be deemed irregular. Likewise if the item total for a lump sum item is unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular unless the project being bid has only a single item and a clear, readable total bid is provided.

Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number of digits and, if applicable, decimal placement. Cents symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in dollars and/or decimal fractions of a dollar. Bids on lump sum items shall be item totals only; if any unit price for a lump sum item is included in a bid and it differs from the item total, the items total shall prevail.

The foregoing provisions for the resolution of specific irregularities cannot be so comprehensive as to cover every omission, inconsistency, error or other irregularity which may occur in a bid. Any situation not specifically provided for will be determined in the discretion of the CITY/COUNTY OF _____, and that discretion will be exercised in the manner deemed by the CITY/COUNTY OF _____ to best protect the public interest in the prompt and economical completion of the work. The decision of the CITY/COUNTY OF _____ respecting the amount of a bid, or the existence or treatment of an irregularity in a bid, shall be final.

If this proposal shall be accepted and the undersigned shall fail to enter into the contract and furnish the 2 bonds in the sums required by the State Contract Act, with surety satisfactory to the CITY/COUNTY OF _____, within 8 days, not including Saturdays, Sundays and legal holidays, after the bidder has received notice from the CITY/COUNTY OF _____ that the contract has been awarded, the CITY/COUNTY OF _____ may, at its option, determine that the bidder has abandoned the contract, and thereupon this proposal and the acceptance thereof shall be null and void and the forfeiture of the security accompanying this proposal shall operate and the same shall be the property of the CITY / COUNTY OF _____.

The undersigned, as bidder, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, or corporation; that he has carefully examined the location of the proposed work, the annexed proposed form of contract, and the plans therein referred to; and he proposes, and agrees if this proposal is accepted, that he will contract with the CITY/COUNTY OF _____, in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the contract, in the manner and time therein

prescribed, and according to the requirements of the Engineer as therein set forth, and that he will take in full payment therefore the following prices, to wit:

BID ITEM LIST

ITEM NO.	ITEM CODE	ITEM	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE (IN FIGURES)	ITEM TOTAL (IN FIGURES)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						

TOTAL BID

NOTE: "TOTAL BID" is only on the last page of the Bid Item List.

The Bidder shall list the name and address, Contractor license number, and description of portion of work subcontracted of each subcontractor to whom the Bidder proposes to subcontract portions of the work, as required by the provisions of the Standard Specifications and of the special provisions.

LIST OF SUBCONTRACTORS

Business Name and Location	California Contractor License Number	Description of Portion of Work	Bid Items Numbers	Percentage of Bid Item Subcontracted

*(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL SHALL
ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF THOSE CERTIFICATIONS
WHICH ARE A PART OF THIS PROPOSAL)*

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder _____, proposed subcontractor _____, hereby certifies that he has _____, has not _____, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

PUBLIC CONTRACT CODE**PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT**

In conformance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder has _____, has not _____ been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The bidder must place a checkmark after "has" or "has not" in one of the blank spaces provided. The above Statement is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

In conformance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes _____ No _____

If the answer is yes, explain the circumstances in the following space.

PUBLIC CONTRACT CODE 10232 STATEMENT

In conformance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

Note: The above Statement and Questionnaire are part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement and Questionnaire.
Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

Noncollusion Affidavit
(Title 23 United States Code Section 112 and
Public Contract Code Section 7106)

To the CITY / COUNTY of _____
DEPARTMENT OF PUBLIC WORKS.

In conformance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Non-collusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Non-collusion Affidavit.
Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

DEBARMENT AND SUSPENSION CERTIFICATION

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions.
The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

**NONLOBBYING CERTIFICATION
FOR FEDERAL-AID CONTRACTS**

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in conformance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

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January 2019

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influenced the covered Federal action.
(b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box. Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

SF-LLL-Instructions Rev. 06-04-90«ENDIF»

Accompanying this proposal is _____

(NOTICE: INSERT THE WORDS "CASH(\$ _____)," "CASHIER'S CHECK,"
"CERTIFIED CHECK," OR "BIDDER'S BOND," AS THE CASE MAY BE.)

in amount equal to at least ten percent of the total of the bid.

The names of all persons interested in the foregoing proposal as principals are as follows:

IMPORTANT NOTICE: *If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a copartnership, state true name of firm, also names of all individual copartners composing firm; if bidder or other interested person is an individual, state first and last names in full.*

Licensed in conformance with an act providing for the registration of Contractors,

License No. _____ Classification(s) _____

ADDENDA

This Proposal is submitted with respect to the changes to the contract included in addenda number/s

(Fill in addenda numbers if addenda have been received and insert, in this Proposal, any Engineer's Estimate sheets that were received as part of the addenda.)

By my signature on this proposal I certify, under penalty of perjury under the laws of the State of California, that the foregoing questionnaire and statements of Public Contract Code Sections 10162, 10232 and 10285.1 are true and correct and that the bidder has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California Administrative Code). By my signature on this proposal I further certify, under penalty of perjury under the laws of the State of California and the United States of America, that the Noncollusion Affidavit required by Title 23 United States Code, Section 112 and Public Contract Code Section 7106; and the Title 49 Code of Federal Regulations, Part 29 Debarment and Suspension Certification are true and correct.

Date: _____



Signature and Title of Bidder

Business Address _____

Place of Business _____

Place of Residence _____

CITY / COUNTY OF _____
DEPARTMENT OF _____

BIDDER'S BOND

We, _____ as Principal, and

as Surety are bound unto the City/County of _____, State of California, hereafter referred to as "Obligee", in the penal sum of ten percent (10%) of the total amount of the bid of the Principal submitted to the Obligee for the work described below, for the payment of which sum we bind ourselves, jointly and severally,

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT:

WHEREAS, the Principal is submitted to the Obligee, for _____

(Copy here the exact description of work, including location as it appears on the proposal)

for which bids are to be opened at _____ on _____
 (Insert place where bids will be opened) (Insert date of bid opening)

NOW, THEREFORE, if the Principal is awarded the contract and, within the time and manner required under the specifications, after the prescribed forms are presented to him for signature, enters into a written contract, in the prescribed form, in conformance with the bid, and files two bonds with the Obligee, one to guarantee faithful performance of the contract and the other to guarantee payment for labor and materials as provided by law, then this obligation shall be null and void; otherwise, it shall remain in full force.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

Dated: _____, 20 ____.

Principal

Surety
 By _____
Attorney-in-fact

CERTIFICATE OF ACKNOWLEDGEMENT

State of California
 City/County of _____ SS

On this _____ day of _____ in the year 20 ____ before me

_____, personally appeared _____,
Attorney-in-fact

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument as the attorney-in-fact of _____, and acknowledged to me that he (she) subscribed the name of the said company thereto as surety, and his (her) own name as attorney-in-fact.

(SEAL)

Notary Public

Insert completed
[[Exhibit 15-G Local Agency Bidder DBE Commitment \(Construction Contracts\)](#)]
here.

Insert completed
[[Exhibit 15-H DBE Information —Good Faith Efforts](#)]
here.

Attach
[RAILROAD AGREEMENT]
(if required)

CITY / COUNTY OF _____**DEPARTMENT OF** _____**CONTRACT NO.** _____

THIS AGREEMENT, made and concluded, in duplicate, _____,
between the City/County of _____ thereof, party of the first part, and

Contractor, party of the second part.

ARTICLE I.--WITNESSETH, That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the said party of the first part, and under the conditions expressed in the 2 bonds, bearing even date with these presents, and hereunto annexed, the said party of the second part agrees with the said party of the first part, at his own proper cost and expense, to do all the work and furnish all the materials, except such as are mentioned in the specifications to be furnished by said party of the first part, necessary to construct and complete in a good, workmanlike and substantial manner and to the satisfaction of the City/County of _____, the work described in the special provisions and the project plans described below, including any addenda thereto. and also in conformance with current California Department of Transportation Standard Plans, the Standard Specifications, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished, which said special provisions, project plans, Standard Plans, Standard Specifications, and Labor Surcharge and Equipment Rental Rates are hereby specially referred to and by such reference made a part hereof.

The special provisions for the work to be done are dated _____ and are entitled:

CITY / COUNTY OF _____;
DEPARTMENT OF _____
NOTICE TO CONTRACTORS AND SPECIAL PROVISIONS FOR

PROJECT DESCRIPTION

IN

PROJECT LOCATION

The project plans for the work to be done were approved _____ and are entitled:

CITY / COUNTY OF _____;
DEPARTMENT OF _____
PROJECT PLANS FOR

PROJECT DESCRIPTION

IN

PROJECT LOCATION

ARTICLE II.--The said party of the first part hereby promises and agrees with the said Contractor to employ, and does hereby employ, the said Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the prices hereinafter set forth, and hereby contracts to pay the same at the time, in the manner and upon the conditions herein set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE III.--The State general prevailing wage rates determined by the Director of Industrial Relations are hereby made a part of this contract. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith. When the project is subject to both State and Federal hourly minimum rates for wages and fringe benefits and when the two rates differ for similar kinds of labor, the Contractor shall not pay less than the higher rate. Federal wage rates can be found in Appendix X.

ARTICLE IV.--By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self insurance in conformance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

ARTICLE V.--And the said Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this agreement; also for all loss or damage, arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the (*NAME OF LOCAL AGENCY, DEPARTMENT OF* _____), and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the plans and specifications, and the requirements of the Engineer under them, to wit:

ARTICLE VI.--The provisions of Form FHWA 1273 is hereby physically attached, unmodified as a part of this contract (Exhibit A). This provision applies to federal-aid contracts and all work performed by subcontracts and subsequent lower-tier subcontracts and required be physically included in each executed contract.

ARTICLE VII.-- The Minimum Federal Wage Rates Determination is hereby physically attached, in conformance with federal 10-day rule as a part of this contract (Exhibit B). This wage rate determination applies to federal-aid contracts and all work performed exceeding \$2000 by subcontracts and subsequent lower-tier subcontracts and required be physically included in each executed contract.

BID ITEM LIST						
Item No.	Item Code	Item	Unit of Measure	Estimated Quantity	Unit Price (In Figures)	Item Total (In Figures)
		(Items in CONTRACT will be the same as those bid in PROPOSAL)				

IN WITNESS WHEREOF, The parties to these presents have here-unto set their hands the year and date first above written

CITY / COUNTY OF _____
DEPARTMENT OF PUBLIC WORKS

By _____
Authorized Local Agency Representative

Contractor

By _____

Licensed in accordance with
an act providing for the
registration of contractors,

License No. _____

Federal Employer Identification

Number _____

Approved and certified as being in conformance with the requirements of the State Contract Act.

Attorney, City / County of _____

Approved Effective _____

CITY / COUNTY OF _____
DEPARTMENT OF PUBLIC WORKS

SAMPLE PAYMENT BOND

(Section 3247, Civil Code)

WHEREAS, The City / County of _____, acting by and through the Department of Public Works, hereafter referred to as "Obligee", has awarded to Contractor _____, hereafter designated as the "Principal", a contract for the work described as follows:

AND WHEREAS, said Principal is required to furnish a bond in connection with said contract, to secure the payment of claims of laborers, mechanics, materialmen and other persons as provided by law.

NOW, THEREFORE, we the undersigned Principal and Surety are bound unto the Obligee in the sum of _____ dollars (\$ _____), for which payment, we bind ourselves, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if said Principal or its subcontractors shall fail to pay any of the persons named in Civil Code Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by such claimant, or any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board for the wages of employees of the Principal and his subcontractors pursuant to Section 18806 of the Revenue and Taxation Code, with respect to such work and labor, that the surety herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the surety will pay a reasonable attorney's fee to be fixed by the court. This bond shall inure to the benefit of any of the persons named in Civil Code Section 3181 as to give a right of action to such persons or their assigns in any suit brought upon this bond.

Dated: _____, 20 ____

Correspondence or claims relating to this bond should be sent to the surety at the following address:

_____	_____
_____	_____
_____	Principal
_____	Surety (SEAL)
_____	By : Attorney-in-Fact

NOTE: Signatures of those executing for the surety must be properly acknowledged.

CERTIFICATE OF ACKNOWLEDGEMENT

State of California
City / County of _____ SS

On this _____ day of _____ in the year 20 ____ before me _____, personally appeared _____, personally known to me (or proved to me

Attorney-in-fact

on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument as the attorney-in-fact of _____ and acknowledged to me that he/she subscribed the name of the said company thereto as surety, and his/her own name as attorney-in-fact.

(SEAL)

Notary Public

CITY / COUNTY OF _____
DEPARTMENT OF PUBLIC WORKS

SAMPLE PERFORMANCE BOND

(To Accompany Contract)

Bond No. _____

WHEREAS, the City / County of _____, acting by and through the Department of Public Works, has awarded to Contractor _____, hereafter designated as the "Contractor", a contract for the work described as follows:

AND WHEREAS, the Contractor is required to furnish a bond in connection with said contract, guaranteeing the faithful performance thereof:

NOW, THEREFORE, we the undersigned Contractor and Surety are held firmly bound to the City / County of _____ in the sum of \$ _____ dollars (\$ _____), to be paid to said City / County or its certain attorney, its successors and assigns: for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if the above bound Contractor, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing contract and any alteration thereof made as therein provided, on his or their part to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning, and shall indemnify and save harmless the City / County of _____, its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and virtue.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this _____ day of _____, 20__.

Correspondence or claims relating to this bond should be sent to the surety at the following address:

Contractor

Name of Surety (SEAL)

By : Attorney-in-Fact

NOTE: Signatures of those executing for the surety must be properly acknowledged.

CERTIFICATE OF ACKNOWLEDGEMENT

State of California, City / County of _____ SS

On this _____ day of _____ in the year 20__ before me _____, a notary public in and for the City / County of _____, personally appeared _____, known to me to be the person whose name is subscribed to this *Attorney-in-fact* instrument and known to me to be the attorney-in-fact of _____ and acknowledged to me that he/she subscribed the name of the said company thereto as surety, and his/her own name as attorney-in-fact.

(SEAL)

NOTARY PUBLIC

**FEDERAL
WAGE RATES**

- Refer to the DOL Homepage on the internet for the current rates at <https://wdol.gov/> or contact your District Local Assistance Engineer for a hard copy.

Exhibit A - For Federal-Aid Contracts Insert
[Unmodified Form FHWA-1273, Required Contract Provisions Federal-Aid Contracts]
here.

Exhibit B - For Federal-Aid Contracts Insert
[Minimum Federal Wage Rates Determinations In Conformance With Federal 10-Day Rule As
May Issued By An Addendum]
here.

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and due process of law to determine compensation. These laws and regulations are also intended as a safeguard to ensure that federal funds are not unnecessarily or inappropriately expended. The information in this section has been compiled from many sources, but the underlying federal and state laws remain unchanged. This chapter should not be used as a substitute for these laws, statutes, regulations, policies, and/or procedures when conducting R/W activities using federal funds.

Note: All documents and papers related to a project must carry the federal-aid project number for identification.

13.2 FEDERAL-AID AND THE FEDERAL/STATE/LOCAL AGENCY RELATIONSHIP

The Federal Highway Administration (FHWA) is the federal agency most typically involved in transportation projects undertaken with federal funding for the programs discussed in this [LAPM](#). It has the authority and responsibility for implementing and monitoring federal laws, regulations, and executive orders affecting these programs. When a project utilizes federal funding, the FHWA is involved pursuant to these responsibilities and the delegations described below.

Caltrans is granted major delegations of authority from FHWA under 23 USC 106(c) and the FHWA/Caltrans Joint Stewardship and Oversight Agreement. Further, Caltrans has passed on these delegations to local agency partners to the greatest extent possible. With each delegation goes the responsibility for initiating and completing each project phase in accordance with the appropriate state and federal laws and regulations without extensive FHWA or state oversight.

FHWA Role

FHWA is responsible for the following project activities, for all federal-aid projects:

- Obligation of federal funds
- Approval of E-76 for R/W activities and utilities under the Alternate Procedure
- Approval of Early Acquisition, Protective Buying or Hardship Acquisition
- Execution of Project Agreements
- Approval of R/W Certification Level 3/3W for projects on the National Highway System, pursuant to the current Stewardship and Oversight Agreement (SOA) or specific Project Oversight Agreement (POA).
- Approval of R/W Certification Level 3/3W for all interstate projects, pursuant to the current Stewardship and Oversight Agreement (SOA) or specific Project Oversight Agreement (POA)
- Approval of R/W certifications where the Project Agreement states FHWA retains approval authority.

For additional details on the FHWA/Caltrans relationship, refer to [LAPM Chapter 2: Roles and Responsibilities](#).

from future development. Appropriate documentation must accompany the request to FHWA for approval of Hardship and Protection acquisitions. When making these advanced acquisitions, ensure that the intent of the Uniform Act and the NEPA are not circumvented. For additional information, please refer to Chapter 5, Hardship and Protection, of the [Caltrans Right of Way Manual](#), or contact Caltrans Right of Way Local Programs Coordinator in your area.

13.5 PRELIMINARY RIGHT OF WAY ACTIVITIES

Request Authorization to Proceed with Preliminary Engineering

Separate work authorizations and fund obligations are normally made for Preliminary Engineering (PE), R/W (including appraisal, acquisition, relocation assistance, and utility relocation) and Construction phases, if federal funds are to be used in each of these phases.

Preliminary Studies

At this early stage in the development process, it is crucial to correctly evaluate the project requirements: namely, the limits, location (including existing utilities), scope, costs, and whether any additional R/W will be required. Each agency should establish a process for accumulating this data, which will play an integral part in successfully completing the Field Review, the Preliminary Environmental Study (PES) Form and the Plans, Specifications & Estimate (PS&E) for the project.

Field Reviews

Formal Field Reviews, which may include FHWA and Caltrans representatives are not required on local agency transportation projects off of the National Highway System (NHS). (For additional details, see [LAPM Chapter 7: Field Review](#)) However, Field Reviews are suggested practice for all complex projects. A representative from FHWA should be consulted on all FHWA Projects of Division Interest projects. All requests for FHWA participation should be coordinated through the DLAE. Local agencies should complete the PES Form and the first two pages of the Field Review Form prior to requesting a Field Review. If it appears that additional R/W will be required, one of the intended results of the Field Review is to provide sufficient data to complete the R/W estimate see [Section 13.7: Project Requiring Right of Way/Property Rights](#), subtitle: R/W Estimate, in this chapter). The information contained in these two documents is crucial in obtaining FHWA authorization to proceed further with the next stage of the project (See Section 13.4: Right of Way Authorization, subtitle: [Request for Authorization to Proceed Right of Way](#)).

The Field Review process brings together all interested parties in order to reach an agreement on the important aspects of the project, including such items as the design features, alternative proposals for building the project, respective responsibilities of the various agencies involved, level of documentation required in the NEPA process, and whether a public hearing will be necessary. For R/W objectives, the Field Review may confirm the need to acquire R/W and relocate the occupants, or relocate utilities and/or railroad facilities, which can significantly affect the project development, in particular, the costs and scheduling. The review also facilitates the identification of compensable property interests plus uncovering project requirements such as the need for temporary construction easements, or permits to enter.

A public forum offers an excellent opportunity to discuss the acquisition and relocation impacts with the affected persons.

The importance of explaining these projects within the context of a public hearing cannot be overstated. One of the most difficult aspects of any project is the displacement of people and/or personal property. Project construction activities can have very serious economic and social impacts on the affected region, including adverse impacts in the traffic patterns, business operations and the lives of its citizens. Those who are displaced must relocate and reestablish their residence or business in a new area. As a result, those most directly affected are often emotionally impacted, apprehensive of the changes due to the project, and need detailed information on the R/W procedures and their rights. The public hearing is often their first real opportunity for information and contact with project representatives. One of the keys to a successful project may be the cooperation engendered at the first public hearing. As the project progresses, there may be a need for additional hearings devoted solely to R/W issues and impacts.

The Environmental Document

Depending upon the potential for impact, there are three NEPA Classes of Action under which a federal-aid project may be processed. These include: Categorical Exclusion (CE) determination, an Environmental Assessment (EA), or Environmental Impact Statement (EIS) document. The purpose of the environmental determination or document is to disclose to the public and decision makers the proposed action, potential environmental impacts, and propose avoidance, minimization, and mitigation measures to offset adverse impacts. R/W acquisition and activities associated with the action must be considered as part of the scope of the action. The environmental investigation and environmental determination or document must also address impacts associated with R/W activities. Guidance on analyzing impacts associated with R/W acquisition and use is provided in the [Standard Environmental Reference \(SER\)](http://www.dot.ca.gov/ser/vol1/vol1.htm) at: <http://www.dot.ca.gov/ser/vol1/vol1.htm>.

13.7 PROJECTS REQUIRING RIGHT OF WAY/PROPERTY RIGHTS

Local federally funded projects involving the acquisition of R/W should be discussed with the District R/W Local Programs Coordinator as early as possible in the project development stage.

There are several reasons for this. As noted above, while some PE activities (i.e., ordering title reports, preparing base maps and appraisal maps, conducting project-wide comparable sales searches, gathering cost estimates and completion of the appraisal) may be conducted and subsequently reimbursed by FHWA prior to NEPA compliance, the majority of R/W activities (such as, initiation of negotiations with property owners, relocating displaced persons, and utility relocations) may not be performed on federal-aid projects prior to NEPA compliance. This restriction minimizes the potential for predetermined project site or alignment selection.

While Draft and Final EAs and EISs may identify the preferred alternative, the selected alternative shall not be announced until the FONSI and ROD has been completed. More detailed discussion of the pre-requisites for R/W activities are provided in [Caltrans Right of Way Manual](#) Chapters 3.08.00.00, and 7.01.06.00.

included for partial acquisitions. The appraiser is responsible for the completeness of the maps and for requesting delineation of pertinent data including, in particular, the area of the taking, and any remainder parcels.

Appraise Right of Way, Determine Fair Market Value

Prior to commencing appraisal work on parcels required for the project, the appraiser must advise the property owner of the decision to appraise the property. The notice must be in writing and covers the following:

- A specific area being considered for a particular public use, i.e., the project.
- The fact that the owner's property lies within the project area.
- All or a portion of the owner's property (which should be generally described) may be acquired for public use.

The letter must offer the owner (or the owner's representative) the opportunity to accompany the appraiser on an inspection of the property. It will give reasonable advance notice. There is no mandatory format for the notice; however, see Chapter 7, Exhibit 7-EX-17 Notice of Decision to Appraise, of the [Caltrans Right of Way Manual](#) for a suggested format. The owner will also be given a written explanation of the agency's land acquisition procedures. A booklet entitled *Your Property, Your Transportation Project*, will satisfy this requirement. Title VI brochures should also be sent to the property owners.

All real property right (both temporary and permanent) shall be appraised before the initiation of negotiations with the owner, and the acquiring agency shall establish an amount it believes to be just compensation (49 CFR 24.102). Although Fair Market Value sets the basis for just compensation, the two amounts may differ because of unusual circumstances. The Code of Civil Procedure defines Market Value as: (a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for doing so, or obliged to sell, and a buyer being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available, and (b) The fair market value of property taken for which there is no relevant comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Appraisal and Just Compensation for Temporary Real Property Rights

A temporary real property right, such as a temporary construction easement (TCE), is a property encumbrance and acquisition item as defined in 23 CFR 710.105. TCE encumbrances are for a specific anticipated use over a specified time period [window of when proposed construction activity(ies) may occur]. Although actual and physical use of a property may be anticipated for a limited duration within the specified time period, the property is considered burdened and encumbered for the entire duration of when the anticipated construction activity(ies) may occur. The valuation and offer of just compensation must therefore consider and evaluate the damages to the remainder due to the TCE term, including impacts to the owner's loss of utility and enjoyment of the encumbered area, and whether the impacts are

consistent throughout or varying, for the duration of the entire TCE term/window period of potential activity (EIS).

In order to comply with possession and control requirements of 23 CFR 635.309(c) the TCE commencement date shall begin on or before the project's Right of Way Certification date. Should the TCE expire before the construction is complete, a revised appraisal and agreement with the property owner (including the additional calculated compensation) is required prior to the Agency's continued possession of the property [49 CFR 24.102(j)].

Appraisal Review

As noted above, on federal-aid projects, a formal review of the appraisal is necessary (See 49 CFR 24.104). If the local agency is using a private sector review appraiser, the review appraiser must have a valid California license issued by the state Office of Real Estate Appraisers (OREA). If the project sponsor is a qualified agency and performing its own appraisal work, the California Department of Real Estate (DRE) has held that, as employees of a public agency, neither the appraiser, nor the review appraiser needs such a license. The review appraiser must determine whether the appraisal meets applicable requirements and make any necessary corrections or revisions.

If the review appraiser is unable to approve or recommend approval of the appraisal, the reviewer may develop additional documentation to support what is felt to be an approved or recommended value unless it meets the requirements of an Appraisal Waiver Valuation as discussed below. The reviewer must state the basis for the value conclusion. The Uniform Act makes it clear that the local agency must establish an amount believed to be just compensation. Therefore, if another agency or a consultant does an appraisal review, the acquiring agency must retain the responsibility for establishing an estimate of just compensation. Another agency or a consultant cannot do so.

Appraisal Waiver Valuation

When the local agency determines that the valuation problem is uncomplicated and the market value is estimated at \$10,000 or less based on a review of available data, the appraisal can be waived. In this case, the local agency will prepare a Waiver Valuation. The \$10,000 amount includes any damages to the remainder property but excludes any non-substantial construction contract work. This information is consistent with 49 CFR 24.102(c)(2).

Separation of Appraisal and Acquisition Functions

Local agencies should maintain a separation of the appraisal and acquisition functions, except that the same person can appraise and acquire a parcel if the total valuation excluding non-substantial construction contract work is \$10,000 or less. This dollar limit also applies to appraisal revisions where the appraiser was previously assigned to negotiate the parcel. The valuation document can be either an appraisal or Waiver Valuation.

When the same person prepares the appraisal and does the acquisition, the appraisal should contain a statement substantially as follows: I understand that I may be assigned as the Acquisition Agent for one or more parcels contained in this report, but this has not affected my professional judgment or influenced my opinion of value.

Utility Relocation

Local agency transportation projects often involve utility relocation. For utility relocation details refer to [LAPM Chapter 14: Utility Relocation](#).

Project Certification – Right of Way Required

When additional property rights are required for a local federal-aid project, it is necessary for the agency to certify that these rights were acquired in conformance with the Uniform Act. All local agencies will certify their own projects, but it is of crucial importance to adhere to the CFRs and the Caltrans Right of Way Manual that incorporate these federal regulations so that any state or federal funds to be used for the project are not jeopardized. This emphasizes the gravity for non-qualified local agencies in the selection of qualified consultants or in contracting with a qualified local agency to perform the respective R/W functions for them.

Levels of Certification

There are four levels of R/W Certification, which are discussed below.

Certification No. 1

This level of certification documents the following:

- All the work is within existing R/W acquired for a previous construction project and all new work will be within that existing R/W.

OR

- Acquisitions are complete (escrow's closed and/or Final Orders of Condemnation recorded).

AND/OR

- There are effective Orders for Possession on all remaining un-acquired parcels.

AND

- All occupants have vacated the lands and improvements.
- Relocation Assistance and payment requirements have been met.
- All necessary material and/or disposal sites have been secured.
- All encroachment and/or construction permits have been obtained.

AND

- All Rights of Way clearance, utility, and railroad work has been completed, or all necessary arrangements have been made (Utility Notices issued, demolition contracts awarded, railroad contracts executed) for the work to be undertaken and completed as required for proper coordination with the physical construction schedules.

Certification No. 2

This level of certification documents the following:

All the requirements for R/W Certification No. 2 are the same as for Certification No. 1, except that one or more parcels are in the agency's possession by virtue of effective Rights of Entry or

an Agreement for Possession and Use. Similar documents, such as a permit, license, or an approved R/W Contract with an effective right of possession date, also require the use of a Certification No. 2. (See limitations on use of Rights of Entry contained in [Section 13.11 -Rights of Entry](#) -Discussion)

Conditional Certification No. 3

This level of certification documents the following:

All requirements are the same as for Certification No. 1, except legal possession or right of occupancy and use of a few remaining parcels are not complete. A Certification No. 3 may only be used in an exceptional circumstance, on a very limited basis, and must be accompanied by a full written justification.

At a minimum, the justification must include the following:

1. An outline of the very unusual circumstances that require early advertisement.
2. A statement how and/or why it is believed to be in the public's interest.
3. A statement that a Resolution of Necessity has been approved on all parcels yet to be acquired.
4. The reason why a Certification No. 1 or No. 2 is not possible.
5. Anticipated actual dates when legal possession and physical occupancy and use will be obtained and substantiation that such dates can be met (a copy of the executed Order of Possession or Right of Entry can be attached to satisfy this requirement).
6. A statement that all remaining residential occupants have had replacement housing made available to them. (For additional information, see Chapter 10, Relocation Assistance, of the [Caltrans Right of Way Manual](#).)
7. A statement assuring that occupants of residences, businesses, farms, or nonprofit organizations who have not yet moved from the R/W are protected against unnecessary inconvenience and disproportionate injury, or any action coercive in nature.
8. Identification of each parcel on which legal possession and/or right of occupancy and use has not been obtained.
9. Bids cannot be opened until the Certification 3 is upgraded to a Certification 2.

Special Certification No. 3 with a Work-Around (3W)

This special R/W Certification 3W may be used only in the most extraordinary circumstances. The local agency must show that there is a critical need to advertise and award the project and describe in detail the extraordinary circumstances. If federal funds are involved in any portion of the project, including construction, and if required by the current Stewardship and Oversight Agreement (SOA) or specific Project Oversight Agreement, approval of the work-around must be obtained from FHWA in advance of certifying the project for advertising. This certification will allow physical construction of a project to commence while occupants of businesses, farms, or nonprofit organizations remain within the R/W. All occupants of residences must have had replacement housing made available to them in accordance with the Uniform Act. The certification must be completed in a timely manner, with proper and complete documentation and justification. Should the local agency anticipate a need to certify the R/W for a project under this type of certification, the District R/W Coordinator should be contacted as soon as the circumstances are confirmed during the PS&E stage.

Time Requirements for Right of Way Certifications

Under ideal conditions, a Certification No.1 would be completed for each project at the PS&E stage. Because this is not always possible, the lower levels of certification allow projects to proceed within limitations while the remaining necessary rights are acquired. The local agency must transmit all certifications to the DLAE for all federal-aid projects along with the Request for Authorization. Certification No's. 1 and 2 are approved at the district level. Certification No's. 3 and 3W require headquarters acceptance and may require FHWA approval pursuant to the current Stewardship and Oversight Agreement or specific Project Oversight Agreement.

In those cases when a project advances to advertising on a Certification No. 3, an upgraded Certification No. 1 or No. 2 must be received by the DLAE prior to the bid opening date. In rare cases where a Certification No. 3W is used, an Updated Special Certification No. 3W must be provided when the local agency has legal and physical possession of the property that is being worked around. This dated and signed Updated Special Certification No. 3W must be provided to the DLAE no later than 15 working days prior to bid opening. For a full discussion on R/W Certification and their usage, see Chapter 14, Project Certification and 17.08.06.00 of the [Caltrans Right of Way Manual](#).

13.11 EMERGENCY RELIEF PROJECT CERTIFICATION

Emergency Opening Phase

Emergencies require rapid response. An R/W Certification for Emergency Opening (EO) work is not required until after the roadway is opened. Upon FHWA approval of the Damage Assessment Form (DAF), actions to advertise, award and administer Emergency Relief (ER) projects may proceed without going through the usual R/W steps.

(See [LAPG Chapter 11: Emergency Relief](#), for further discussion)

After the facility has been reopened, the emergency actions must be reviewed for R/W implications. If either persons or properties were affected during the emergency repair phase, even temporarily, appropriate steps must be taken to ensure compliance with the Uniform Act. This may include appraisal and purchase of the real property rights, or relocation assistance, required to perform the ER construction activities.

Following the review, and any required subsequent actions necessary to comply with the Uniform Act have been completed, an R/W Certification meeting the Level 1 requirements detailing the R/W activities required must be prepared for each project that has been completed using a PS&E (generally a non-force account project) and submitted to the DLAE or District R/W Local Programs Coordinator. (See [LAPG Chapter 11](#) of the for further discussion) All Permanent Restoration (PR) work follows the standard federal-aid process and therefore requires complete R/W certification prior to processing the construction E-76.

Permanent Restoration Phase

Once the facility has been reopened and the emergency is over, any further work to restore or improve the facility is no longer exempted from the requirements for certification prior to

advertising, or obtaining bids. Restoration projects shall follow the procedures outlined in this chapter. (See [LAPG Chapter 11: Emergency Relief](#), for further discussion)

Right of Way Certification Form - Discussion

In order to assist the local agency in completing the certification form, the following explanations are provided for each of the items, which appear on the certification. For additional information, see Chapter 14, Project Certification, of the [Caltrans Right of Way Manual](#).

Status of Required Right of Way

All new property rights required for a project must be included in the R/W Certification. This includes any interests in real property that lie outside of the existing R/W boundary lines, as well as regular parcels acquired by deed, Final Orders of Condemnation, and Orders for Possession. It also includes temporary interests such as Rights of Entry (See Rights of Entry below), construction or access easements, permits to enter during construction (including any Caltrans encroachment permits), or licenses. It is important to include the expiration date of any temporary rights in the certification, so that they may be evaluated in terms of the construction schedule.

Rights of Entry

The use of Rights of Entry are limited to emergency and exceptional situations only and require pre-approval from Caltrans Division of Right of Way and Land Surveys (Headquarters) and the Federal Highway Administration.

In accordance with Caltrans policy and 49 CFR 24.102(j), funds must be made available to the property owner for their withdrawal and use prior to the owner surrendering possession of their property. Owners must acknowledge they have been advised of their right to receive immediate compensation and have waived that right, agreeing to be compensated at a later date with interest. Local agencies must also deposit funds into escrow prior to obtaining possession. A Right of Entry allows an agency representative to enter someone's property for a specific purpose at a specified time. Only in emergency and/ or exceptional situations when the local agency would normally acquire the needed interest, but the owner cannot or will not provide an executed R/W contract, shall use of a right of entry be considered. An acceptable form/format for Right of Entry is the state's Agreement for Possession and Use, Exhibit 8-EX-25, of the Caltrans Right of Way Manual. The Right of Entry will not be utilized if the project will displace people or impact improvements of a significant nature.

Status of Access Control

Access to the project must be adequate to meet the needs during construction. At the same time, access rights for persons whose property abuts on the project boundaries cannot be denied or unreasonably restricted, unless other access is available or provided to the owner during construction. If no access can be provided, the owner is entitled to compensation during the course of construction.

each requiring different processes. Because of the time required to reach an agreement with the respective railroad companies, and because of the complexities involved with these agreements, special care should be given to any project where railroad involvement is possible.

Early discussions should take place with the District Right of Way Local Programs Coordinator on the specific project requirements necessary to successfully process an R/W Certification. Please refer to Chapter 8, Section 8.69.00, of the [Caltrans Right of Way Manual](#) (Acquisitions – Railroads) for a detailed discussion on this topic.

Material and Disposal Sites

When projects involve the excavation or importation of soils and other materials to or from a material and/or disposal site, separate agreements providing for the use of the sites, the owner's name, and the duration of the agreement must be listed.

Note: Typically, on local public agency projects, there is excess material, which the contractor disposes of as part of the contract. The disposal site is not a project need. Under these circumstances, in completing the R/W Certification, no should be the response.

Only when a separate disposal site is necessary as a part of the project should the yes answer be given.

Utility Relocation

It is the local agency's responsibility to provide for the relocation, protection or removal of all private and public utility facilities which conflict with the construction of the proposed project. It is necessary to reach agreement concerning: (1) the date by which the relocation will be completed, (2) the financial liability for the relocation costs with each of the utility companies having facilities within the project area or that are affected in some way by the project, and (3) who will perform the utility relocation work.

Note: 23 CFR 635.309(b) requires utility arrangements to be completed prior to project construction except where it is determined such work is not feasible or practical. Federal participation in the utility relocation costs is a R/W issue and not a construction matter, even if the relocation will occur during construction. A separate Authorization Approval must be received prior to any utility relocation. [LAPM Chapter 14: Utility Relocation](#), provides a detailed discussion of the specific authorization requirements and approval process.

Right of Way Clearance

The preliminary investigations included in the field review will reveal the presence of any improvements or physical obstructions that must be removed prior to construction. Care should be taken in arranging for the removal of these items in order to properly coordinate with the construction schedule.

Airspace Agreements

Airspace right of way use agreements are revenue-producing agreements for parcels within (above or below) the operating R/W. When subsequent projects are proposed, which affect the airspace areas or pose a problem for the lessee's use of the site, the agreement shall be

terminated, modified, or suspended, or cancelled, according to the subject area's specific agreement terms. Care must be taken in drafting an airspace agreement to ensure there is language in the lease addressing lease termination, modification, suspension and/or cancellation due to either temporary or permanent project impacts. It is recommended that Lessor negotiate a lease where lessee incurred-costs due to temporary or permanent project impacts are the responsibility of the Lessee. Any Lessee-incurred costs paid by Lessor due to agreement termination, modification, suspension, or cancellation because of temporary or permanent project impacts shall not be Federally reimbursable. Any arrangements for the lessee's relocation must be coordinated according to the agreement terms prior to certifying the project.

Compliance with the Relocation Assistance Program

The Uniform Act prescribes certain benefits and protections for persons displaced by local projects which are funded in whole or in part with federal money. Among the benefits the Uniform Act provides are relocation payments for residential displaced persons and for businesses, farms, and nonprofit organizations. The Uniform Act also provides certain protections, such as requiring the availability of replacement housing for residential displaced persons, minimum standards for such housing, and assurances that displaced persons have sufficient time in which to choose their replacement properties. Finally, the Uniform Act provides for certain advisory services for displaced persons. Each of these legal requirements must be satisfied and then addressed in the R/W Certification.

Cooperative Agreements

Cooperative Agreements are defined as any formal agreement between Caltrans and a local agency for a project on the SHS wherein the parties share in the development activities. If there are Cooperative Agreements covering responsibilities or obligations for the respective portions of the project, these agreements must be listed on the R/W Certification form.

Environmental Mitigation

When an approved NEPA document includes mitigation commitments involving the acquisition of property, a list of those commitments along with the date each parcel is expected to be acquired, must be listed on the R/W Certification. While wetland and floodplain mitigation is mainly the responsibility of the project engineer and their environmental staff and/or consultant, the mitigation measures involving the acquisition of property to accommodate replacement wetlands is the responsibility of the District R/W staff. To ensure the most efficient and expeditious implementation of mitigation commitments, it is imperative that the local agency project engineer, District Right of Way Engineer and District Environmental staff collaborate closely on the acquisition of mitigation parcels and the subsequent implementation of mitigation measures.

Acceptance of Right of Way Certification

When there are R/W issues involved, the local agency will certify that the issues have been resolved. Because local agencies are now certifying their own projects, it should be stressed that the authorized official or designated alternate executing the certification must be certain that the

proper R/W procedures have been followed and that the requirements of the Uniform Act have been met. All local agencies may certify their own projects but it is of crucial importance to adhere to state and federal standards, so that the federal funds for the project will not be jeopardized. This emphasizes the gravity for non-qualified agencies in the selection of qualified consultants or in contracting with a qualified agency to perform the various R/W functions. Upon receipt, the District Right of Way Local Programs Coordinator will review the certification to see that each item has been completed in compliance with federal and state laws and regulations and if applicable, the date by which the R/W will be cleared.

If all of the R/W issues have been dealt with in a satisfactory manner, both duplicate originals will be accepted and a signed original copy will be returned to the local agency. If there are irregularities in the certification and it cannot be accepted as submitted, the Right of Way Local Programs Coordinator will return the certification to the local agency with an explanation as to why it cannot be accepted and the steps that are necessary for acceptance.

Certifications 1 and 2 will be accepted in the district. Certifications 3 and 3W will be forwarded to Caltrans headquarters for review and may require FHWA's approval pursuant to the current Stewardship and Oversight Agreement (SOA) or Project Oversight Agreement (POA).

13.12 REIMBURSEMENT/FISCAL POLICY

Purpose

This section contains critical requirements and basic principles relating to the eligibility of R/W transactions for federal reimbursement. From this overview, the local agency should be able to understand the overall federal and state requirements. Detailed procedures are found in [LAPM Chapter 5: Invoicing](#).

Reimbursement Process Overview – Caltrans

Caltrans receives federal funds on a reimbursement basis. This means Caltrans must first obtain an Authorization to Proceed (E-76), incur costs, and bill the FHWA for payment before receiving payment. Federal funds are received by Caltrans as reimbursement for federally eligible expenditures.

As noted above, the normal sequence of events to obtain prior Federal Authorization and reimbursement through Caltrans is:

- a. Obtain authorization to begin work. Federal authorization is gained by obtaining an E-76, Approval to Proceed which means funding is available. Only eligible expenditures incurred for work after the date FHWA approves the request are reimbursable.
- b. Reimbursement is limited to the amount shown on the E-76. However, the amount can be revised. If necessary, execute a revised E-76 with FHWA. The revised E-76 is used to increase or decrease the federal funding limit shown on previous agreements.
- c. Submit progress payment invoices during the course of the work and a final invoice upon completion, along with the other documents discussed below.
- d. Final Voucher Project with FHWA after work is completed. Caltrans may audit project charges to ensure that FHWA is billed for all federally eligible expenses. When Caltrans

Acquisitions

Federal participation in R/W costs requires prior authorization from FHWA. In order to obtain this authorization, it is necessary to identify the acquisition costs, and the phase for which authorization is being requested. Costs to be reimbursed with federal funds for eligible parcel acquisition reimbursement, initiation of acquisition (first written offer) cannot begin until the E-76 has been approved by FHWA. 23 CFR 710.203(a)(3) provides specific preliminary acquisition activities that can occur under the preliminary engineering phase.

The following describes the three basic parcel types as related to the proposed R/W line:

- A Core Parcel is one which is acquired in its entirety (full acquisition) whether or not the parcel lies entirely within the proposed R/W lines.
- An Excess Parcel is that portion of a property not within the R/W lines that is acquired, even though it is not needed for construction or maintenance of the highway facility. In some cases the acquisition costs for excess parcels may be eligible for reimbursement [see 23 CFR 710.203(b)(7)].
- A Non-Core Parcel is one which is not required in its entirety (partial acquisition) leaving the grantor with ownership of an adjacent remainder.
- Federal-aid authorization/agreement is required for both Full Acquisition and Partial Acquisition.

Acquisition of Uneconomic Remnants

If prior FHWA approval has been secured, federal funds can participate in the acquisition costs of uneconomic remnants.

Acquisition of Property Specifically for Exchange

Acquisition of property specifically for exchange occurs where the agency agrees to obtain property for the grantor in exchange for the required R/W. This occurs primarily in connection with public utilities or other public agencies where substitute property is acquired by the local agency to replace property required for the project. Both properties must be appraised. The costs of such acquisition are chargeable directly to the R/W Capital Outlay EA. This type of acquisition is treated as acquisition of replacement property. Without prior federal approval, reimbursement cannot be obtained.

Functional Replacement

This involves the replacement of real property in public ownership, either lands or facilities, or both, acquired for a highway project with other lands or facilities which will provide equivalent utility. FHWA has specific procedures, which must be followed, and requirements, which must be met if the costs for a functional replacement property are to be reimbursed. These procedures are discussed in 23 CFR 710.509. For additional information, see Chapter 7, Appraisals, and Chapter 8, Acquisitions, of the [Caltrans Right of Way Manual](#).

EXHIBIT 13-B RIGHT OF WAY CERTIFICATION

LOCAL ASSISTANCE PROJECT (Off State Highway System)

Local Agency: _____

NOTE: This form is intended for use on local assistance projects, off the State Highway System (SHS), where federal funds are used and where Right of Way (R/W) or rights in real property are required. This form could also be used when work required for local agency projects is located primarily off the SHS but may also encroach onto the SHS. *(Eliminate this paragraph before submitting document to your DLAE)*

Right of Way Certification No.: _____
(Insert 1, 2, or 3 for the type of Certification being made)

Project ID: _____

Project Location: _____

General Project Description: _____

1. STATUS OF REQUIRED RIGHT OF WAY:

Right of Way (has been) (will be) acquired in accordance with applicable policy and procedure covering the acquisition of real property. Local Agency (has) (will have) legal and physical possession and right to enter on all lands as follows:

A. Total number of parcels required¹:

For items A 1-8 below and B on page 2, if total at time of completing certification is 0, enter 0 on the number line (or B line) and eliminate corresponding table/s.

1. Parcels acquired (escrow closed or Final Order of Condemnation recorded): _____

(To add table rows below, set cursor to right of last column in empty table set, then press enter, additional table rows will populate.)

Parcel Number	Owner	Project R/W Required ²	Excess (Yes or No)	Close of Escrow/Final Order of Condemnation Date

2. Parcels covered by Order for Possession: _____

Parcel Number	Owner	Project R/W Required ²	Effective Date of OP

3. Parcels covered by executed Right of Way Contract with Possession Clause: _____

Parcel Number	Owner	Project R/W Required ²	Effective Date	Date Funds Made Available to Owner/Deposited into Escrow ³

¹ Parcels listed in items A1-A7 on pages 1 and 2 should total the number shown on line 1A above.

² Items A1-A7: List as full acquisition, partial acquisition, fee, permanent easement (including type), temporary construction easement, etc. Detail should be added showing expiration dates of documents with fixed termination dates, i.e., temporary easements.

³ Funds must be deposited into an escrow account and be made available (able to withdraw), as legally permissible, to the grantor/s, as a condition of use of a possession clause in a Right of Way contact.

4. Parcels covered by Possession and Use Agreement only: _____

Parcel Number	Owner	Project R/W Required ²	Effective Date	Date Funds Deposited Into Escrow ⁴

5. Parcels covered by Right of Entry only (Requires HQs R/W and FHWA pre-approval)⁵: _____

Parcel Number	Owner	Project R/W Required ²	Effective Date	Date Funds Deposited into Escrow

6. Parcels Covered by Resolution of Necessity only⁶: _____

Parcel Number	Owner	Project R/W Required ²	Local Agency Resolution Date	Anticipated OP Service Date (all parties)	Anticipated OP Effective Date

7. Parcels covered by other acquisition documents as follows⁷: _____

Parcel Number or Location/ (P.M.)	Owner	Project R/W Required ²	Type of Document	Effective Date	Expiration Date	Date Funds Deposited into Escrow ⁴

8. Number of Parcels with a value in excess of \$500,000 _____

Dual Appraisal for each parcel (recommended but not required)? ____Yes ____No

B. Construction Permits, other required permits⁸: _____

Location/ (P.M.)	Owner	Type of Document	Effective Date	Expiration Date

2. STATUS OF ACCESS CONTROL:

Select appropriate statement/s and remove those that do not apply:

Conventional Highway, a highway with no control of access. Abutting property owners have access rights.

(OR)

Freeway/Expressway, a highway with limited/restricted rights of access.

(OR)

Non-Interstate Access Controlled Highway (or other facility with full access control). Except as provided in the approved plans for the project, all rights of access to, or from the section of highway to be improved under the project and the abutting property either are prohibited by law, or have been acquired, or are being acquired in condemnation proceedings heretofore commenced and which will be prosecuted to completion.

⁴ Funds must be deposited into an escrow account and be made available (able to withdraw), as legally permissible, to the grantor/s, as a condition of use.

⁵ Rights of Entry must only be used in emergencies, or extremely unusual/extraordinary circumstances. All Rights of Entry must be pre-approved by the Division of HQs RW&LS and approved by FHWA. Funds must be deposited into an escrow account and be made available (able to withdraw), as legally permissible, to the grantor/s, as a condition of using a right of entry.

⁶ To be used only rarely in a Certification No. 3; Resolution of Necessity must be adopted and the Order for Possession served, but is not yet effective.

⁷ This section covers acquisitions where the document is a license, permit etc., not otherwise covered by A1-A6 above. Examples include Licenses from State Lands Commission, Flood Control Districts, and Letters of Consent from US Forest Service.

⁸ These permits are not counted as parcels, are not appraised, recorded, or require payment (e.g. Permits to Enter).

(OR)

Except as provided in the approved plans for the project, all rights of access to, or from the section of highway to be improved under the project and the abutting property either are prohibited by law, or have been acquired under a previous project.

3. **STATUS OF AFFECTED RAILROAD OPERATING FACILITIES** - Select appropriate statement/s and remove what does not apply:

None affected.

(OR)

The _____ Railroad has approved the proposed work, which is within their right of way but which does not require the adjustment of railroad facilities. The necessary clauses will be placed in the contract special provisions. The project may now be advertised.

(OR)

The _____ Railroad (and when needed, the Public Utilities Commission) has approved the proposed work, which is within the railroad right of way and does require the adjustment of railroad facilities. The railroad, or its contract forces, will provide the necessary labor, materials and/or equipment to adjust their facilities. The necessary clauses will be placed in the contract special provisions. The project may now be advertised.

CPUC Approval Type and Date: _____

C&M Execution Date: _____

4. **MATERIAL SITE(S)** - Select appropriate statement; remove those that do not apply:

None required.

Commercial

Optional site(s) secured as follows:

Mandatory site(s) secured as follows:

Parcel Agreement No.	Owner	Document Effective Date	Expiration Date

5. **DISPOSAL SITE(S)** - Select appropriate statement; remove those that do not apply:

None required.

Commercial

Optional site(s) secured as follows:

Mandatory site(s) secured as follows:

Parcel Agreement No.	Owner	Document Effective Date	Expiration Date

6. **STATUS OF REQUIRED UTILITY RELOCATIONS:**

There are no Utility Relocations required on the project. Therefore, Buy America compliance does not apply to the utility portion of the project.

(OR)

All utility work has been or will be completed in accordance with applicable policy and procedure covering the adjustment of utility facilities. All utility notices have been issued and arrangements have been made with the owners of all conflicting utility encroachments remaining within the right of way, so that adequate control of the project right of way will be achieved. If applicable, federal participation has been determined.

(AND)

- All utility work has been completed.

- ☐ Project specific utility agreement(s) is (are) fully executed and include(s) the Buy America language.
- ☐ Buy America compliance is not applicable for utility relocations as Utility Agreements are not required.

(OR)

- All utility work will be completed by a stated date prior to award of the contract (see schedule below).

- ☐ Project specific utility agreement(s) is(are) fully executed and include(s) the Buy America language.
- ☐ Buy America compliance is not applicable for utility relocations as Utility Agreements are not required.

(OR)

- All necessary arrangements have been made for remaining utility work to be completed as required for proper coordination with project construction. The special provisions in the contract provide for the coordination (see schedule below).

- ☐ Project specific utility agreement(s) is(are) fully executed and include(s) the Buy America language.
- ☐ Buy America compliance is not applicable for utility relocations as Utility Agreements are not required.

(AND when applicable)

The following utilities are located within the project Rights of Way but require no relocation:

Company	Type Facility

The following utilities are in conflict with the project and require relocation as follows: (If applicable)

R/W Notice and Notice Date Date	Company	Type of Facility	Liability % (Owner=O) (Local Agency=C)	Utility Agreement. Date	Federal Participation (yes/no) ⁹	Relocation Date & End Concurrent with construction (or) Bid Item/s listed below ¹⁰

⁹ A copy of Specific Authorization to Relocate Utility Facilities memorandum must be attached for each facility relocation item.

¹⁰ Additional information is required for each bid item if highway contractor will complete work as part of the highway contract.

(AND)

Bid Item Number	Owner/Type Facility	Liability % (Owner/Local Agency)	Federal Participation (Yes/No)

7. RIGHT OF WAY CLEARANCE:

There were no improvements or obstructions located within the limits of this project.

(OR)

All right of way clearance work has been completed and there are no improvements or obstructions remaining within the right of way area required for construction.

(OR)

All necessary arrangements have been made for remaining right of way clearance work to be undertaken and completed as required for proper coordination with the construction schedule as follows:

Parcel No.	Location/ P.M.	Description	Salvable/ Non Salvable		Method of Disposal ¹¹	Date Site Available to Construction Contractor

8. AIRSPACE AGREEMENTS:

There are no airspace lease properties within the limits of this project.

(OR)

All necessary arrangements have been made with airspace lessee(s) and/or special provisions in the contract to minimize conflicts between lessee's activities and contractor's operations.

(OR)

Airspace lease (describe) has been cancelled effective (date).

(OR)

Explanation of other disposition of airspace lease area.

9. COMPLIANCE WITH RELOCATION ASSISTANCE PROGRAM REQUIREMENTS

Compliance was not required as there were no displacements for this project.

(OR)

The Local Agency has complied with the Federal Uniform Relocation Assistance and Real Property Acquisition Act, as amended. The Local Agency has also complied with all the steps relative to relocation advisory assistance and payments as required by applicable policies and procedures, and no person has been required to relocate without at least 90 days written notice. If residential relocation was involved, all individuals and/or families have been relocated to a decent, safe and sanitary housing, or the Local Agency has made replacement housing available to the relocatees.

¹¹ Demolition Contract, Construction Contract, or Owner.

Types of relocation involved on this project. Check all that apply.

- ☐ Personal property relocation
- ☐ Residential relocation
- ☐ Business, farm or nonprofit relocation

Exceptions:

Occupants of residences, businesses, farms or nonprofit organizations who have not yet moved from the right of way will be protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

Parcel Number	Location/(P.M.) (Owner) (Tenant)	Name of Occupant	Date to Vacate	Type of Occupancy ¹²

10. COOPERATIVE AGREEMENTS

None required.

(OR)

Agency	Agreement Number or Document Number

Attach a Copy of Each Cooperative Agreement.

11. ENVIRONMENTAL MITIGATION

No environmental mitigation parcels are required for this project.

(OR)

All environmental mitigation parcels for the project have been acquired.

(OR)

Acquisition of environmental mitigation parcels is ongoing. (Give detailed explanation)

12. INDEMNIFICATION BY LOCAL AGENCY

The Local Agency agrees to indemnify, defend, and hold harmless the Department of Transportation (Caltrans) from any and all liabilities which may result in the event the right of way for this project is not clear as certified. The Local Agency shall pay from its own non-matching funds, any costs which arise out of delays to the construction of the project because utility facilities have not been removed or relocated, or because rights of way have not been made available to Local Agency for the orderly performance of the project work.

13. CERTIFICATION (USE THE APPROPRIATE STATEMENT)

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(b) and (c)(1) or (c)(2).
The project may be advertised with contract award being made at any time.

¹² Residential, Business, Farm, Nonprofit Organization, or Personal Property only.

(OR)

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3)(i)(iii)(iv). The project may be advertised at any time. The project will be certified as conforming to 23 CFR 635.309 (b) **and** (c)(1) or (c)(2) by _____ (Date) _____.

(Attach letter explaining why a Conditional R/W Certification No. 3 is being used and substantiate that the Certification No. 1 or No. 2 date given above is realistic.)

(OR)

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3)(ii),(iii) and (iv) with Work-Around. The project may be advertised at any time. Appropriate notification has been included in the Bid Documents. An updated Certification will be provided by _____ (Date) _____.

(Attach letter explaining why a Special Certification No. 3 with Work-Around is being used.)

(When updating the Special Certification No. 3 with Work-Around, use the following statement. This statement is required no later than 15 days prior to bid opening. If able to upgrade to a Certification No. 1 or No. 2, use appropriate CFR certification statement referenced above.):

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3)(ii),(iii) and (iv) with Work-Around. The project has been advertised and the contract may be awarded. I have confirmed that all appropriate notifications have been included in the Bid Documents concerning said Work-Around.

Local Agency: _____

Project ID: _____ As Authorized by Resolution No.: _____

By: _____

Title _____ Date _____

The undersigned Caltrans Official has reviewed this Right of Way Certification as to form and content. Based on the review of the documents submitted, the Certificate is accepted on behalf of the local public agency.

Accepted as to form and content:

By: _____
District Deputy Director/Office Chief – Right of Way
(or person authorized in writing to sign) _____ Date _____

(AND)

(HQ Right of Way signature required for Projects of Division Interest (PODI's) depending on delegations identified in the Project Oversight Agreement, Conditional R/W Certification No. 3 and Special R/W Certification No. 3 with Work-Around.)

ACCEPTED:

By: _____
Chief, Headquarters Division of Right of Way and Land Surveys Date

(AND)

(FHWA signature block is required for Projects of Division Interest (PODI's) depending on delegations identified in the Project Oversight Agreement (POA), and Conditional R/W Certification No. 3 and Special R/W Certification No. 3 with Work-Around for projects located on the Interstate system. FHWA concurrence and approval is not required for Certification No. 3 upgrades and Certification No. 3W updates.)

APPROVED:

By: _____
Realty Officer Date
Federal Highway Administration

- Distribution:
- 1) Local Agency completes and sends to DLAE for approval.
 - 2) DLAE approves and returns to Local Agency.
 - 3) Local Agency retains approved original in project files.

Footnote Instructions

1. Parcels listed in items A1 – A7 on pages 1 and 2 should total the number shown on line A above.
2. For sections A1 – A7 list as full acquisition, partial acquisition, fee, permanent easement (including type), temporary construction easement, etc. Detail should be added showing expiration dates of documents with fixed termination dates, i.e., temporary easements.
3. Funds must be deposited into an escrow account and be made available (able to withdraw), as legally permissible, to the grantor, as a condition of use of a possession clause in a right of way contact.
4. Funds must be deposited into an escrow account and be made available (able to withdraw) as legally permissible, to the grantor as a condition of use.
5. Rights of Entry must only be used in emergencies, or extremely unusual/extraordinary circumstances. All Rights of Entry must be pre-approved by the Division of HQs RW&LS and approved by FHWA. Funds must be deposited into an escrow account and be made available (able to withdraw), as legally permissible, to the grantor, as a condition of using a right of entry.
6. An adopted Resolution of Necessity (RON) is the minimum requirement for the use of both a Conditional R/W Certification #3 and/ or a Special R/W Certification #3 with Work-Around, which are rarely used. The Resolution of Necessity must be adopted.
7. This section covers acquisitions where the document is a license, permit etc., not otherwise covered by A1 – A6 above. Examples include Licenses from State Lands Commission, Flood Control Districts, and Letters of Consent from the US Forest Service.
8. These permits are not Project R/W requirements and are neither appraised nor recorded. (e.g. Permits to Enter and Construct).
9. A copy of Specific Authorization to Relocate Facility Utilities Memorandum must be attached for each facility relocation item.
10. Additional information is required for each bid item if highway contractor will complete work as part of highway contract.
11. Demolition Contract, Construction Contractor, or Owner.
12. Residential, Business, Farm, Nonprofit Organization, or Personal Property only.

JANUARY 1, 2019



EXECUTIVE SUMMARY

LAPM CHAPTER 14: UTILITY RELOCATIONS

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
Division of Local Assistance

A. Introduction

After the environmental document (NEPA) has been approved by Caltrans or FHWA, the administering agency may request an RFA for R/W and/or Utility Relocations. One of the essential factors that needs to happen on most transportation projects are the utility relocations. As a definition, any utility that is called in conflict (relocation, adjustment, or protect-in-place) is considered a utility relocation. It is a best practice to submit the completed (unsigned) utility package to the District Utility Coordinator for review and comment. The utility relocation work can happen before, during or after construction. It can be authorized as its own phase, **or** within the construction phase (depending on how it is programmed in the FTIP). If this work is to be authorize at the construction phase, certain guidelines and conditions must be met, please contact your DLAE for details.

B. Purpose and Objective

We recognize the complexity of this process and in effort to streamline and effectively communicate the required documents needed by District Utility Coordinator from the administering agency, we developed a process flow chart that will address the necessary documents needed, **regardless** if the work to be done are federally participating or non-participating.

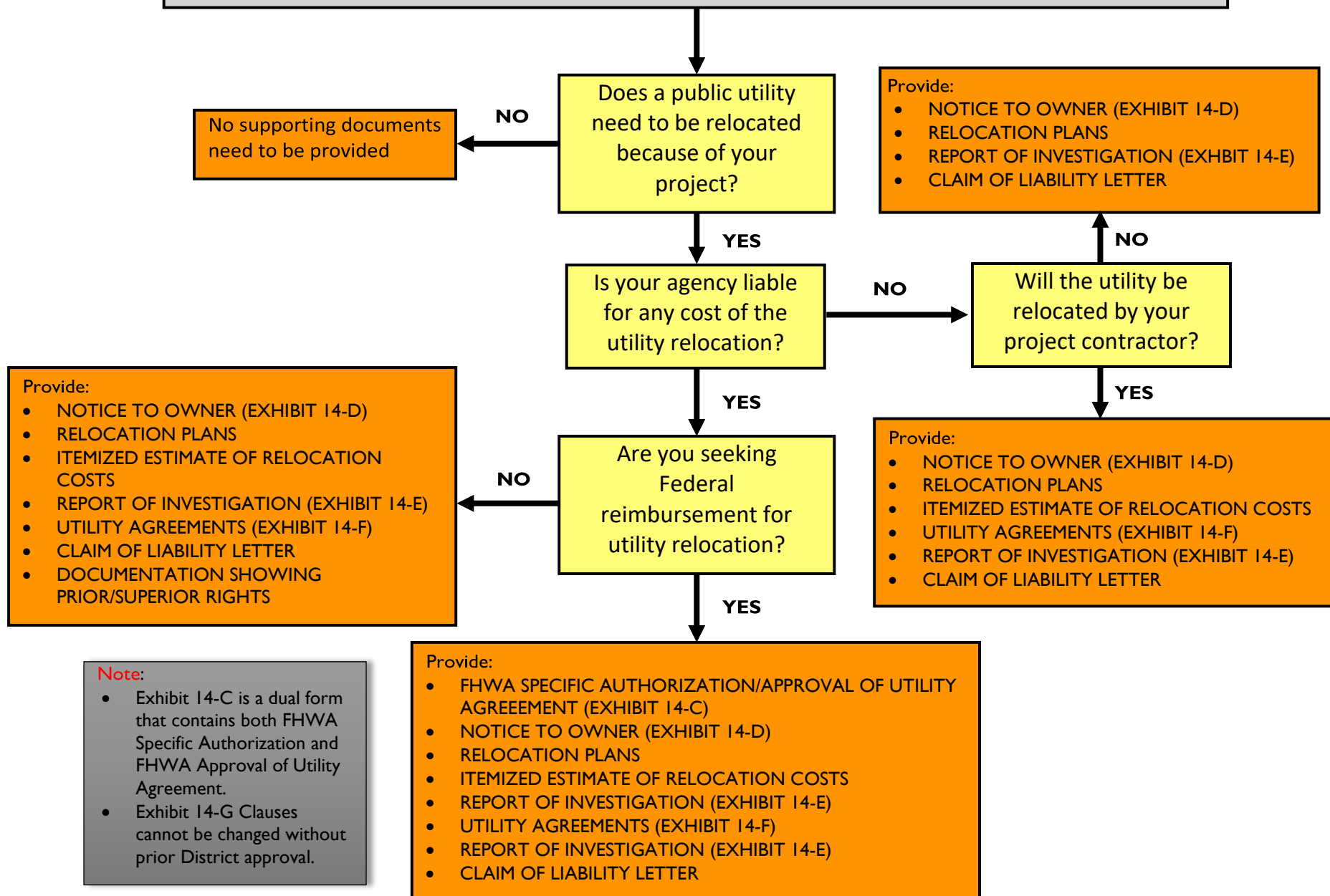
The main objectives of this is to:

- Have the agency a better understanding of the State's processes
- To lessen the uncertainty and increase productivity

It is the full responsibility of the administering agency to understand how to attain a fully responsive submittal. The guided instructions, processes and in-depth details are outlined in [Chapter 14](#).

Supporting documents you need to provide the District Utility Coordinator with your Right of Way Certification Off the SHS*

* The District Utility Coordinator may require additional supporting documents if needed



Chapter 14 Utility Relocation

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Exhibits

Exhibits applicable to this chapter can be found at:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

[*Exhibit 14-A: Local Agency Submittal Requirements for Federal Participation in Utility Relocations*](#)

[*Exhibit 14-B: Local Agency Utility Agreement Provisions for Federal Participation*](#)

[*Exhibit 14-C: FHWA Specific Authorization/Approval of Utility Agreement*](#)

[*Exhibit 14-D: Notice to Owner*](#)

[*Exhibit 14-E: Report of Investigation*](#)

[*Exhibit 14-F: Utility Agreements*](#)

[*Exhibit 14-G: Utility Agreement Clauses*](#)

[*Exhibit 14-H: Stages of R/W Utilities through Stages of Project Development*](#)

[*Exhibit 14-I: Local Agency/Utility Owner Special Agreement*](#)

[*Exhibit 14-J: Revised Notice to Owner \(RW 13-04R\)*](#)

CHAPTER 14 Utility Relocation

14.1 INTRODUCTION

The procedures in this chapter have been designed to comply with the Federal Highway Administration's (FHWA) regulations and requirements under Code of the Federal Regulations (CFR) governing utility relocations. The purpose of this chapter is to provide guidelines to the local agency when performing R/W utility relocations on projects outside of the State Highway System (SHS) and financed with federal funds.

Utility relocation procedures in this chapter only apply when relocating public utility facilities that serve the general public. Service connections and private utilities are handled through R/W Acquisition under Cost to Cure (23 CFR 710.203), and Uniform Act (49 CFR 24: Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-assisted Programs).

Forms and Exhibits included in this chapter are to provide the local agency with working samples. The language in these forms has been reviewed and approved by Caltrans Legal Department. The local agency has the option to modify the format of these forms or to use its own forms. However, the local agency's own forms have to satisfy all required elements under 23 CFR 645.113, and the use of non-approved forms and clauses will require review and approval by Caltrans Headquarters Utilities Relocation office and Caltrans Headquarters Legal Department on a case-by-case basis.

Any Federal-aid project that involves any R/W utility relocations shall be accomplished in accordance with the Utility and Buy America Procedures described in the [Caltrans Right of Way Manual](#), Chapter 13.

These manuals are available online at the following URLs:

Right of Way Manual:

<http://www.dot.ca.gov/hq/row/rowman/manual/>

Encroachment Permits Manual:

http://www.dot.ca.gov/hq/traffops/developserv/permits/encroachment_permits_manual/

14.2 TERMS AND DEFINITIONS

Public Utility Facilities – Publicly and privately owned utility facilities, which serve the public.

Impacted Utility Facility – A public utility facility has been identified as in conflict with the proposed activity of a transportation project.

Utility Relocation – Any adjustment to the impacted utility facility required by the proposed transportation project.

Owner – Utility company, municipal utility department, who owns the impacted facility.

Utility Coordinator – Local agency's person who acts as a liaison with owners.

District R/W Utility Coordinator – District Right of Way Utility Coordinator assigned to this project.

Conflict Resolution Plan (Relocation Plan) – Plan from owner to resolve the conflict with activity of a transportation project. This plan should clearly define scope of work and the duration of construction.

Claim Letter – Owner’s liability determination along with supporting documentations. It is the owner’s responsibility to support their claim.

Unanticipated Utility Relocation – Unforeseen, or discovery utility relocation as a result of accident or incomplete utility verification/conflict identification.

Prior Rights– The Local Agency will bear relocation costs for facilities installed within an Easement area. The Local Agency must determine that the utility facility existing in the deed is, in fact, in the area of the recorded easement area by comparing the facility location with easement deed description. A replacement easement deed will need to be prepared and recorded by the Local Agency.

Utility Relocation Procedures

The following steps have been modeled after the Caltrans Right of Way Utility Relocation procedures. These activities are performed in different stages of project development (See [*Exhibit 14-H: Stages of R/W Utilities through Stages of Project Development*](#)) to ensure proper and complete utility clearance prior to R/W Certification.

This procedure is designed to identify utility conflicts early in the design stage. It provides the Project Engineer with an opportunity to evaluate the proposed plan and make adjustments to avoid or lessen the impact on existing utility facilities. Thus, it reduces utility relocation cost, saves time, and prevents discovery conflicts during construction.

Note: It is strongly recommended that each local agency adopt and follow these procedures:

Utility Verification

- In the early phase of the Design process, the Utility Coordinator sends a proposed project plan to owner and request for owners’ facility map(s) of any facility located within project limits.
- Utility Coordinator forwards owners’ map(s) to the Project Engineer. The Project Engineer plots all existing facilities onto UTILITY SHEET (Refer to Caltrans Design’s Standard Plan or American Society of Civil Engineers [ASCE], Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data).

Identifying Conflict

- Project Engineer identifies all impacted utility and potholing facilities within project limits.
- Provide conflict maps for each impacted facility to the Utility Coordinator.

Requesting Conflict Resolution Plan (This step would be done only after National Environmental Policy Act approval.)

- Utility Coordinator contacts and informs the owner(s) of the conflict(s), requests conflict resolution plan(s), detail cost estimate(s), and owner’s liability determination.

- When the above items are received from owner(s), the Utility Coordinator will forward the plan(s) to the Project Engineer for approval.

Liability Determination

After the conflict resolution plan(s) is approved by the Project Engineer, a liability determination must be made to determine whether the local agency is legally liable for any portion or all of the relocation cost(s). (See Chapter 13 Utility Relocation, Section 13.04.00 of the [Caltrans Right of Way Manual](#) for guidance.)

- Liability can be determined by property rights, franchise rights/ agreements, State and local statutes/ordinances, permits, or finding by the local agency's counsel.
- Complete [Exhibit 14-E: Report of Investigation \(ROI\)](#). The ROI is a document that determines the local agency's liability for relocation costs.
- The cost of relocating such facilities is eligible for federal participation:
 - a. Only when the relocation is made necessary by the proposed construction.
 - b. Only when the local agency is legally liable to pay for any portion of the relocation.

The Utility Coordinator shall send a proposed copy of the ROI, Notice to Owner (NTO), and Utility Agreement to District Local Assistance Engineer (DLAE) and District Right of Way Utility Coordinator for review and approval, prior to sending out to owner.

Note: For State highway projects, the local agency must ensure that all utility relocations and encroachments are accomplished in accordance with Caltrans policies, procedures, standards, practices, and statutes. In addition, any existing agreements or contracts between the Department of Transportation (Caltrans) and a utility owner will also obligate the local agency in such circumstances.

Notifying Owner

- After the conflict resolution plan is approved and liability is determined, the Utility Coordinator shall seek concurrence from the owner in case the liability determination is different from owner's claim letter.
- Once the owner concurs with the liability (this is referred to as Meeting of the Minds), the Utility Coordinator will issue a written NTO (See [Exhibit 14-D: Notice to Owner](#)) to the owner. The local agency must make all necessary arrangements with owners of the affected utility facilities for their relocations.
- The NTO will clearly define the impacted facility, owner's conflict resolution plan number and date, estimated completion date, and liabilities.
- The local agency shall provide all other necessary permit(s) related to the relocation to the owner prior to the commencing of work. Only when any ordered work is located within the SHS, a Caltrans Encroachment Permit is required. The Utility Coordinator can request the permit through the District Right of Way Utility Coordinator.
- If the local agency is liable for any portion of the relocation, a Utility Agreement (See [Exhibit 14-F: Utility Agreements](#) and [Exhibit 14-G: Utility Agreement Clauses](#)) will also be prepared and sent to the owner along with the NTO. Utility Agreements are required for all projects with local agency liability.

- The local agency's liability portion and authority to pay for the relocation must be clearly cited in its Utility Agreement and in the liability section of the NTO.

Note: For freeway projects, State policy and procedure take precedence for cost liability determination even where relocation work to support or accommodate the project may take place outside of the state's R/W.

Right of Way Utility Clearance Memo

- Once all utility conflicts have been resolved, the Project Engineer and the Utility Coordinator will issue a Utility Clearance Memo that clearly lists all conflicts, locations, the NTO numbers and issued date, liability, and estimated completion date.
- The information on this memo will be incorporated into the R/W Certification.

Managing the Physical Relocation

- Prior to any physical relocation work being commenced, the Project Engineer and Utility Coordinator shall make sure all agreements have been executed, Specific Authorization/Approval of Utility Agreement has been approved (if federal funding is sought), and funding has been secured.
- The Project Engineer and Utility Coordinator shall monitor the progress and verify that the relocation has been carried out according to the conflict resolution plan and schedule.

Managing Relocation Invoices

- The Utility Coordinator will process utility relocation invoices for reimbursement in accordance to the procedures described in [LAPM Chapter 5: Invoicing](#).
- The Project Engineer and Utility Coordinator shall make sure the owner provides credit when applicable, for salvage value, betterment, and all supporting documents are attached to the invoice.

Utility Records Keeping

The Utility Coordinator will create a Utility File for each impacted facility. These records will be retained by the local agency as required by FHWA regulations.

Section 23 CFR 645.119(c)(1)(iv), Alternate Procedure approval, requires documentation of actions taken in compliance with State and federal policies. All engineering decisions affecting the utility relocation from the beginning of planning to the completion of the relocation and billing, should be documented in the local agency's Utility File diary.

It is essential that documented field verification of the progress and completion of all reimbursable utility work be provided by the local agency. This required documentation is met by the use of detailed inspector's diaries or their equivalent.

If the local agency wishes not to request federal participation for the utility relocation work on projects off the SHS, even though they will be requesting federal participation in other R/W activities and/or the construction phases of the project, they must comply with FHWA's regulations. Transportation Infrastructure Finance and Innovation Act (TIFIA) Loan must follow all Code of Federal Regulations as well as 23 CFR 645. The local agency must provide the

proposed utility relocation plan to the DLAE for forwarding to the District Right of Way Utility Coordinator for review so that proper R/W certification on utility relocation matters may be given prior to construction.

14.3 FEDERAL REIMBURSEMENT

Federal regulations governing utility relocation are described extensively in 23 CFR, Part 645. Local agencies should be familiar with these regulations. The following procedures are based on the above-mentioned and other federal regulations, which must be followed when the local agency requests federal participation in a utility relocation:

Under the current federal transportation funding act and the FHWA Alternate Procedure process (23 CFR 645.119), E-76 utility relocation work has been delegated to Caltrans on Delegated projects for full review oversight requirements by FHWA (See [LAPM Chapter 2: Roles and Responsibilities](#)). Caltrans also has approval authority for Specific Authorization and Approval of the Utility Agreement.

The Utility Coordinator will send all submissions to the District Right of Way Utility Coordinator for review and approval.

The following items must be included in the request for review and approval by Caltrans:

1. Copy of draft and final Notice to Owner
2. Draft and final fully executed Utility Agreement
3. Draft and final approved owner's conflict resolution plan showing the necessary relocations
4. The completed Report of Investigation and any supporting documents
5. An itemized estimate of the local agency's relocation costs

Such review typically takes three weeks. Submission must be sent in advance of the proposed Right of Way Certification date. The DLAE is not responsible for delays due to an incomplete or erroneous relocation package. All documents must be approved by Caltrans.

Note: If federal funds are not participating in utility relocation then items 1 through 5 above **still apply**. However, neither [Exhibit 14-C: FHWA Specific Authorization/Approval of Utility Agreement](#) nor an E-76 is needed for said utility relocation, since the local agency is not seeking federal reimbursement.

Anticipated Utility Relocation

To apply and qualify for federal reimbursement, the following steps must be followed:

Authorization to Proceed (E-76)

Prior to the start of any physical utility relocation work, the local agency must complete [Exhibit 3-C: Request for Authorization to Proceed with Utility Relocation](#) and [Exhibit 3-E: Request for Authorization to Proceed Data Sheet](#) where all anticipated utility facilities requiring relocation will be listed with an estimated cost to relocate each facility.

On page 2 of [Exhibit 3-C](#), under utility relocation, the Alternate Procedure box must be checked. The completed E-76 must request the use of the Alternate Procedure (23 CFR 645.119(e)(2)) and must include a list of every utility facility anticipated to be relocated along with the utility

Any minor change that does not include changes in scope of the work, addition or deletion of the proposed conflict resolution plan, may be submitted in a letter to Caltrans describing the change including revised maps and estimate, and requesting that the change be included under the original authorization.

Approval of Utility Agreement

The local agency must submit each executed Utility Agreement and a request for FHWA approval of the Utility Agreement to the DLAE for processing. This approval authority has been delegated to the Caltrans Division of Right of Way and Land Surveys by FHWA. Such review and approval typically takes three weeks if the local agency used the pre-approved utility clause from [Exhibit 14-G: Utility Agreement Clause](#). For local agency owned utilities, the appropriate agreement and clauses for the local agency to use are found in [Exhibit 14-I: Local Agency/Utility Owner Special Agreement](#).

Upon approval, Caltrans will provide the local agency with [Exhibit 14-C: FHWA Specific Authorization/Approval of Utility Agreement](#) for each Utility Agreement. Any exceptions to the approval will be noted in writing on the Remarks section of the form, and the local agency will be requested to concur with the exceptions or to prepare a rebuttal. It is anticipated that an agreement will be reached on all such items prior to any physical work commencement to avoid the loss of eligibility.

It is strongly recommended that the standard [Exhibit 14-G: Utility Agreement Clauses](#) should be used in every circumstance. Use of nonstandard clauses requires Caltrans Headquarters Office of Utilities and Caltrans Headquarters Legal review and recommendation before the Utility Agreement can be executed. (Non-standard language request form is available in the Caltrans Right of Way Manual, Chapter 13). When applicable, the following items should be shown in the itemized estimate(s) of the relocation costs.

Credits

- FHWA Regulations (23 CFR 645.117(h)) require salvage credit to any highway or freeway project for the value of facilities removed as part of the relocation for future use or resale.
- FHWA Regulations (23 CFR 645.117(h)) also require betterment credit for the cost of any betterment to the facility being replaced or adjusted.

Note: For projects on the State Highway System, State law (Section 705 of the California Streets and Highways Code) requires that utility owners itemize, estimate, and invoice for utility relocation to show a credit for the used life of an existing utility facility being replaced in connection with improvement to a freeway. Where these credits are received by the local agency, they must be properly listed on the invoice and deducted from the total federal-aid reimbursement amount.

Removal Only

Where the entire utility transaction consists of removal without replacement, consideration should be given to handling it as an R/W clearance item and invoicing for federal reimbursement in that fashion. If processed as an R/W clearance activity, the following conditions apply:

- The utility owner must have a property right in the existing location, which is compensable in eminent domain.
- The local agency must enter into an agreement with the owner providing for the removal of the facility. In support of the invoice for federal reimbursement, the file must contain information to show that the cost of removal by the utility owner was more cost-effective than the local agency buying the facilities and having them removed by some other method.
- Where legitimate removal without replacement charges are included in a utility owner's invoice and the local agency has not arranged to receive a credit for salvage (See above), the charges may be invoiced for federal reimbursement only when they are reduced by the amount of salvage attributable to the subject facilities, as shown by the utility owner's records available for audit as noted in the Utility Agreement (48 CFR 31).

Using Right of Way Clearance Contract

Where utility relocation work is performed by the local agency under an R/W clearance contract, a conformed copy of the executed contract must be forwarded to the DLAE before submitting an invoice for federal reimbursement.

Using Consultants

When a local agency or utility owner employs a consulting engineer to perform engineering services in connection with a specific utility relocation, and federal participation is involved, the procedures in [LAPM Chapter 10: Consultant Selection](#) shall apply. The consultant agreement must satisfy the criteria specified in Chapter 13, Section 14 of the [Caltrans Right of Way Manual](#), including a completed pre-award evaluation, if applicable. These steps must be performed by the local agency early in the process to avoid loss of eligibility.

Non-reimbursable

FHWA regulations prohibit federal reimbursement for costs of interest during construction or interest on funds borrowed by the owner for performing the relocation.

Unanticipated Utility Relocation

After the normal period to apply for Specific Authorization to Relocate Utilities has expired and an unanticipated utility relocation is encountered, the Utility Coordinator must immediately notify the DLAE and request a Special Authorization to Relocate Utilities. The approved environmental documents may also need to be re-evaluated depending on the scope of the utility relocation. The Special Authorization to Relocate Utilities is reserved for those cases where required work could not be identified in time to secure normal authorization, or when the contractor's operations will be delayed. The local agency must provide a statement with full explanation of the special circumstances for the request. Requests for Special Authorization to Relocate Utilities must be based on substantial reasons.

Special Authorization to Relocate Utilities for discovered work must be upgraded by the local agency to full Specific Authorization status before the local agency submits an invoice for reimbursement.

EXHIBIT 14-G UTILITY AGREEMENT CLAUSES

Use of these clauses will reduce errors and omissions as well as save preparation, review, and approval time as the clauses have been pre-reviewed and approved by Caltrans, as well as most major Utility Owners. The clauses are numbered for each section of the Utility Agreement. The Local Agency preparing the Utility Agreement will need to select the appropriate clause(s) for each section. Some of the clauses pertain to involvement with State Highway Right of Way; a careful analysis should be made to determine which clauses would be appropriate.

Section I. Work to be Done**I-1. Work Performed by Owner per Owner's Plan:**

“In accordance with Notice to Owner No. _____ dated _____, OWNER shall _____. All work shall be performed substantially in accordance with OWNER's Plan No. _____ dated _____, consisting of _____ sheets, a copy of which is on file in the Office of the LOCAL AGENCY at _____. Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and agreed to/ acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner.”

NOTE: Significant changes in previously approved plans and estimates require a revised FHWA Specific Authorization.

I-2. Work Performed by Local Agency's Contractor per Local Agency's Plans:

“In accordance with Notice to Owner No. _____ dated _____, LOCAL AGENCY shall relocate OWNER's _____ as shown on LOCAL AGENCY's contract plans for the improvement of route _____, which by this reference are made a part hereof. OWNER hereby acknowledges review of LOCAL AGENCY's plans for work and agrees to the construction in the manner proposed.

Deviations from the plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and agreed to/acknowledged by the OWNER, will constitute an approved revision of the plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner. OWNER shall have the right to inspect the work during construction. Upon completion of the work by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities, and relinquishes to LOCAL AGENCY ownership of the replaced facilities except in the case of liability determined pursuant to Water Code 7034 or 7035.”

NOTE:

- 1. In the event the Owner wants to retain ownership of their old facilities removed by the construction contractor, a clause stating this fact must be included in the “Special**

Provisions” portion of the construction contract. Otherwise, the “Standard Specifications” of the contract will award all salvaged material to the contractor. If the Owner wants to retain ownership of the replaced facility, the Clause above must be modified to delete “and relinquishes to LOCAL AGENCY ownership of the replaced facility.”

Whenever liability is determined pursuant to Water Code Sections 7034 or 7035, Standard Clauses V-10a or V-10b shall then be added to the Utility Agreement.

I-3. Work Performed by Local Agency's Contractor per Owner's Plan:

“In accordance with Notice to Owner No. _____, dated _____, LOCAL AGENCY shall relocate OWNER's _____ as shown on OWNER's Plan No. _____ dated _____, which plans are included in LOCAL AGENCY's Contract Plans for the improvement of _____ which, by this reference are made a part hereof.

Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER's Plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner. OWNER shall have the right to inspect the work by LOCAL AGENCY's contractor during construction. Upon completion of the work by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facilities, except in the case of liability determined pursuant to Water Code 7034 or 7035.”

NOTE: See NOTE under Clause I-2.

I-4. Work Performed by Both Owner and Local Agency's Contractor per Owner's Plan:

“In accordance with Notice to Owner No. _____, dated _____, OWNER shall _____. All work shall be performed substantially in accordance with OWNER's Plan No. _____, dated _____, consisting of _____ sheets, a copy of which is on file in the Office of the LOCAL AGENCY at _____.”

“Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and agreed to/ acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to written execution by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner.”

“It is mutually agreed that the LOCAL AGENCY will include the work of _____ as part of the LOCAL AGENCY's highway construction contract. OWNER shall have access to all phases of the work to be performed by the LOCAL AGENCY for the purpose of inspection to ensure that the work being performed for the OWNER is in accordance with the specifications contained in the highway contract. Upon completion of the work performed by LOCAL AGENCY, OWNER agrees to

accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facilities, except in the case of liability determined pursuant to Water Code 7034 or 7035.”

NOTE: See NOTE under Clause I-2.

I-5. Preliminary Engineering by Utility Owner:

“In accordance with Notice to Owner No. _____ dated _____, OWNER shall prepare their relocation plans. Any revision to the OWNER’s plan described above, after approval by the LOCAL AGENCY, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and agreed to/acknowledged by the OWNER, will constitute an approved revision of the OWNER’s plan described above and are hereby made a part hereof. No redesign or additional engineering, after approval by the LOCAL AGENCY, shall commence prior to written execution by the OWNER of the Revised Notice to Owner and may require an amendment to this Agreement in addition to the Revised Notice to Owner.”

Section II. Liability for Work

II-1. Local Agency's Expense - California Streets and Highways Code (S&HC), Section 702 or 703:

“The existing facilities are lawfully maintained in their present location and qualify for relocation at LOCAL AGENCY’s expense under the provisions of Section (702) or (703) of the Streets and Highways Code.”

II-2. Local Agency's Expense - S&HC 704:

“This is a second or subsequent relocation of existing facilities within a period of ten years; therefore, relocation is at LOCAL AGENCY’s expense under the provisions of Section 704 of the Streets and Highways Code.”

II-3. Local Agency's Expense - Superior Rights:

“Existing facilities are located in their present position pursuant to rights superior to those of the LOCAL AGENCY and will be relocated at LOCAL AGENCY’s expense.”

II-4. Local Agency's Expense - Service Line on Private Property:

“The facilities are services installed and maintained on private property required for highway purposes and will be relocated at LOCAL AGENCY’s expense.”

II-5. Local Agency's Expense - Prescriptive Rights:

“The existing facilities are located in their present position pursuant to prescriptive rights prior and superior to those of the LOCAL AGENCY and will be relocated at LOCAL AGENCY’s expense.”

II-6. Owner's Expense - Encroachment Permit:

“The existing facilities are located within the LOCAL AGENCY's right of way under permit and will be relocated at OWNER's expense under the provisions of Sections (673) and (680) of the Streets and

Highways Code.”

II-7. Owner's Expense - Trespass:

“The existing facilities are located within the LOCAL AGENCY's right of way in trespass and will be relocated at OWNER's expense.”

II-8. Local Agency or Prorated Expense - Right of Way Contract:

“The existing facilities described in Section I above will be relocated (at LOCAL AGENCY's expense) (at _____% LOCAL AGENCY expense and _____% OWNER expense) as set forth in Right of Way Contract No. _____, dated _____.”

II-9. Local Agency or Prorated Expense – Preexisting Master Contract:

“The existing facilities described in Section I above will be relocated (at LOCAL AGENCY's expense) (at _____% LOCAL AGENCY's expense and _____% OWNER's expense) in accordance with (Section _____ of the Master Contract dated _____) (Sections _____ of the Master Contract dated _____ in accordance with the following proration:

_____.).”

NOTE: Where liability for portions of the utility facility to be relocated will be based on different sections of the Master Contract, insert the equation used to develop the overall percentage of liability in the Utility Agreement in the space following the word “proration:”

II-10. Prorated Expense - No Master Contract:

“The existing facilities described in Section I above will be relocated at _____% LOCAL AGENCY's expense and _____% OWNER's expense in accordance with the following proration: _____.”

NOTE: Where liability for portions of the utility facility to be relocated will be based on different sections of the S&H Code or other government code, insert the equation used to develop the overall percentage of liability for the relocation in the space following the word “proration:.”

II-11. Liability in Dispute - Deposit is not a Waiver of Rights:

“Ordered work described as _____ is in dispute under Section _____ of the Streets and Highways Code. That in signing this AGREEMENT neither LOCAL AGENCY nor OWNER shall diminish their position nor waive any of their rights nor does either party accept liability for the disputed work. LOCAL AGENCY and OWNER reserve the right to have liability resolved by future negotiations or by an action in a court of competent jurisdiction.”

NOTE: The appropriate Payment for Work clause (IV-1, 2, 8 or 9) must also be modified by inclusion of “after final liability determination” and “immediately following 90 days.”

II-12. LPA Requests Undergrounding - Engineering or Cost Effective Option:

“The LOCAL AGENCY has determined the best engineering and/or most cost-effective solution is to underground the existing utility facilities. Since undergrounding is at LOCAL AGENCY’s request, LOCAL AGENCY will pay 100% of underground relocation cost less the percentage Owner would be responsible for under an aerial relocation in accordance with the liability determination.”

II-13. Local Agency Requests Undergrounding:

“LOCAL AGENCY chooses to have the utility company relocate their facilities underground at the cost of the Local Agency funds only. This relocation work is not federally eligible for reimbursement and does not meet the criteria to be mitigated any other way.”

NOTE: When a Local Agency chooses to pay for undergrounding not necessary for the project, this clause must be used.

Section III. Performance of Work**III-1. Owner's Forces or Continuing Contractor Performs Work:**

“OWNER agrees to perform the herein-described work with its own forces or to cause the herein described work to be performed by the OWNER’s contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools, and equipment required therefore; and to prosecute said work diligently to completion.”

III-2. Owner Performs Work by Competitive Bid Process:

“OWNER agrees to cause the herein described work to be performed by a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure, and to furnish or cause to be furnished all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion.”

III-3. Local Agency's Contractor Performs All or Portion of Work:

“OWNER shall have access to all phases of the relocation work to be performed by LOCAL AGENCY, as described in Section I above, for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the Highway Construction Contract; however, all questions regarding the work being performed will be directed to LOCAL AGENCY’s Resident Engineer for their evaluation and final disposition.”

III-4. Owner to Hire Consulting Engineer:

“Engineering services for locating, making of surveys, preparation of plans, specifications, estimates, supervision, inspection, _____ (delete or add services as established by the Owner’s Agreement with the consultant) are to be furnished by the consulting engineering firm of _____ on a fee basis previously approved by LOCAL AGENCY. Cost principles for determining the reasonableness and allow ability of consultant costs shall be determined in accordance with 48 CFR, Chapter 1, Subpart E, Part 31; 23 CFR, Chapter 1, Part 645; and 18 CFR, Chapter 1, Parts 101, 201 and OMB Circular A-87, as applicable.”

NOTE:

- (1) If the Utility Owner is not regulated by the Federal Energy Regulatory Commission (FERC), you may delete reference to 18 CFR.
- (2) OMB Circular A-87 applies to local agencies and local governments.

III-5. Owner and Local Agency's Contractor Performs Work:

"OWNER agrees to perform the herein described work, excepting that work being performed by the LOCAL AGENCY's highway contractor, with its own forces and to provide and furnish all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion."

III-6. Travel Expenses Per Diem: (Has been made as part of the mandatory language of the agreement)

"Use of personnel requiring lodging and meal "per diem" expenses will not be allowed without prior written authorization by LOCAL AGENCY's representative. Requests for such authorization must be contained in OWNER's estimate of actual and necessary relocation costs. OWNER shall include an explanation why local employee or contract labor is not considered adequate for the relocation work proposed. Per Diem expenses shall not exceed the per diem expense amounts allowed under the California Department of Human Resources travel expense guidelines."

III-7. Prevailing Wages Requirements for Contracted Work:

"Work performed by OWNER's contractor is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements; but, work performed directly by Owner's employees falls within the exception of Labor Code Section 1720(a)(1) and does not constitute a public work under Section 1720(a)(2) and is not subject to prevailing wages. OWNER shall verify compliance with this requirement in the administration of its contracts referenced above."

III-8. Owner to Prepare Preliminary Engineering Plans:

"Engineering services for locating, making of surveys, preparation of plans, specifications, estimates, supervision, inspection, _____ (delete or add services as established with the Utility Owner) are to be furnished by the Utility Owner and approved by the LOCAL AGENCY. Cost principles for determining the reasonableness and allowability of OWNER's costs shall be determined in accordance with 48 CFR, Chapter 1, Subpart E, Part 31; 23 CFR, Chapter 1, Part 645; and 18 CFR, Chapter 1, Parts 101, 201 and OMB Circular A-87, as applicable."

Section IV. Payment for Work**IV-1. Owner Operates Under PUC, FERC or FCC Rules:**

"The LOCAL AGENCY shall pay its share of the actual and necessary cost of the herein described work within 90 days after receipt of OWNER's itemized bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual and necessary cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for OWNER by the California Public Utilities

Commission (PUC), Federal Energy Regulatory Commission (FERC) or Federal Communications Commission (FCC), whichever is applicable.”

“It is understood and agreed that the LOCAL AGENCY will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the LOCAL AGENCY for all accrued depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER.”

NOTES:

- (1) When a lump sum payment method is to be used, substitute Clause IV-8 or IV-9 as appropriate for Clause IV-1 or IV-2 and IV-3.
- (2) See Clause IV-10 for work being done by Local Agency's contractor.
- (3) Accrued depreciation refers to the period of economic usefulness in a particular owner's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the owner or the industry.
- (4) See Section 13.07.06.02 for depreciation clause for oil companies.
- (5) For “Liability in Dispute” Utility Agreements, add the wording “after final liability determination and” immediately following “45 days” on IV-1, 2, 8 or 9. See Note II-12 for cross reference.

IV-2. Owner Does Not Operate Under PUC, FERC or FCC Rules:

“The LOCAL AGENCY shall pay its share of the actual and necessary cost of the herein described work within 90 days after receipt of OWNER's itemized bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual and necessary cost and expense. The OWNER shall maintain records of the actual costs incurred and charged or allocated to the project in accordance with recognized accounting principles.”

“It is understood and agreed that the LOCAL AGENCY will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the LOCAL AGENCY for all accrued depreciation of the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER.”

NOTES:

- (1) Section 705 of the S&H Code states “A credit allowance for age shall not be applied to publicly owned sewer.” In these cases the following words “... for the accrued depreciation of the replaced facilities and ...” shall be eliminated from the second paragraph above.
- (2) See Clause IV-1 for work done being done by Local Agency's contractor.

IV-3. For All Owners - Progress/Final Bills:

“Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit itemized progress bills for costs incurred not to exceed OWNER's recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by LOCAL AGENCY of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement.”

“The OWNER shall submit a final bill to the LOCAL AGENCY within 180 days after the completion

of the work described in Section I above. If the LOCAL AGENCY has not received a final bill within 180 days after notification of completion of OWNER's work described in Section I of this Agreement, and LOCAL AGENCY has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER's facilities; LOCAL AGENCY will provide written notification to OWNER of its intent to close its file within 30 days. OWNER hereby acknowledges, to the extent allowed by law that all remaining costs will be deemed to have been abandoned."

"The final billing shall be in the form of an itemized statement of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the LOCAL AGENCY shall not pay final bills, which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER and approval of documentation by LOCAL AGENCY. Except, if the final bill exceeds the OWNER's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation."

"In any event if the final bill exceeds 125% of the estimated cost of this Agreement, an amended Agreement shall be executed by the parties to this Agreement prior to the payment of the OWNERS final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement shall have the prior concurrence of LOCAL AGENCY."

"Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final payment and will be available for audit in accordance with Contract Cost Principles and Procedures as set forth in 48 CFR, Chapter 1, Subpart E, Part 31 by LOCAL AGENCY and/or Federal Auditors. In performing work under this Agreement, OWNER agrees to comply with the Uniform System of Accounts for Public Utilities found at 18 CFR, Parts 101, 201, et al., to the extent they are applicable to OWNER doing work on the project that is the subject of this agreement, the contract cost principles and procedures as set forth in 48 CFR, Chapter 1, Part 31, et seq., 23 CFR, Chapter 1, Part 645 and 2 CFR, Part 200, et al. If a subsequent State and/or Federal audit determines payments to be unallowable, OWNER agrees to reimburse AGENCY upon receipt of AGENCY billing. If OWNER is subject to repayment due to failure by Local Public Agency (LPA) to comply with applicable laws, regulations, and ordinances, then LPA will ensure that OWNER is compensated for actual cost in performing work under this agreement."

NOTES:

- (1) See NOTE under Clause IV-1.
- (2) Contract Cost Principles and Procedures of 48 CFR, Federal Acquisition Regulations Systems, Chapter 1, Subpart E, Part 31 have been accepted as the standards for all projects.
- (3) See Manual Sections 13.04.07.01 and 13.10.02.03 for additional information.
- (4) If Utility Owner is not regulated by FERC, modify above clause by deleting reference to "and/or 18 CFR, Chapter 1, Parts 101, 201, et al."

IV-4. Advance of Funds - Local Agency Liability:

"OWNER, at the present time, does not have sufficient funds available to proceed with the relocation of OWNER's facilities provided for herein. It is estimated that the cost of the work provided for by this Agreement and, as hereinafter set forth, is the sum of \$ _____ LOCAL AGENCY agrees to advance to OWNER the sum of \$ _____ to apply to the cost of the work to be undertaken as provided hereinabove. Said sum of \$ _____ will be deposited by the LOCAL AGENCY with OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's bill for the advance."

“It is further agreed that upon receipt of the monies agreed upon to be advanced by LOCAL AGENCY herein, OWNER will deposit said monies in a separate interest-bearing account or trust fund in State or National Banks in California having the legal custody of said monies in accordance with and subject to the applicable provisions of Section 53630, et seq., of the Government Code, and all interest earned by said monies advanced by LOCAL AGENCY and deposited as provided for above shall be credited to LOCAL AGENCY.”

“In the event actual relocation and necessary costs as established herein are less than the sum of money advanced by LOCAL AGENCY to OWNER, OWNER hereby agrees to refund to LOCAL AGENCY the difference between said actual and necessary cost and the sum of money that was advanced. The remittance check for the balance of advanced funds will be separate from the remittance check for the earned interest. In the event that the actual and necessary cost of relocation exceeds the amount of money advanced to OWNER, in accordance with the provisions of this Agreement, LOCAL AGENCY will reimburse OWNER said excess costs upon receipt of an itemized bill as set forth herein.”

NOTE: Advance of funds should not exceed 90% of the Agreement amount due to possible credits for depreciation, salvage, etc. No funds are to be advanced to cover owner initiated betterments.

IV-5. Loan of Funds - Owner Liability:

“OWNER recognizes its legal obligation to relocate its facility at its own cost, but at the present time does not have sufficient funds available to proceed with the relocation of OWNER's facilities provided for herein. It is estimated that the cost of the work provided for by this Agreement, and as hereinafter set forth, is the sum of \$ _____. LOCAL AGENCY agrees to advance to OWNER the sum of \$ _____, in accordance with Section 706 of the Streets and Highways Code, to apply to the cost of the work to be undertaken as provided hereinabove. Said sum of \$ _____ will be deposited by the LOCAL AGENCY with OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's bill for the advance. It is understood that OWNER shall pay interest upon receipt of said advance. The rate of interest shall be the rate of earnings of the California Surplus Money Investment Fund and computation shall be in accordance with Section 1268.350 of the Code of Civil Procedure.”

NOTE: See State Controller's Office website at <http://www.sco.ca.gov> for the Surplus Money Investment Fund rate chart.

IV-6. Agreement for Identified Betterments:

“It is understood that the relocation as herein contemplated includes betterment to OWNER's facilities by reason of increased capacity in the estimated amount of \$ _____ (which represents _____ % of the estimate dated _____. Said _____ % shall be applied to the actual and necessary cost of work done) and OWNER shall credit the LOCAL AGENCY for the actual and necessary cost of said betterment; all of the accrued depreciation and the salvage value of any materials or parts salvaged and retained by OWNER.”

IV-7. Local Agency Performs Work - Owner Requested Betterments:

“The LOCAL AGENCY shall perform the work under Section I above at no expense to OWNER except as hereinafter provided.”

"It is understood that the relocation as herein contemplated includes betterment to OWNER's facilities by reason of increased capacity in the estimated amount of \$ _____, said amount to be deposited upon demand in the _____ Office of the LOCAL AGENCY prior to the time that the subject freeway/highway contract bid is opened by the LOCAL AGENCY. The final betterment payment shall be calculated based upon the actual quantities installed as determined by the LOCAL AGENCY's engineer and the current cost data as determined from the records of the OWNER. In addition, the OWNER shall credit the LOCAL AGENCY at the time of the final billing for all the accrued depreciation and the salvage value of any material or parts salvaged and retained by the OWNER."

IV-8. Lump Sum/Flat Sum Billing Agreements (Excluding SBC):

"Upon completion of the work, and within 90 days after receipt of OWNER's bill, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, LOCAL AGENCY will pay OWNER the lump sum amount of \$ _____. The above lump sum amount has been agreed upon between the LOCAL AGENCY and the OWNER and includes any credits due the LOCAL AGENCY for betterment, depreciation and salvage."

NOTE: For lump sum amounts in excess of \$25,000, the following clause should be added.

"LOCAL AGENCY and OWNER further agree that for lump sum payments in excess of \$25,000 the LOCAL AGENCY shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of LOCAL AGENCY's audit shall be to establish the continued acceptability of using lump sum payments for high cost relocations and shall not in any way affect the amount or acceptability of the lump sum amount herein agreed to. OWNER shall keep supporting detailed records available for LOCAL AGENCY review for a period of one year following OWNER's submittal of final bill."

NOTES:

- (1) Lump-sum Utility Agreements should be used for all utility involvements where the STATE's cost is estimated to be \$100,000 or less, and the conditions of Section 13.05.04.00 can be met.**
- (2) See Clause IV-9 for Pac Bell/SBC lump-sum Utility Agreements.**

IV-9. Lump - Sum/Flat Sum SBC Billing Agreements:

"Upon completion of the potholing and relocation work, and within 90 days after receipt of OWNER's bill, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead; LOCAL AGENCY will pay OWNER the lump sum amount of \$ _____. The above lump sum amount for the physical relocation work has been agreed upon between the LOCAL AGENCY and the OWNER and includes any credits due the LOCAL AGENCY for betterment, depreciation, and salvage."

NOTE: Although most positive location will be done pursuant to the Positive Location Agreement, if Pac Bell/SBC will be conducting their own potholing, the following clause should be added.

"In addition to the amount specified above, the LOCAL AGENCY will pay the OWNER an additional amount of \$ _____ for each pothole location requested by the LOCAL AGENCY in order to determine the location of the OWNER's facilities. It is estimated that _____ pothole locations will be required. The final cost for potholing will be the lump sum amount of \$ _____ per pothole

location times the actual number of pothole locations.”

NOTE: For lump sum amounts in excess of \$25,000, the following clause should be added.

“LOCAL AGENCY and OWNER further agree that for lump sum payments in excess of \$25,000 the LOCAL AGENCY shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of LOCAL AGENCY's audit shall be to establish the continued acceptability of using lump sum payments for high cost relocations and shall not in any way affect the amount or acceptability of the lump sum amount herein agreed to. OWNER shall keep supporting detailed records available for LOCAL AGENCY review for a period of one year following OWNER's submittal of final bill.”

NOTE:

(1) Lump sum Utility Agreements should be used for all utility involvements where the LOCAL AGENCY's cost is estimated to be \$100,000 or less and the conditions of Section 13.05.04.00 can be met.

IV-9a. Lump - Sum/Flat Sum AT&T Billing Utility Agreements:

“Upon completion of the Preliminary Engineering, and within 45 days after receipt of OWNER's bill, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead, LOCAL AGENCY will pay OWNER the lump-sum amount of \$ _____. The above lump-sum amount, for the preliminary engineering design work, has been agreed upon between the LOCAL AGENCY and the OWNER.”

IV-10. Local Agency's Contractor Performs Portion of Work-Owner Liability:

NOTE:

(1) Insert the following Clause after Clause IV-1 or IV-2, unless the Owner is liable.

“The OWNER shall pay its share of the actual cost of said work included in the LOCAL AGENCY's highway construction contract within 90 days after receipt of LOCAL AGENCY's bill; compiled on the basis of the actual bid price of said contract. The estimated cost to OWNER for the work being performed by the LOCAL AGENCY's highway contractor is \$ _____.”

“In the event actual final relocation costs as established herein are less than the sum of money advanced by OWNER to LOCAL AGENCY, LOCAL AGENCY hereby agrees to refund to OWNER the difference between said actual cost and the sum of money so advanced. In the event that the actual cost of relocation exceeds the amount of money advanced to LOCAL AGENCY, in accordance with the provisions of this Agreement, OWNER hereby agrees to reimburse LOCAL AGENCY said deficient costs upon receipt of an itemized bill as set forth herein.”

Section V. General Conditions

V-1. Local Agency Liable for Review and Design Costs, and Project Cancellation Procedure Clause:

“All costs accrued by OWNER as a result of LOCAL AGENCY's request of ____ (date) to review, study and/or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement.”

“If LOCAL AGENCY's project which precipitated this Agreement is canceled or modified so as to

eliminate the necessity of work by OWNER, LOCAL AGENCY will notify OWNER in writing, and LOCAL AGENCY reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement.”

“All obligations of LPA under the terms of this Agreement are subject to the acceptance of the Agreement by LPA Board of Directors or the Delegated Authority (as applicable), the passage of the annual Budget Act by the State Legislature, and the allocation of those funds by the California Transportation Commission.”

V-2. For All Owners - Notice of Completion:

“OWNER shall submit a Notice of Completion to the LOCAL AGENCY within 30 days of the completion of the work described herein.”

V-3. Owner to Acquire New Rights of Way:

“Total consideration for rights of way to be acquired by OWNER for this relocation shall not exceed (e.g. \$2,500) unless prior approval is given by the LOCAL AGENCY. Said property shall be appraised and acquired in accordance with lawful acquisition procedures.”

NOTE: A reasonable easement cost limitation should be stated to preclude excessive acquisition cost.

V-4. Local Agency to Provide New Rights of Way Over State Lands:

“Such Easement Deeds as deemed necessary by the LOCAL AGENCY will be delivered to OWNER conveying new rights of way for portions of the facilities relocated under this Agreement over available LOCAL AGENCY owned property outside the limits of the highway right of way.”

“LOCAL AGENCY's liability for the new rights of way will be at the proration shown for the relocation work involved under this Agreement.”

NOTE: New rights of way means a right of way described in the same language as found in the OWNER's document by which it is acquired, or held, in its original right of way.

V-5. Local Agency to Provide New Rights of Way Over Private Lands:

“LOCAL AGENCY will acquire new rights of way in the name of either the LOCAL AGENCY or OWNER through negotiation or condemnation and when acquired in LOCAL AGENCY's name, shall convey same to OWNER by Easement Deed. LOCAL AGENCY's liability for such rights of way will be at the proration shown for relocation work involved under this Agreement. OWNER shall reimburse the LOCAL AGENCY all costs for the easement.”

NOTE: New rights of way shall mean a right of way described in the same language as found in the OWNER's document by which it is acquired, or held, in its original right of way. In those cases where the OWNER requests acquisition be made in their name, it will be permissible to negotiate or condemn in their name; provided the OWNER has the power to condemn and the Local Agency has OWNER's consent for condemnation on OWNER's behalf. The above paragraph should be revised accordingly.

V-6. Joint Use Agreement (JUA) or Consent to Common Use Agreement (CCUA) to be issued:

“Where OWNER has prior rights in areas which will be within the highway right of way and where OWNER's facilities will remain on or be relocated on LOCAL AGENCY highway right of way, a Joint Use Agreement or Consent to Common Use Agreement shall be executed by the parties.”

V-7. Master Contract Specifies Equal Replacement Rights:

“Upon completion of the work to be done by LOCAL AGENCY in accordance with the above-mentioned plans and specifications, the new facilities shall become the property of OWNER, and OWNER shall have the same rights in the new location that it had in the old location.

V-8a. Federal Aid Clause - No Master Contract:

“It is understood that said highway is a federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement.”

V-8b. Federal Aid Clause - No Master Contract and NEPA document on project:

“It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement.”

“In addition, the provisions of 23 CFR 635.410, BA, are also incorporated into this agreement. The BA requirements are further specified in Moving Ahead for Progress in the 21st Century (MAP-21), section 1518; 23 CFR 635.410 requires that all manufacturing processes have occurred in the United States for steel and iron products (including the application of coatings) installed on a project receiving funding from the FHWA.”

V-9a. Federal Aid Clause - Master Contract:

“It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1, Part 645 is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the State and the OWNER pursuant to State law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable Federal or State regulatory body and approved by the FHWA, shall govern in lieu of the requirements of said 23 CFR Part 645.”

NOTE: The FHWA allows liability to be determined in accordance with the terms of Master Contracts in lieu of otherwise applicable S&H Code sections.

V-9b. Federal Aid Clause - Master Contract and NEPA document on project:

“It is understood that said highway is a Federal aid highway and accordingly, 23 CFR, Chapter 1 Part 645 is hereby incorporated into this Agreement by reference: provided, however, that the provisions of any agreements entered into between the State and the OWNER pursuant to State law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable Federal or State regulatory body and approved by the FHWA, shall govern in lieu of the requirements of said 23 CFR 645.

“In addition, the provisions of 23 CFR 635.410, Buy America, are also incorporated into this agreement. The Buy America requirements are further specified in Moving Ahead for Progress in the

21st Century (MAP-21), section 1518; 23 CFR 635.410 requires that all manufacturing processes have occurred in the United States for steel and iron products (including the application of coatings) installed on a project receiving funding from the FHWA.”

V-10a. Facilities Replaced per Liability Determination Under Water Code Sections 7034:

“In as much as Water Code Sections (7034) requires LOCAL AGENCY to be responsible for the structural maintenance of the conduit portion of OWNER's facilities, which transports water under the highway at Engineer's Station, _____, LOCAL AGENCY will repair or replace the conduit portion of OWNER's facilities, which lies within the LOCAL AGENCY highway right of way when such becomes necessary. In no event shall LOCAL AGENCY be liable for any betterment, change, or alteration in said facility made by or at the request of the OWNER for its benefit.”

V-10b. Facilities Replaced per Liability Determination Under Water Code Sections 7034 & 7035:

“In as much as Water Code Section 7035 requires LOCAL AGENCY to be responsible for the structural maintenance of the conduit portion of OWNER's facilities which transports water under the highway at Engineer's Station ____, LOCAL AGENCY will repair or replace the conduit portion of OWNER's facilities which lies within the LOCAL AGENCY right of way when such becomes necessary unless such repair or replacement is made necessary by negligent or wrongful acts of the OWNER, its agents, contractors or employees; provided that the OWNER shall keep the conduit clean and free from obstruction, debris, and other substances so as to ensure the free passage of water in said conduit. In no event shall LOCAL AGENCY be liable for any betterments, changes or alterations in said facility made by or at the request of the OWNER for its benefit.”

NOTE:

- (1) Use of Clause V-10 is dependent upon the delegated approval of the Water Code Checklist (form RW 13-19).**
- (2) See NOTE under Clause I-2.**

V-11a. Utility Owner Self Certification Method:

“Owner understands and acknowledges that this project is subject to the requirements of the BA law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance. OWNER hereby certifies that in the performance of this Agreement, for products where BA requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying BA compliance. This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions or excluded material cited in the Department's guidelines for the implementation of BA requirements for utility relocations issued on December 3, 2013.”

NOTE:

- i. Utility Owner will source materials that comply with BA requirements.**
- ii. Utility Owner will certify compliance via a contract provision in the Utility Agreement above.**
- iii. Utility Owner will not be required to provide copies of supplier certifications or other utility owner-signed certifications as part of this Agreement or with the final invoice.**

V-11b. Vendor/Manufacturer Certification Method:

“Owner understands and acknowledges that this project is subject to the requirements of the BA law (23 U.S.C., Section 313) and applicable regulations, including 23 CFR 635.410 and FHWA guidance and will demonstrate BA compliance by collecting written certification(s) from the vendor(s) or by collecting written certification(s) from the manufacturer(s) (the mill test report (MTR)).”

“All documents obtained to demonstrate BA compliance will be held by the OWNER for a period of three (3) years from the date the final payment was received by the OWNER and will be made available to STATE or FHWA upon request.”

“One set of copies of all documents obtained to demonstrate BA compliance will be attached to, and submitted with, the final invoice.”

“This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions or excluded material cited in the Department’s guidelines for the implementation of Buy America requirements for utility relocations issued on December 3, 2013.”

V-12. Utility Agreement not subject to BA:

“State represents and warrants that this Utility Agreement is not subject to 23 CFR 635.410, the BA provisions.”

V-13. De Minimis:

“It is understood that said right of way is a Federal aid highway and, accordingly, 23 CFR 645 and 23 U.S.C. 313, as applicable, is hereby incorporated into this Agreement by reference. However, OWNER represents and warrants that the non-domestic iron and steel materials used on this relocation do not exceed one-tenth of one percent (<0.1%) of this Utility Agreement amount, or \$2,500, whichever is greater.”

NOTE:

- i. **The De Minimis equation is calculated according to the following formula:**

**Combined Cost of Only those Materials that are Subject to Buy America and are Non-Compliant
(limited to the individual UA)**

Total Utility Relocation Cost (cited in the individual UA)

- ii. **Applies only to non-domestic iron and steel materials used in this relocation.**

V-14a. Acknowledgments:

“If, in connection with OWNER’s performance of the Work hereunder, LOCAL AGENCY provides to OWNER any materials that are subject to the Buy America Rule, LOCAL AGENCY acknowledges and agrees that LOCAL AGENCY shall be solely responsible for satisfying any and all requirements relative to the Buy America Rule concerning the materials thus provided (including, but not limited to, ensuring and certifying that said materials comply with the requirements of the Buy America Rule).”

V-14b. Acknowledgments:

“LOCAL AGENCY further acknowledges that OWNER, in complying with the Buy America Rule, is expressly relying upon the instructions and guidance (collectively, “Guidance”) issued by LOCAL AGENCY and its representatives concerning the Buy America Rule requirements for utility relocations within the State of California. Notwithstanding any provision herein to the contrary, OWNER shall not be deemed in breach of this Agreement for any violations of the Buy America Rule if OWNER’s actions are in compliance with the Guidance.”

Lock Data on Form

NOTICE TO OWNER

Number

District	County	Route	Post Mile	Proj. ID	E.A.
FEDERAL AID NUMBER					
OWNER'S FILE					
DATE		FREEWAY <input type="checkbox"/> YES <input type="checkbox"/> NO			

REVISION DATED

This revision is acknowledged and agreed
to by the owner referred to herein.

By:

To:

Because of the State Highway construction project:

Which affects your facilities:

You are hereby ordered to:

Your work schedule shall be as follows:

Notify at telephone number . hours prior to initial
start of work, and hours prior to subsequent restart when your work schedule is interrupted.

Liability for the cost of the work is:

DISTRICT DIRECTOR

DISTRICT DIVISION CHIEF

By

DISTRICT UTILITY COORDINATOR

CC: Resident Engineer
Permits
R/W

THIS NOTICE DOES NOT CONSTITUTE A PERMIT. OBTAIN AN ENCROACHMENT PERMIT BEFORE STARTING WORK.

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For alternate format information, contact the Forms Management Unit at (916) 445-1233, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

Use weblink to access: <http://cefs2.dot.ca.gov/v2Forms/servlet/FormRenderer?frmid=RW1304R>

Chapter 15 **Advertise and Award Project**

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Exhibits

Exhibits applicable to this chapter can be found at:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

[*Exhibit 15-A: Local Agency Construction Contract Administration Checklist*](#)

Advertising costs shall be charged to the preliminary engineering work authorization if such authorization has been requested and has been established for the purpose of federal reimbursement.

Prequalification of Contractors

The Federal Highway Administration (FHWA) permits the use of a prequalified list of Prime Contractors developed by the local agency, in accordance with 23 CFR, Section 635.110(a), "Licensing and Qualifications of Contractors". The use of a prequalification list and process is optional and not required.

If a local agency wishes to utilize such a prequalification process on Federal-Aid projects, advance approval must be granted by the FHWA Division Administrator (California Division) for use on Federal-Aid projects. As such, the local agency would submit a package to their District Local Assistance Engineer that would include an overview of their proposed process with timelines, the typical Responsibility Statement and Questionnaire that prospective Contractors would be submitting, and the criteria by which prospective Contractors would be evaluated for inclusion on the prequalified list

Per 23 CFR 635.110(b), no procedure or requirement for bonding, insurance, prequalification, qualification, or licensing of contractors shall be approved which, in the judgment of the Division Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by any responsible contractor, whether resident or nonresident of the State or locally designated area wherein the work is to be performed.

It is particularly important that if a prequalification process is used on a given project, enough time is allowed between the initial advertising and the bid opening to allow a prospective bidder a reasonable opportunity to attain their prequalification (if not already prequalified).

Nationwide, the use of a contractor prequalification process typically consists of one of two basic methods:

- Contractors are prequalified on a project by project basis. In such a case, local agencies may set their own threshold for when (which projects) the prequalification process is used – for example a project over a certain dollar amount, or for a project that is particularly time sensitive, etc.
- Contractors are prequalified on a programmatic basis, in which a prospective Contractor may apply to become prequalified for a finite time period – usually one or two years – with provisions for renewal (of that prequalification) before or after that time period has elapsed. Once prequalified, such Contractors would be eligible to bid on any project for that local agency during that active period in which they are deemed prequalified.

The administration of a project specific (Item 1 above) Contractor prequalification process is eligible for Federal participation, as long as it can be directly attributed to a specific federal project or projects for which the prequalification process will be utilized. This work would be invoiced against either the Preliminary Engineering (PE) phase, or if occurring on a specific project after the Federal authorization (E-76) is received for Construction/Construction Engineering, the Construction Engineering (CE) phase of work. Local agencies should consult with their District Local Assistance Engineer staff regarding federal participation for contractor pre-qualification.

For further information and discussion on prequalification of bidders, see the AASHTO publication on Suggested Guidelines for Strengthening Bidding and Contract Procedures (which is also available in the FHWA Contract Administration Core Curriculum).

Procedures

Prior to project advertisement, the administering agency shall certify that their final PS&E package complies with all applicable federal and state regulations and procedures (see [Exhibit 12-C: PS&E Certification](#)). Local agencies should also complete and retain the [Exhibit 15-C: Local Agency Project Advertising Checklist](#) in the project files prior to requesting an Authorization to Proceed. All administering agencies must submit a completed Request for Authorization with the PS&E Certification before they can receive verification that construction has been authorized by Caltrans.

Upon receipt of Authorization to Proceed for construction by Caltrans, the local agency can proceed to advertise the project.

During the advertising period, the administering agency shall notify all prospective bidders of PS&E addenda in the same manner as all other nonfederal-aid projects. For award of federal-aid contracts, the local agency is required to certify that all bidders certify receipt of all addenda. The administering agency shall ensure free and open competition. The advertisement period is determined by the administering agency. A minimum advertisement period of three weeks is required for all federal-aid projects. Caltrans District Local Assistance Engineer may approve shorter periods in special cases where justified with a local agency's [Exhibit 12-F: Cost – Effectiveness/Public Interest Finding](#). The advertising period begins with publication of a Notice to Contractors in a newspaper receiving wide local circulation. The Notice shall identify the DBE goal. The administering agency is responsible to approve and issue all addenda to the PS&E during the advertising period.

The local agency shall assure that all updated estimates are fundable from available local or federal resources.

As soon as the project is advertised, the local agency shall furnish the DLAE with one copy of the as advertised plans and special provisions or two copies if structures (bridges) are involved.

federal contracts. A publication titled, A Listing of Parties Excluded from Federal Procurement and Nonprocurement Programs is available electronically in the internet at: www.sam.gov

Note: Contractor's Debarment and Suspension Certification is part of [Exhibit 12-H: Sample Bid](#).

In summary, a successful bid opening should identify the responsible bidder submitting the lowest responsive bid.

Procedures

The administering agency shall follow its own procedures for bid opening, provided such procedures include:

- As bids are received, they shall be logged in and stamped with the time and date.
- The bids shall be retained in a secure place until the designated time and place for public opening.
- All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount.
- If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the bid opening.
- Negotiation with contractors, during the period following the opening of bids and before the award of the contract shall not be permitted.

The agency's bidding procedures shall not discriminate against any qualified bidder regardless of political boundaries. No bidder shall be required to obtain a license before submitting a bid or before the bid is considered for award of a contract, which includes federal financing; however, a State contractor's license must be obtained upon award of the contract. The local agency may also withhold payment under such contract until such time as the contractor furnishes proof of a proper license in compliance with State laws. No local agency shall bid in competition with, or enter into a subcontract with private contractors. As bids are received, they shall be logged in and stamped with the time and date. The bids shall be retained in a secure place until the designated time and place for public opening.

The administering agency shall retain the following completed documents for the successful bidder in the project file:

- [Exhibit 15-G: Construction Contract DBE Commitment](#)
- A list of bidders and total amounts bid with an item-by-item breakdown (see [Exhibit 15-D: Bid Tabulation Summary Sheet \(Sample\)](#)) of the three lowest bidders
- The Non-collusion Affidavit (see [Exhibit 12-H: Sample Bid](#))
- [Exhibit 15-I: Local Agency Bid Opening Checklist](#)

Where the lowest bid exceeds the engineer's estimate by an unreasonable amount as defined by established agency procedures, or where competition is considered to be poor for the size, type, and location of project, bids may be rejected unless an award of contract is justified as being in the best interest of the public. See [Section 15.6: Contract Award, Bid Analysis Process](#), and guidelines on [Preparing Engineer's Estimate, Bid Review and Evaluation](#), dated January 20, 2004.

no definitive parameters (e.g., an amount or percent of variance from the engineer's estimate) that constitutes an unbalanced bid. The degree of unbalancing of a bid may depend on the reason for the unbalancing. Mathematically unbalanced bids, although not desirable, may be acceptable.

The determination of mathematically unbalanced bids may be aided by the use of one of the several computer software packages now available. However, the final decision should not preclude the use of engineering judgment. Care must also be exercised to ensure that unit bids for mobilization do not mask unbalancing. Also, token bids (i.e., bids with large variations from the engineer's estimate) should be considered as mathematically unbalanced bids and further evaluation and other appropriate steps should be taken to protect the public interest.

There may be situations where the quantity of an item could vary due to inaccuracies in the estimating, errors in the plans, changes in site conditions or design, etc. In such situations, the bids should be further evaluated to determine if the low bidder will ultimately yield the lowest cost. If unbalancing creates reasonable doubt that award would result in the lowest ultimate cost, the bid is materially unbalanced and should be rejected or other steps should be taken to protect the public interest.

Award Procedures

Unless it is a Project of Division Interest, the administering agency shall follow its normal procedures for award of the project and is delegated the authority to determine the lowest responsive/responsible bidder without concurrence to award by Caltrans or the FHWA. Written justification shall be included in the project file for all projects that are not awarded to the lowest bidder. The administering agency shall follow its normal procedures for award of the contract and assure that all federal requirements are followed. A bid analysis is not a requirement but is recommended. The administering agency shall retain the executed contract, document the award date, and the Preconstruction conference minutes. The State shall not participate in resolving disputes between the administering agency and its bidders.

It is the responsibility of the administering agency to verify with the DLAE and RTPA/ MPO that the appropriate amount of federal funds is authorized before the project is awarded. Once awarded, notify the DLAE the 'Notice to Proceed' has been given.

Post-Award Reviews

The administering agency should conduct post-award bid evaluations to assure against bid rigging. An adequate number of projects awarded over a sufficient time period should be evaluated. A period of approximately 5 years should be selected for an initial evaluation to determine if any abnormal competitive bid patterns exist. The following information should be considered in a post-award review for abnormal bid patterns:

- Number of contract awards to a specific firm
- Project bid tabulations
- Firms that submitted a bid and later become a subcontractor on the same project
- Rotation of firms being the successful bidder
- Consistent percentage differential in the bids

EXHIBIT 15-G CONSTRUCTION CONTRACT DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
3. Project Description: _____
4. Project Location: _____
5. Bidder's Name: _____ 6. Prime Certified DBE: ☐ 7. Bid Amount: _____
8. Total Dollar Amount for **ALL** Subcontractors: _____ 9. Total Number of **ALL** Subcontractors: _____

10. Bid Item Number	11. Description of Work, Service, or Materials Supplied	12. DBE Certification Number	13. DBE Contact Information (Must be certified on the date bids are opened)	14. DBE Dollar Amount
Local Agency to Complete this Section upon Execution of Award			15. TOTAL CLAIMED DBE PARTICIPATION	
21. Local Agency Contract Number: _____	22. Federal-Aid Project Number: _____	23. Bid Opening Date: _____		
24. Contract Award Date: _____	25. Award Amount: _____			
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable with the names and items of the work in the "Subcontractor List" submitted with your bid. Written confirmation of each listed DBE is required.	
26. Local Agency Representative's Signature _____	27. Date _____	16. Preparer's Signature _____	17. Date _____	
28. Local Agency Representative's Name _____	29. Phone _____	18. Preparer's Name _____	19. Phone _____	
30. Local Agency Representative's Title _____		20. Preparer's Title _____		

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.
 3. Include additional copy with award package.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSTRUCTION CONTRACT DBE COMMITMENT**CONTRACTOR SECTION**

- 1. Local Agency** - Enter the name of the local agency that is administering the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Location** - Enter the project location(s) as it appears on the project advertisement.
- 4. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
- 5. Bidder's Name** - Enter the contractor's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Bid Amount** - Enter the total contract bid dollar amount for the prime contractor.
- 8. Total Dollar Amount for ALL Subcontractors** - Enter the total dollar amount for all subcontracted contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime contractor information in this count.
- 9. Total number of ALL subcontractors** - Enter the total number of all subcontracted contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime contractor information in this count.
- 10. Bid Item Number** - Enter bid item number for work, services, or materials supplied to be provided.
- 11. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime contractor's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 12. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 13. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted contractors. Also, enter the prime contractor's name and phone number, if the prime is a DBE.
- 14. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime contractor if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 15. Total Claimed DBE Participation** - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column. %: Enter the total DBE participation claimed ("Total Claimed DBE Participation Dollars" divided by item "Bid Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 16. Preparer's Signature** - The person completing the DBE commitment form on behalf of the contractor's firm must sign their name.
- 17. Date** - Enter the date the DBE commitment form is signed by the contractor's preparer.
- 18. Preparer's Name** - Enter the name of the person preparing and signing the contractor's DBE commitment form.
- 19. Phone** - Enter the area code and phone number of the person signing the contractor's DBE commitment form.
- 20. Preparer's Title** - Enter the position/title of the person signing the contractor's DBE commitment form.

LOCAL AGENCY SECTION

- 21. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 22. Federal-Aid Project Number** - Enter the Federal-Aid Project Number(s).
- 23. Bid Opening Date** - Enter the date contract bids were opened.
- 24. Contract Award Date** - Enter the date the contract was executed.
- 25. Award Amount** - Enter the contract award amount as stated in the executed contract.
- 26. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Contractor Section of this form is complete and accurate.
- 27. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 28. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the contractor's DBE commitment form.
- 29. Phone** - Enter the area code and phone number of the person signing the contractor's DBE commitment form.

30. Local Agency Representative Title - Enter the position/title of the Local Agency Representative certifying the contractor's DBE commitment form.

EXHIBIT 15-H: PROPOSER/CONTRACTOR GOOD FAITH EFFORTS

Federal-aid Project No(s). _____ Bid Opening Date _____

The _____ established a Disadvantaged Business Enterprise (DBE) goal of _____ for this contract. The information provided herein shows the required good faith efforts to meet or exceed the DBE contract goal.

Proposers or bidders submit the following information to document their good faith efforts within five (5) business days from bid opening. Proposers and bidders are recommended to submit the following information even if the Exhibit 10-O1: Consultant Proposal DBE Commitments or Exhibit 15-G: Construction Contract DBE Commitment indicate that the proposer or bidder has met the DBE goal. This form protects the proposer's or bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions, **please attach additional sheets as needed:**

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement
_____	_____
_____	_____
_____	_____

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- C. The items of work made available to DBE firms including those unbundled contract work items into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation in order to met or exceed the DBE contract goal.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

- E. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining information related to the plans, specifications and requirements for the work which was provided to DBEs:

F. Efforts (e.g. in advertisements and solicitations) made to assist interested DBEs in obtaining bonding, lines of credit or insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

H. Any additional data to support a demonstration of good faith efforts:

EXHIBIT 15-L LOCAL AGENCY CONTRACT AWARD CHECKLIST

Administering Agency: _____

Federal-aid Project Number: _____

Project Locator: _____

(Caltrans District – County – 0 or State Route – Administering Agency)

Project Limits: _____

(Physical limits reference intersections or post miles limits)

Has Caltrans issued an “Authorization to Proceed” (E-76) in writing with federal funds included for construction, and is the amount correct?	yes	no
Copy of engineers estimate:		
Is material testing and sampling arranged?	yes	no
Copy of low bidder’s proposal		
Low Bid signed in ink?	yes	no
Is a Good Faith Effort Statement of DBE Participation (Exhibit 15-H) included in the low bidder’s proposal? (Only required if DBE goal is not achieved)	yes	no n/a
Construction Contract DBE Commitment (Exhibit 15-G)		
Is the Non-Collusion Affidavit (Exhibit 12-H, Sample Bid) included in the low bidders’ proposal?	yes	no
Is the Bid summary (itemized bids for 3 lowest bidders) complete?	yes	no
Addendum procedures adhered to?	yes	no
TIP information, Authorized amount.....		
Include TIP page number or amendment number here:		
Bid opening procedures were adhered to?	yes	no
Date DLA’s Federal Wage Rate website was checked for updates *		
Date of bid opening		
Date of award		
Amount of award		
Detail Estimate (Exhibit 15-M):		
Finance Letter (Exhibit 3-O):		
Resident Engineer’s Construction Contract Administration Checklist (Exhibit 15-B).....		
Is successful bidder licensed?	yes	no

NOTE: If the answer is “no” to any of the above questions, a letter of explanation is required. The DLAE shall review the explanation and determine if the local agency is eligible for federal funds.

Reviewed by: _____

(Signature of Administered Agency Representative)

(Name printed or typed)

*** If the date listed is more than 10-calendar days before bid opening, local agency must provide documentation that web site was subsequently checked within the 10-calendar day period or after bid opening, and there were no changes in the applicable federal wage rates, otherwise an addendum may be required.**

Title: _____

Date: _____

Phone Number: _____

Distribution: 1) Original plus one copy –DLAE
2) Copy- Local Agency Project files

Keep in mind these manuals are not contract documents; they are procedures and guidelines. In case of conflicts, the contract documents and the agency-state agreements shall prevail. However, if mandated federal-aid requirements were inadvertently omitted from the contract, the LPA must amend the contracts via change order to correct the omissions.

Available Training for Federal-Aid Construction Administration

The following two courses are offered to LPA Resident Engineers (REs) and other staff through the California Local Technical Assistance Program Training:

- The Resident Engineer Academy
- Federal-Aid Series, Day 5, Federal Rules for Construction Contract Administration and Project Completion

The RE Academy introduces students to the roles and responsibilities of an RE and to the requirement of the federal-aid program, while Day 5 of the Federal-Aid Series explains the federal-aid requirements in this chapter and [LAPM Chapter 17: Project Completion](#). To find out more information go to the [HQ Local Assistance Training webpage](#).

Other Available Resources

When a problem arises, the RE has many resources to consult or request assistance, in addition to the LAPM, including the:

- [District Local Assistance Engineer \(DLAE\)](#)
- Construction Oversight Engineer (COE)
- [HQ Division of Local Assistance](#)
- [Federal-Aid Essentials for Local Public Agencies](#)
- [Caltrans Manuals and Guides](#)

The [Caltrans Construction Manual](#) is a great resource for REs, Office Engineers (OE), field inspectors and lab testers, covering topics from change order writing, labor compliance, as well as sampling and testing. [Caltrans Construction Manual](#). Chapter 4: Construction Details is especially helpful to those inspecting roadwork operations, providing specific activities to be completed before, during and after construction.

For structure work, the Bridge Construction Procedures Manual should be consulted.

Contract Administration Costs Eligible for Reimbursement

Construction engineering costs (CE) including the work of project advertising, contract administration, supervision and inspection of contract activities, measurement and payments, preparation of as-built plans, and final estimates are eligible for federal-aid reimbursement if identified and programmed in the Authorization to Proceed. A CE cost limitation of fifteen percent (15%) of the Engineers Estimate is highly recommended for the federal-aid program although it is recognized that the limitation may be inappropriate for some smaller or more complex projects. Although approval is not guaranteed, support documentation including, but not limited to, a project cost breakdown, must be submitted to the DLAE for justifying project funding requests that exceed the recommended CE limitation. During the course of construction

and subject to the availability of federal funding, any requests from the LPA for additional CE funds that would result in exceeding the recommended limitation must be submitted to the DLAE for review and approval. For more information on programming construction engineering see: [LAPM Chapter 3: Project Authorization](#).

16.2 PROJECT SUPERVISION AND INSPECTION

Designate the Person in Responsible Charge of the Project

Federal statutes require that the LPA must provide a full time employee of the LPA who is accountable for the project. This individual is the person in responsible charge of the project. For projects administered by an LPA, the person in responsible charge does not need to be an engineer. The regulations allow one employee to have responsible charge over multiple projects at the same time.

Person in Responsible Charge

The person designated responsible in charge must be a public employee. This requirement applies even in the following cases:

- a. A consultant is performing the construction engineering services
- b. A consultant has been hired as the City Engineer or Public Works Director

Person in Responsible Charge Duties:

The person in responsible charge performs the following duties:

- Administers inherently governmental project activities including those dealing with cost, time, adherence to contract requirements, construction quality and scope,
- Maintains familiarity of the day to day project operations, including project safety issues,
- Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements,
- Visits and reviews the project on a frequency that is commensurate with the magnitude and complexity of the project,
- Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse,
- Directs project staff, local agencies or consultants, to carry out project administration and contract oversight, including proper documentation, and
- Maintains awareness of the qualification assignments and on-the-job performance of local agencies and consultant staff at all stages of the project.

Provide Adequate Project Staff

The LPA must designate a qualified engineer who is empowered to administer the construction contract, known as the Resident Engineer (RE). For projects off the SHS, the RE is not required to be a registered, however, if not registered, they must be working under the supervision of a registered engineer. The LPA must furnish sufficient qualified support staff to assist the RE in,

- e. [*Exhibit 16-O: Federal-Aid Highway Contractors Annual EEO Report*](#)
- 13. Disadvantaged Business Enterprise (DBE) Records
 - a. [*Exhibit 15-G: Construction Contract DBE Information*](#)
 - b. [*Exhibit 15-H: DBE Information - Good Faith Efforts*](#)
 - c. [*Exhibit 16-Z1: Monthly DBE Trucking Verification*](#)
 - d. DBE Substitution Supporting Documentation (if applicable)
 - e. [*Exhibit 17-F: Final Report –Utilization of DBE and First –Tier Subcontractor*](#)

Other sections of this chapter explain the content of the above listed file categories.

A large and complex project usually requires a more detailed record-keeping system. The record-keeping system described in [Caltrans Construction Manual](#), Section 5-102, Organization of Project Documents, is suggested for large projects.

Availability of Records for Review or Audit

The record retention period for the non-Federal entities for financial purposes is 3 years and begins when the final voucher is submitted in FMIS and required documentation is submitted to FHWA per the stewardship and oversight agreement. The files must be available at a single location for these reviews and audits. Use of a uniform project record-keeping system, together with diligent maintenance of the system, greatly facilitates a process review and minimizes negative findings. Good records of all construction activities clearly demonstrate to those concerned that project supervision and control were attained on the project.

16.4 PRE-CONSTRUCTION CONFERENCE AND PARTNERING

Pre-Construction Conference

For all construction projects, the LPA must schedule a pre-construction conference with the contractor.

Required Attendees:

- LPA Representative
- Resident Engineer (if this is not the same person as above)
- Contractor

Possible/Recommended Attendees:

- LPA Labor Compliance Officer
- LPA Safety Officer
- Other Affected Agencies (Fish and Wildlife, Parks and Rec, etc.)
- Emergency Services (Fire, Police, Ambulance, etc.)
- Public Utilities (if relocation or temporary shut downs are required)
- FHWA Project Oversight Manager

discussed in Public Contract Code 4107 (c) and Public Contract Code 4109. Ensure the listed subcontractor performs the work, or the contractor complies with the substitution procedures in the Act.

Request the contractor make corrections and resubmit the form for approval, if there are any conflicts.

Common Violations of the Subletting and Subcontracting Fair Practices Act

The following are examples of common violations of the Act by a prime contractor:

- Subcontracting additional work to a listed subcontractor where the work was not originally listed as subcontracted work, and is in excess of the threshold requirements,
- Using a subcontractor not listed at bid time whose dollar value of work is in excess of the threshold,
- Substituting subcontractors without the LPA written consent, and
- Performing work with their own forces that the bid documents designated a subcontractor to perform.

If the Prime Contractor is found to be in Violation of the Fair Practice Act:

If these or any other violations actually occur during the work:

- The contractor must be assessed a penalty of up to 10 percent of the value of the work as defined by contract item unit prices.
- The penalty is taken as an administrative deduction.

Discuss the issue with your LPA Labor Compliance Officer and consult Section 3-507C (4), Violations of the Subletting and Subcontracting Fair Practices Act of the [Caltrans Construction Manual](#) for direction on how to proceed. Consult the Construction Oversight Engineer (COE) for additional guidance, if needed.

Substitution of a Listed Subcontractor

To replace, or substitute, a subcontractor listed in the bid documents per the Fair Practices Act, the prime contractor must submit a written request based on the reasons identified in [Public Contract Code Section 4107](#). Examples of acceptable substitution reasons listed in the code are insolvency, failure to furnish bonds, unlicensed, failure to pay prevailing wages, and failure to execute a subcontract.

When the prime contractor requests a substitution, review the code to determine if the reason provided by the contractor is eligible for substitution. If yes, follow the process outlined in your contract documents, or if not provided, consult [Section 3-507C \(2\)](#), Substitution Process, of the [Caltrans Construction Manual](#). The process generally requires written notice to the subcontractor by certified mail and five business days to submit a written objection to the substitution. Follow the process carefully and maintain documentation in the project files.

- a. Employee was classified properly for the work the employee was doing at the time of the interview as described in the daily reports,
- b. Correct wage rate was paid for the proper classification, and
- c. Overtime rate was paid for any work in excess of 8 hours in a day or 40 hours in a week, or for the first eight hours work on a seventh consecutive day.

A single worker may perform many different tasks covered by more than one craft or classification during the course of a single day. In this situation, the contractor may break up the work into the different classification and pay accordingly, or it may pay the worker the highest applicable wage rate for the entire day. If the highest wage rate is paid for the entire day, separate entries in the payroll records are not required.

If you find payroll discrepancies through review, random confirmation or worker complaints, see the CT Labor Compliance Policy Bulletin 11-01 for required follow up steps.

Task 8: Document that the Required Posters and Wage Rates are Displayed at the Job Site

Document that the posters and wage rates are legible and posted in plain view where employees are not intimidated to read them. If the project has multiple locations without a single gathering place, the contractor may need to be creative, mounting them to the porta-potty or a sandwich board that can be easily moved.

A photograph of the display is a good way to document that the contractor was in compliance. If you are unable to take a photo, the engineer performing the verification must note compliance in the daily report. Place a copy of the photo or daily report in the project labor compliance file.

A checklist helpful for performing verification is available at:

<http://www.dot.ca.gov/hq/construc/LaborCompliance/posters.htm>.

Note that the laminated all-in-one posters many contractors purchase do not contain all the required information.

Task 9: Compare all Force Account (time and material) Billings to Certified Payrolls

Confirm the names of employees, wage rates, and hours listed on change order bills match information listed on the contractor's certified payrolls. If the documents do not show identical information, do not approve payment of the change order bill until the discrepancy is corrected.

Delinquent or Inadequate Payrolls

This section covers procedures for payroll delinquencies, discrepancies, and inadequacies.

If the Contractor Fails to Submit all Certified Payrolls, or Submits Incomplete Certified Payrolls

The RE must notify the contractor in writing which certified payroll documents are missing or inadequate, as well as withheld pay due to the contractor on the monthly progress payment. A withholding up to 10% of the payment is recommended a minimum of \$1,000 and a maximum

Federal policy requires that actual costs be used to determine extra work payments; however, actual equipment costs are not always readily available. A state subject to the FHWA's concurrence, may adopt an industry equipment rate guide or it may develop its own guide. In California, the guide is the Caltrans Labor Surcharge and Equipment Rental Rates book. Overtime, multiple shift and delay factors apply to these rates as detailed in the guide.

Equipment rental rates paid in excess of those shown in the guide are not eligible for federal-aid reimbursement.

For major change orders and/or Change Orders on Projects of FHWA Division Interest, FHWA may retain approval authority for such specific change orders.

16.11 QUALITY ASSURANCE PROGRAM

Introduction

A [Quality Assurance Program \(QAP\)](#) is a program that will ensure the materials and workmanship incorporated into each construction project conform to the requirements of the contract plans and specifications including approved changes. The main elements of a QAP are an acceptance program and an independent assurance program.

For federal construction projects, each LPA is required to adopt a QAP. Caltrans will not process a Request for Authorization for Construction without verification of an adopted QAP. Prior to adopting a QAP, the LPA must submit it to the Caltrans DLAE for review. The QAP must be signed by the LPA public works director or, if the director is not registered, it must be delegated to the next highest registered Engineer. The QAP must be updated at least every five years. Copies of the approved Quality Assurance Program shall be kept on file and available for state review.

The LPA is required to adhere to their QAP during the construction of the project, but a QAP is not part of the contract. Failure to comply with the QAP and the requirements described in this section may result in loss of federal funds.

A typical QAP is structured as shown below:

1. General Discussion
 - a. Variations for SHS, NHS, Non-NHS Projects
 - b. Materials Acceptance Program
 - c. Independent Assurance (IA) Program
 - d. Dispute Resolution Process
 - e. Materials Certification Process
2. Attachments
 - a. Table of Minimum Sampling and Testing Frequency Requirements (a.k.a. Frequency Table)

furnished materials simultaneously from a single plant, it is not necessary to secure separate samples for each project; however, individual test reports are to be supplied to complete the records for each project.

Project Certification

Upon completion of the project, the RE must complete [Exhibit 17-G: Materials Certificate](#). The RE and the LPAs Person in Responsible Charge must sign the certificate. All materials incorporated into the work which did not conform to specifications must be explained and justified on the Materials Certificate, including changes by virtue of contract change order. The original is submitted to the DLAE in the Report of Expenditures and a copy is placed in the project file.

16.12 ENVIRONMENTAL STEWARDSHIP

Introduction

The National Environmental Policy Act (NEPA) mandates that steps be taken to prevent or eliminate damage to the environment. This is accomplished through the environmental processes detailed in [LAPM Chapter 6: Environmental Procedures](#). Furthermore, the LPA is responsible for complying with applicable state and local laws, obtaining necessary permits, and ensuring that mitigation commitments are fully incorporated into the Plans, Specifications and Estimate, and implemented during construction. This section outlines the RE's responsibilities to fulfill these requirements.

Responsibilities of the RE

The responsibility to ensure that all environmental mitigation commitments are incorporated during construction falls on the RE. First, the RE must double check that no mitigation commitments were inadvertently omitted from the PS&E, then the RE must ensure that the commitments are properly executed during construction, and third, the RE must ensure that the execution was adequately documented.

At the start of each project, to ensure no mitigation commitments were omitted from the PS&E, the RE must obtain and read the key documents related to environmental mitigation for the project, including:

1. The approved project environmental document. This document will have been signed by Caltrans and will be one of the following three types:
 - Categorical Exclusion (CE)
 - Finding of No Significant Impact (FONSI)
 - Record of Decision (ROD)
2. The Environmental Commitment Record (ECR). The ECR is a tool for tracking and documenting the completion of all mitigation commitments and is required for all federal-aid projects. It is developed during the PS&E phase and compiles all terms, conditions, and mitigation measures required by all the environmental permits, approvals and agreements from resource and regulatory agencies.

Chapter 17 Project Completion

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EXHIBITS

Exhibits applicable to this chapter can be found at:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

[*Exhibit 17-A: Cover Letter & Federal Report of Expenditures Checklist*](#)

[*Exhibit 17-B: Final Inspection of Federal-Aid Project \(FHWA Form 1446C\)*](#)

[*Exhibit 17-C: Final Inspection Form*](#)

[*Exhibit 17-D: Federal-Aid Final Invoice*](#)

[*Exhibit 17-E: Sample Change Order Summary*](#)

[*Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise and First-Tier Subcontractors*](#)

[*Exhibit 17-G: Materials Certificate*](#)

[*Exhibit 17-H: Cover Letter and Final Report of Expenditures Checklist \(PE Only\)*](#)

[*Exhibit 17-I: Cover Letter for the Report of Completion of Structures*](#)

[*Exhibit 17-J: Report of Completion of Structures on Local Streets and Roads*](#)

[*Exhibit 17-K: Sample Report of Completion of Right of Way Expenditures*](#)

[*Exhibit 17-L: Sample Report of Expenditures for Force Account Projects*](#)

[*Exhibit 17-M: Final Project Expenditure Report*](#)

This chapter and [LAPM Chapters 15: Advertise and Award Project](#), and [LAPM Chapter 16: Administer Construction Contracts](#), of the Local Assistance Procedures Manual (LAPM) are for the use of local agencies, which administer federal-aid projects under a Local Agency-State Agreement. These three chapters cover general contract administration procedures.

When a locally sponsored project funded with federal-aid is within the state R/W and the State (Caltrans) is the administering agency, the Caltrans Construction Manual is used in lieu of these procedures.

17.2 DEFINITIONS OF TERMS

Delegated Project – A lower risk project not selected as Project of Division Interest project, for which Caltrans has authority for all aspects of a federal-aid project except those activities which may not be delegated by federal law (requiring Federal Highway Administration [FHWA] approval). Prior to September 2007 these projects were referred to as State-Authorized projects defined by set criteria (rather than risk) such as non-Interstate 3R projects, Interstate construction projects under \$1 million, non-NHS projects, and so forth. Over 99% of local assistance projects are delegated in which Caltrans or the local agency has approval authority for most project level activities.

EEO – Equal Employment Opportunity.

Final Invoice – Invoice listing final cost incurred for a particular phase of the project, i.e., Preliminary Engineering, Construction Engineering, Right of Way, or Construction. The District Local Assistance Engineer (DLAE) is required to verify project completion and approve payment before forwarding the final invoice to Local Programs Accounting (LPA). For example see [Exhibit 17-C: Final Inspection Form](#), and refer to [LAPM Chapter 5: Invoicing](#), for instructions.

Form FHWA 1446C – Final Inspection of Federal-aid Project. Document used by Caltrans to complete the final inspection of NHS Projects subject to FHWA Full Oversight. See [Exhibit 17-B: Final Inspection of Federal-Aid Projects](#)

Form FIF-6/05 – Final Inspection Form and revision date. Document used by local agency to complete the final inspection of all projects (see [Exhibit 17-C](#)).

Projects of Division Interest (PoDI) – Projects where the CADO has retained one or more 23 U.S.C. 106 (c) responsibilities. These are projects that have an elevated risk, contain elements of higher risk, or present a meaningful opportunity for FHWA involvement to enhance meeting project objectives or advancing key initiatives. Major Projects are always designated as PoDIs.

Progress Invoice – Periodic billing invoice by local/regional agencies for reimbursement of costs on on-going contracts.

Report of Expenditures – Collectively refers to various final report documents.

3. A breakdown of Right of Way costs (with participating costs shown separately). The total participating costs should equal the Participating Costs to Date as shown on the Final Progress Requests (Forms FM 1592A).
 4. Final Invoice for Right of Way – The invoice must be prepared on an agency letterhead; each phase must include:
 - a. All agency and project identification shown on the form including the Local Agency-State agreement number.
 - b. Dates and amounts of funding authorized for Incidental and Capital Outlay.
 - c. Period of expenditures (dates) for Incidental and Capital Outlay.
 - d. Cost breakdown for Incidental and Capital Outlay as follows:
 - Total Cost to Date
 - Rental Income
 - Nonparticipating Cost to Date
 - Subtotal – Participating Costs
 - Participating Cost Previously Claimed
 - Subtotal – Change in Participating Posts
 - Reimbursement Ratio
 - Amount of this Claim
 - Invoice Total
- .
- **Force Account Projects** – Projects with Force Account work also require a Report of Expenditures. These projects are usually emergency relief type and include emergency repair work. Other federal-aid projects may incorporate all, or a part of the project to be built using the force account method. A completed example of a Report of Expenditures for a project including Force Account Work is included in [Exhibit 17-L: Sample Report of Expenditures for Force Account Projects](#). For more information on force account procedures, see [LAPM Chapter 12: Plans, Specifications & Estimate](#), Section 12.4: Method of Construction.

The DLAE shall perform a review of these documents for correct format and obvious errors and/or omissions. Upon verification that the Final Report of Expenditures is complete, the DLAE shall forward it to LPA for processing.

State-Funded Projects

For state funded projects, in state transportation programs such as the Environmental Enhancement and Mitigation (EEM) Program, the local agency shall complete [Exhibit 17-M: Final Project Expenditure Report](#). The report with the final invoice attached will be submitted to the DLAE.

Note: These programs were intended under the blueprint legislation as state only funded projects. However due to varying circumstances of the state budget

1. Local Agency Contract Number		2. Local Agency			3. Contract Completion Date	
4. Consultant		5. Business Address		6. Original Contract Amount		7. Final Contract Amount
8.Task Order Number	9.Federal Project Number	10. Task Order Description	11. Contract Payments		12. Date Work Completed	13. Date of Final Payment
			Non-DBE	DBE		
14. ORIGINAL DBE COMMITMENT AMOUNT \$					15. TOTAL for Task Orders \$	
estimate from 10-O2						

16.Explanation Box:			
I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT			
17. Consultant Representative's Signature	18.Consultant Representative's Name	19. Phone	20. Date
I CERTIFY THAT THE CONTRACTING RECORDS OF THE DBE(S) HAS BEEN MONITORED			
21. Local Agency Representative's Signature	22. Local Agency Representative's Name	23. Phone	24. Date

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) FOR ON-CALL CONTRACTS AND FIRST-TIER SUBCONSULTANTS

1. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
2. **Local Agency** - Enter the name of the local or regional agency that is funding the contract.
3. **Contract Completion Date** - Enter the date the contract was completed.
4. **Consultant** - Enter the consultant's firm name.
5. **Business Address** - Enter the consultant's business address.
6. **Original Contract Amount** - Enter the original on-call contract amount.
7. **Final Contract Amount** - Enter the total final amount for the contract.
8. **Task Order Number** - Enter task order or work order number.
9. **FPN** - Enter Federal Project Number that corresponds to task order.
10. **Task Order Description** - Enter the description of the task order.
11. **Contract Payments** - Enter all non-DBE and DBE actual total payment amounts.
12. **Date Work Completed** - Enter the date the subconsultant's item work was completed.
13. **Date of Final Payment** - Enter the date when the prime consultant made the final payment to the subconsultant for the portion of work listed as being completed.
14. **Original DBE Commitment Amount** - Enter the "Total Claimed DBE Participation Dollars" from Exhibit 10-O2 for the contract.
15. **Total** - Verify autosum of the "Contract Payments" Non-DBE and DBE columns.
16. **Explanation Box**: If original DBE commitment does not match or exceed actual utilization, please explain.
17. **Consultant Representative's Name** - Enter the name of the person preparing and signing the form.
18. **Phone** - Enter the area code and telephone number of the person signing the form.
19. **Date** - Enter the date the form is signed by the consultant's preparer.
20. **Local Agency Representative's Signature** - A Local Agency Representative must sign their name to certify that the contracting records of the DBE(s) has been monitored.
21. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative signing the form.
22. **Phone** - Enter the area code and telephone number of the person signing the form.
23. **Date** - Enter the date the form is signed by the Local Agency Representative.
24. **Consultant Representative's Signature** - The person completing the form on behalf of the consultant's firm must sign their name.

Exhibit 17-H Cover Letter and Final Report of Expenditures Checklist (PE Only)

Department of Transportation
Caltrans- Local Assistance

Federal- Aid Project No.: _____

Dear:

Submitted for your consideration is: FINAL REPORT OF EXPENDITURES CHECKLIST (PE ONLY)

Project:

Consultant:

Contract:

Local Agency's Person In Responsible Charge:

Final Report of Expenditure Checklist

1. Category <input type="checkbox"/> Planning Study <input type="checkbox"/> Financial Study/ Report <input type="checkbox"/> Exhibit 3-O: Finance Letter <input type="checkbox"/> Environmental Determination – No Build <input type="checkbox"/> Date of FHWA Approved No Repayment: _____ <input type="checkbox"/> Exhibit 3-O: Finance Letter		<input type="checkbox"/> Subsequent Phases Funded Under Separate Federal Project(s) <input type="checkbox"/> FPN for Subsequent Phase: _____ <input type="checkbox"/> FPN for Subsequent Phase: _____ <input type="checkbox"/> FPN for Subsequent Phase: _____ <input type="checkbox"/> Exhibit 3-O: Finance Letter <input type="checkbox"/> Subsequent Phases Funded With Non-Federal Funds <input type="checkbox"/> Date of R/W Acquisition or Construction Award: _____ <input type="checkbox"/> Funding Sources: _____ <input type="checkbox"/> Exhibit 3-O: Finance Letter
2. Consultant Utilization <input type="checkbox"/> Exhibit 17-F: Consultant Contracts(s) (Include Final Report–Utilization of Disadvantage Business Enterprises <input type="checkbox"/> Exhibit 17-O: Disadvantage Business Enterprise (DBE) Certification Status Change <input type="checkbox"/> Force Account		
3. Final Invoice <input type="checkbox"/> Exhibit 17-D: Federal-Aid Final Invoice <input type="checkbox"/> Exhibit 5-J: Local Agency Invoice Review Checklist <input type="checkbox"/> Exhibit 5-K: Billing Summary		

Sincerely,

Local Agency's Person in Responsible Charge

Reviewed By:

District Local Assistance Engineer

Distribution: (All projects): (1) Final Report of Expenditures
(2) Local Agency project files



Local Assistance Program Guidelines (LAPG)

CHAPTER 2 FINANCING THE FEDERAL-AID HIGHWAY PROGRAM**CONTENTS**

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CHAPTER 2 FINANCING THE FEDERAL-AID HIGHWAY PROGRAM

2.1 INTRODUCTION

This chapter describes the actions required for the financing of the Federal Highway Administration (FHWA) federal-aid projects on the national, state, and project levels. On the national level, the chapter covers the Federal-aid Highway Program actions taken in Washington D.C. to fund local federal-aid projects. State level actions cover the five kinds of federal funds available for local federal-aid projects as well as the monitoring and tracking of obligational authority. The project level actions outline the documents that need to be in place and tasks to complete before a local agency can begin invoicing for federal-aid funds.

DEFINITIONS

Allocation – An administrative distribution of funds among the states, done for funds that do not have statutory distribution formulas.

Apportionment – A statutorily prescribed division or assignment of funds. An apportionment is based on prescribed formulas in the law and consists of dividing authorized obligational authority for a specific program among the states.

Authorization – Formal federal process that establishes a date for which an agency can start reimbursable work for a phase(s) of a project. For the construction phase, an agency must obtain authorization prior to project advertisement. Authorization can be given by Congress, FHWA, or state depending on funding program regulations. Local agencies know they have authorization when they receive “Authorization to Proceed” from Caltrans.

Obligation – Commitments made by federal agencies to pay out money as distinct from the actual payments, which are “outlays.” Generally, obligations are incurred after the enactment of budget authority. However, since budget authority in many highway programs is in the form of contract authority, obligations in these cases are permitted to be incurred immediately after apportionment or allocation. The obligations are for the federal share of the estimated full cost of each project at the time it is approved regardless of when the actual payments are made or the expected time of project completion.

Obligational Authority – Another term for limitation on obligations.

2.2 NATIONAL LEVEL ACTIONS

The process of financing the Federal-aid Highway Program begins with congressional approval of a Federal Highway Act. The most recent Federal Highway Act is the Fixing America’s Surface Transportation (FAST) Act signed by President Barack Obama on December 4, 2015, which superseded the Moving Ahead for Progress in the 21st Century (MAP-21) Act. The highway act is the primary instrument used by Congress to shape and redirect the federal-aid highway program.

Most programs (CMAQ, STBGP, etc.) within the federal-aid highway program operate under what is called “contract authority,” a special form of budget authority. Under contract authority, the sums authorized in federal highway acts are made available for obligation without an annual appropriations action. The use of contract authority gives the states advance notice of the size of the federal-aid program as soon as the authorization is enacted. It should be understood that contract authority is unfunded by definition and does not allow the obligation of funds to a project. It does, however, allow an assignment of funds to projects when preparing planning documents, such as the Transportation Improvement Program. A subsequent appropriations act is necessary to pay obligations made under contract authority (discussed later). One program that does not operate under contract authority is the discretionary program. See the figure below for more information on contract authority.

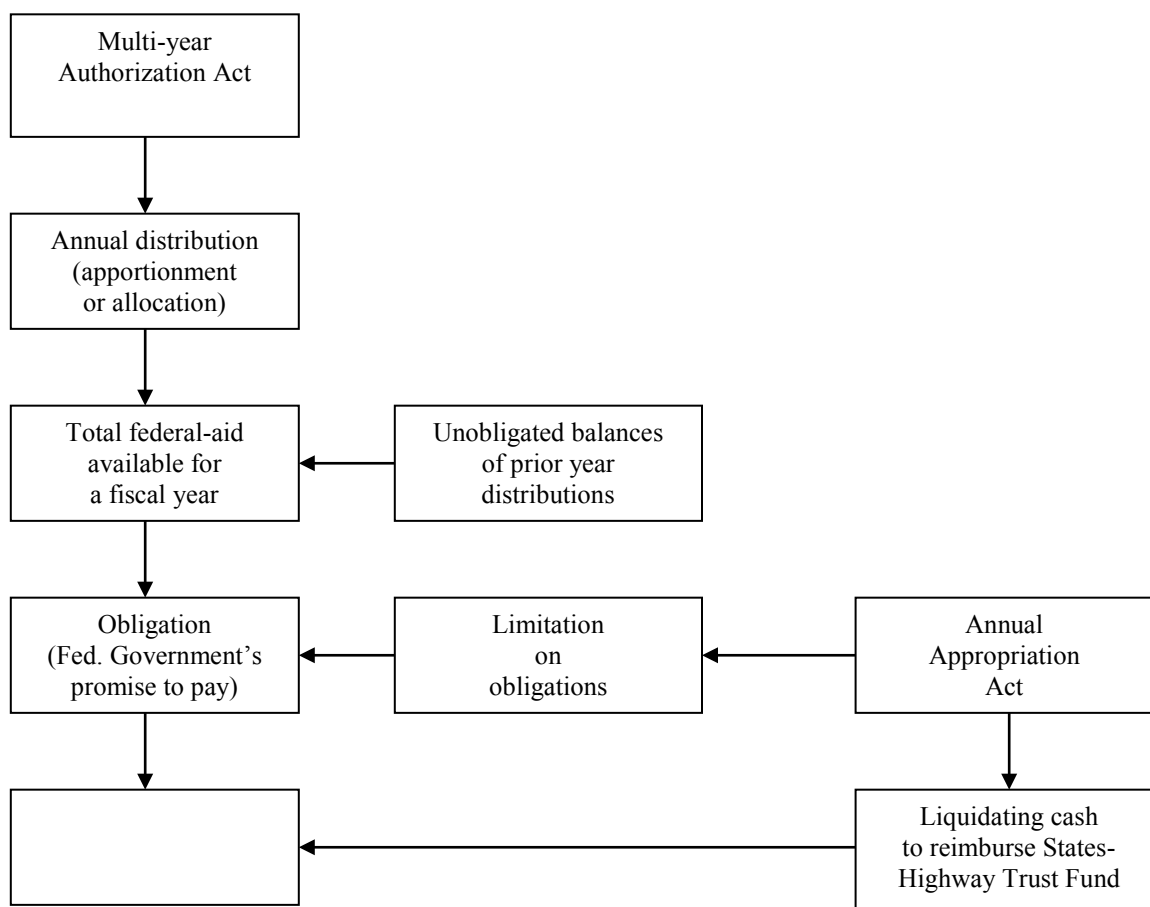


Figure 1.—Contract Authority Programs

Title 23 of the United States Code (23 USC) is titled “Highways,” and contains most of the laws that govern the federal-aid highway program. It includes the provisions of law that Congress considers permanent or continuing, and need not be reenacted with each new highway act. As new highway acts are passed, sections of Title 23 are amended, added or repealed as necessary. Title 23 does not contain requests for studies, special projects, etc., and most authorizations are not codified.

APPORTIONMENTS AND ALLOCATIONS

Congressional authorizations represent the upper limits on the federal funding commitments, which can be made against the various federal-aid highway programs included in a Federal Highway Act. The FHWA apportions (distributes) the authorized program funds, after deductions and set asides, to the states using federally mandated formulas and procedures.

Federal apportionment of authorized amounts generally occurs on the first day of the federal fiscal year (FFY). The FFY begins October 1 and ends September 30 and is referred to by the ending year (e.g. 2000 fiscal year begins on October 1, 1999). Once an apportionment is made to a state, it cannot be taken away except by lapsing or through a congressional action.

The majority of Federal Highway Program funds are available for three years after the close of the fiscal year for which such sums are authorized. In effect, these funds are available for a four-year period. However, at the end of this period of availability, the authority to obligate remaining funds from that particular fiscal year's apportionment will lapse—it is no longer available for obligation.

The apportioned funds for the current year are added to the unused portion (unobligated balance) of the previous years' apportionments to establish the new unobligated balance. This balance represents the total funds authorized by Congress and distributed (apportioned) by FHWA for eventual obligation by the state. However, as discussed in the next section on "Obligational Authority," there is a limitation (established annually) on the total amount of apportioned funds, including unexpired funds from previous fiscal years, which can be obligated in a given year.

"Allocation" is the distribution of funds where there are no federally mandated formulas. In most cases, allocated funds are divided among the states using administratively determined formulas and/or criteria provided by law.

OBLIGATIONAL AUTHORITY

Because of the multi-year authorization and multi-year availability of funds associated with the federal-aid highway program, federal limitations are placed on the amount of funds that a state can obligate within a given fiscal year. This annual limitation is called "Obligational Authority" (OA) and applies to the total obligations of apportioned funds within a given fiscal year, regardless of the year in which the funds were apportioned. A limit on OA enables the federal-aid highway program to be more responsive to economic and budgetary conditions. The ceiling on annual OA does not take back authorized funds already apportioned to the states; it only limits the annual rate of obligation. The amount of OA is included in the federal annual appropriations act. Any unused OA does not carry over to subsequent years.

The OA ceiling is divided among the states based on each state's relative share of total apportioned funds. SAFETEA-LU, Section 1102 provides for an annual redistribution of this obligational ceiling after August 1. OA is redistributed from states unable to utilize their initial full share of OA to other states able to obligate more than their initial share. A state which uses up both its initial OA limit and any OA received through the August 1 redistribution before September 30 may also be eligible for an additional OA bonus. This process does not increase the overall total funds authorized to a state, however, it does permit a state to use their authorization faster.

OA only impacts apportioned funds. Allocated funds are either exempt from OA controls or are covered by their own spending authority. Please see individual program chapters to see which funds are impacted by OA.

ANNUAL APPROPRIATIONS ACTIONS

Although obligations are commitments by the federal government to reimburse the states for the federal share of a project cost, actual cash reimbursements by the Department of the Treasury cannot be made until approval of the annual appropriations act. The two primary functions of the annual appropriations act are to: 1) provide cash to liquidate (pay) the federal commitment and 2) establish the annual limit on obligational authority.

2.3 STATE LEVEL ACTIONS

LOCAL AGENCY APPORTIONMENTS

There are several kinds of federal funds that are made available to local agencies to fund their projects. These are funds associated with:

- **Statewide pools of Federal-aid**

The statewide funds set aside for local use include programs like Highway Bridge Program (HBP), Highway Safety Improvement Program (HSIP), and the Active Transportation Program (ATP). Projects are prioritized and placed on statewide program lists. Each one of these programs has its own unique method of determining prioritized lists based on program goals.

- **High Priority (Demonstration) Projects**

Demonstration programs have project descriptions and locations defined in legislation so they are not a source for general purpose funding of local projects. Demonstration projects are earmarked in federal legislation. They come with their own OA, may have an impact on what the state receives in Minimum Guarantee funds and are not subject to Senate Bill 45 (SB 45) rules. See Chapter 12, "Other Federal Programs," of the *"Local Assistance Program Guidelines (LAPG)"* for additional information.

- **Local Federal-aid**

Federal-aid is apportioned to Regional Transportation Planning Agencies (RTPAs) and Metropolitan Planning Organizations (MPOs) based on state law.

Regional Surface Transportation Block Grant Program (STBGP) (Chapter 4, LAPG) funds and Congestion Mitigation and Air Quality (CMAQ) Improvement Program (Chapter 5, LAPG) funds are apportioned to RTPAs and MPOs. State legislation (Section 182.6 of the Streets and Highways Code) defines how the funds are apportioned to RTPAs and MPOs within California. Each RTPA and MPO determines which projects are to be funded with these funds.

RSTBGP and CMAQ funds are subject to use it or lose it provisions of Assembly Bill 1012 (AB 1012) (Chapter 783 in Statutes of 1999).

- **State Transportation Improvement Program (STIP) funds**

Under SB 45, the STIP consists of two broad programs, the Regional Improvement Program (RIP) funded from 75 percent of the STIP funding and the Interregional Improvement Program (IIP) funded from 25 percent of STIP funding. The 75 percent regional program is further subdivided by formula into county shares. County shares are available solely for projects (local streets and roads, state highway, or mass transportation must compete for the 75 percent regional share) nominated by RTPAs/MPOs in their Regional Transportation Improvement Programs (RTIPs). Caltrans will nominate only projects for the IIP. Under restricted circumstances, an RTPA/MPO may recommend a project for funding from the interregional share. See Chapter 23, “Local Agency STIP Projects,” of this manual for further information on how this relates to federal funds.

LOCAL OBLIGATIONAL AUTHORITY

When ISTEA funds first became available to local agencies, available OA was not perceived as a problem (see Section 2.1 for a discussion of OA) because most local agencies were in the process of learning federal-aid procedures. At that time, most local agency obligations against apportionments statewide were well below the OA limit. Currently, many local agencies are familiar with the rules and flexibility of federal-aid so the obligations against total apportionments are much higher. Therefore, it is necessary to monitor obligations to ensure that all local agencies have the opportunity to use their apportionments. It is also necessary to monitor obligations to ensure that the Division of Local Assistance (DLA), as a whole, does not exceed its proportionate share of the OA limitation.

The following procedures are used in managing federal OA for Local Assistance projects:

- Based on state statute, after the beginning of each FFY (October 1), or when federal apportionments and OA allocations are received from FHWA, Caltrans will allocate federal apportionments and corresponding OA to each MPO/RTPA. The OA will be determined based on the obligation limitation established by FHWA for that year and the federal apportionments for RSTBGP and CMAQ for each MPO/RTPA.
- FHWA sets a 15 percent limitation of the annual OA allocation that can be used in the first quarter of the FFY.
- The DLA monitors apportionment and OA usage/transfers and provide online reports for the District Local Assistance Engineers (DLAEs) and MPOs/RTPAs.
- The DLA grants the MPOs/RTPAs flexibility in borrowing/loaning OA from other MPOs/RTPAs at any time during the year, provided that the DLA is notified of the agreement by the affected MPOs/RTPAs.
- When an MPO/RTPA region exhausts its OA allocation, the DLAE will ask any local agency submitting a “Request for Authorization,” in the affected area, if it wants to obligate any project under Advance Construction (AC), or if they have arranged with another MPO/RTPA to borrow their OA (see Chapter 3, “Project Authorization,” of the *Local Assistance Procedures Manual* (LAPM)).
- When an MPO/RTPA regional OA is exhausted, and the MPO/RTPA and local agencies in the region have not agreed to use AC, the DLAE will place all local agency “Requests for Authorization” (in that MPO’s/RTPA’s region) on hold until July 1 of that fiscal year.

Note: Any MPO/RTPA may negotiate a loan of OA from any other MPO/RTPA and continue to obligate projects using the borrowed OA. MPOs/RTPAs must notify DLA in writing of any loans prior to, or at the time of, submitting a request to obligate funds that use the borrowed OA.

- On June 1 of each year, the DLA will transfer all unused OA, including statewide OA (bridge and safety programs are in the statewide OA), into a statewide pool. The DLA will then cash out all AC and obligate all projects on hold on a first-come, first-served basis until the OA is exhausted or all projects are obligated.

- Also on June 1, the DLA will request that local agencies provide “Requests for Authorization” to the DLAE for any additional projects that are not under AC or on hold and that could be obligated prior to September 30 of that year. This is in preparation for the “August Redistribution” of OA. In August of each year, FHWA redistributes OA (from states that have not used all of their OA) to states that (1) have used their OA or (2) can show that they will use all their OA by September 30 and have requested additional OA. Lists of projects on hold plus any additional projects are provided by the DLAEs to the DLA by July 20 of each year. Projects under AC will be identified by the DLA.
- On July 30 of each year, the DLA will provide the Federal Resources Office (FRO) with a list of AC projects (if any), projects that are still on hold (if any), and additional projects to be obligated before September 30. This list is used in requesting additional OA from FHWA.
- The FRO will request additional OA from FHWA on or around August 4.
- If additional OA is obtained from FHWA, a pro rata portion, based on the ratio of the dollar costs of Caltrans and local agency projects submitted for redistributed OA, is provided by FRO to the DLA.
- The DLA will cash out any remaining AC projects, obligate projects that are on hold (if any), and obligate those additional projects with “Requests for Authorization” submitted between July 1-20. This will be done on a first-come, first-served basis until the additional OA is exhausted.
- If OA is still remaining, the DLA will continue to obligate projects as they are requested until September 15, or until the statewide OA pool and the regional Minimum Allocation is exhausted.
- If there is OA remaining on September 15, the FRO will obligate Caltrans projects (or cash out AC for Caltrans projects) to utilize all the OA that is available statewide. This is necessary since OA is available for one year only and expires on October 1 of each year.

OBLIGATIONAL AUTHORITY AND ADVANCE CONSTRUCTION GUIDELINES

- Advance Construction (AC) allows agencies to begin work on a project. However, agencies are required to use their own funds and they have the option to seek federal reimbursement. Federal reimbursement is postponed until the OA is available to obligate funds for reimbursement. Federal Authorization must be received prior to beginning work that will be reimbursed later.
- Once funds are obligated on a project, they cannot be withdrawn and substituted with a different fund (e.g., cannot de-obligate RSTBGP and substitute with CMAQ).
- If AC is used, the federal participation rate can be set at the time AC is converted to federal funds. (This allows federal funds to be obligated when better cost data is available). This procedure works especially well for underfunded projects (see Chapter 3, “Project Authorization,” of the LAPM) and can be used even if OA is available.

PROJECT INCLUSION IN THE FTIP/FSTIP AND APPROVED ELIGIBILITY LISTS

All projects, except Emergency Relief (ER), must be included in a Federal Statewide Transportation Improvement Program (FSTIP) before work can be authorized and initiated. ER projects must be included in the FTIP/FSTIP only if they involve substantial functional, location or capacity changes. Local agencies are responsible for ensuring that their project is programmed correctly with an FTIP prior to requesting authorization to proceed for that project. For additional information on FTIP/FSTIP, see Chapter 1, “Introduction/Overview,” of this manual.

To provide local agencies with the increased flexibility in handling projects, expedite project delivery, and reduce paperwork, certain categories of projects (see Exhibit 2-A, “Transportation Improvement Program (TIP) Exempt Projects” - “Table 1”) may be excluded from project-specific listing in Metropolitan Transportation Plans and TIPs. This exemption does not apply to Table 1 projects; if the MPO in consultation with other state and federal agencies under the interagency consultation requirements concurs that the project has potentially adverse emissions impacts for any reason.

Funding for Table 1 projects still must be listed in TIPs to meet the programming requirement, but that requirement may be fulfilled by an appropriate grouped project listing. For more information on lump sum listings, see the Transportation Programming Web site at www.dot.ca.gov/hq/transprog/oftmp.htm, under the appropriate FSTIP/FTIP Development and/or Guidance.

Additional regulation allows certain types of regional transportation projects to be exempted from regional emissions analyses. These project types are listed in Exhibit 2-A, “TIP Exempt Projects” - “Table 2.” The local effects of these projects with respect to carbon monoxide (CO) or particulate matter (PM10) concentrations must be considered to determine if hotspot analysis is required prior to making a project-level conformity determination (see Chapter 5, “CMAQ,” of this manual). If a local agency determines a hot-spot analysis is not required, the local agencies can then proceed with the project development process and place those eligible projects for exemption under the appropriate lump sum listing. However, the exemption clause does not apply to those projects when the MPO, in consultation with other state and federal agencies under the interagency consultation conformity requirements, concurs that the project has potentially adverse emissions impacts for any reason. In addition, the following projects must also be included on the approved multi-year program lists:

- Grade Crossing Improvement funds - California Public Utilities Commission (CPUC) approved list (see Division of Rail, Rail Crossing Safety and Track Branch for more information)
- Highway Bridge Program (HBP) funds - Caltrans approved list (see Chapter 6, “HBRR,” of this manual)
- Highway Safety Improvement Program (HSIP) funds - Caltrans approved list (see Chapter 9, “HSIP,” of this manual)
- Safe Routes to School (SRTS) – California Highway Patrol and Caltrans approved list (see Chapter 24, “Federal Safe Routes to School,” of this manual)

These multi-year program lists (or plans) are explained in detail in the appropriate chapters of this manual. The multi-year program lists may be downloaded from the DLA Web site.

AUTHORIZATION TO PROCEED

Prior to beginning reimbursable work on a federal-aid project, an “Authorization to Proceed” (E-76) (see Chapter 3, “Project Authorization,” of the LAPM) must be granted by the FHWA or Caltrans (per stewardship agreements), which authorizes reimbursement with federal funds. Any work performed prior to such authorization is not eligible for federal participation. The project shall not be advertised prior to authorization of construction phase. The obligation of funds for all federal-aid projects is performed by the FHWA.

“Authorization to Proceed” is required for each phase of work for which federal reimbursement is sought. These include preliminary engineering, right of way, and construction, including construction engineering (concurrent phase authorization is permissible). However, right of way and construction cannot be authorized without NEPA approval. “Authorization to Proceed” may also be granted for a portion of a work phase, (e.g., utility work may be authorized as part of the right of way phase). Within a phase of work, the work for partial approval must be at logical break points as agreed to by Caltrans or the FHWA, based on task accomplishments and not a period of time. The work tasks must be specifically attributable to the development of the project.

For declared emergencies approved by the FHWA for Emergency Relief funding, emergency repair work (to open public roads to traffic) and preliminary engineering work may be initiated without prior authorization. Restoration work requires prior authorization. Provide documentation necessary to prepare the Disaster Assessment Form (see Chapter 11, “Disaster Assistance,” of this manual).

For highway related projects, detailed procedures for obtaining federal authorization to proceed and obligating federal funds are contained in Chapter 3, “Project Authorization,” of the LAPM.

FAST Act funds made available for public transit projects, which are typically administered by the Federal Transit Administration (FTA), must be transferred to the jurisdiction of the FTA. The procedures for transferring federal funds and administrative responsibility from the FHWA to the FTA are also discussed in Chapter 3, “Project Authorization,” of the LAPM.

PROGRAM SUPPLEMENT AGREEMENT

A Program Supplement Agreement between the state and local agency must be executed prior to the reimbursement of federal funds for each project. This agreement is a supplement to the above referenced Local Agency-State Master Agreement and addresses project specific financial responsibilities (see Chapter 4, “Agreements,” of the LAPM).

DETAIL ESTIMATE

Before the award of a construction contract, the project sponsor prepares a “Detail Estimate.” The Detail Estimate is used to:

- Identify federally participating and non-participating portions of work
- Segregate work by major federal work type codes

- Quantify supplemental work, state/local agency furnished materials, and contingencies and construction engineering
- Establish the federal reimbursement ratio for the project

See Exhibit 15-M, “Detail Estimate,” of the LAPM.

FINANCE LETTER

A Finance Letter is also prepared by the local agency to identify the funding sources of a project. It is based on the Detail Estimate and other costs for nonconstruction phases of work. A Finance Letter segregates project costs by eligible phases of work, identifies work performed by state and/or local forces, shows the total and participating and nonparticipating project costs, and identifies the various project funding sources. The Finance Letter is the basis for reimbursement of the federal funds shown in the Federal-aid Project Agreement (E-76). Eligible project costs cannot be reimbursed until a Finance Letter is submitted to the Local Program Accounting Branch via the DLAE and DLA. See Exhibit 15-N, “Finance Letter,” of the LAPM.

COMBINED STATE AND FEDERAL-AID PROJECT FINANCING

Where the state is providing funds to match or supplement federal funding, the details of this funding shall be provided with the “Request for Authorization” (see Chapter 3, “Project Authorization,” of the LAPM) submittal. Sufficient information and cost breakdown shall be provided to segregate the state funding.

Before beginning preliminary engineering, the local agency should discuss the current program rules with the DLAE.

2.5 REFERENCES

- FAST Act Web site: <http://www.fhwa.dot.gov/fastact/>
- Section 176 (c)(4) of the Clean Air Act as Amended in 1990
- Section 182 Streets and Highway Code
- California Transportation Commission, *STIP Guidelines*, amended July 19, 2000, CTC Resolution G-00-20
- *Transportation Enhancement Activities Guidelines*, April 6, 1999 and April 27, 1999
- *Local Assistance Procedures Manual* (LAPM)
- 23 CFR 630.114
- 23 CFR 635.301 et.seq.
- 23 CFR 450
- *Financing Federal-aid Highways*: www.fhwa.dot.gov/policy/olsp/fundingfederalaid/
- Transportation Programming Web site: www.dot.ca.gov/hq/transprog/oftmp.htm

Table 1 — Transportation Improvement Program (TIP) Exempt Projects**SAFETY**

Railroad/highway crossing
 Projects that correct, improve or eliminate a hazardous location or feature
 Safer non-Federal-aid system roads
 Shoulder improvements
 Increasing sight distance
 Safety improvement program
 Traffic control devices and operating assistance other than signalization projects
 Railroad/highway crossing warning devices
 Guardrails, median barriers, crash cushions
 Pavement resurfacing and/or rehabilitation
 Pavement marking demonstration
 Emergency relief
 Fencing
 Skid treatments
 Safety roadside rest areas
 Adding medians
 Truck climbing lanes outside the urbanized area
 Lighting improvements
 Widening narrow pavements or reconstructing bridges (no additional travel lanes)
 Emergency truck pullovers

MASS TRANSIT

Operating assistance to transit agencies
 Purchase of support vehicles
 Rehabilitation of transit vehicles
 Purchase of office, shop, and operating equipment for existing facilities
 Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.)
 Construction or renovation of power, signal, and communications systems
 Construction of small passenger shelters and information kiosks
 Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)
 Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
 Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet
 Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR 771

AIR QUALITY

Continuation of ridesharing and vanpooling promotion activities at current levels
 Bicycle and pedestrian facilities

OTHER

Specific activities which do not involve or lead directly construction, such as:
 Planning and technical studies
 Grants for training and research programs
 Planning activities conducted pursuant to Titles 23 and 49 U.S.C.
 Federal-aid systems revisions
 Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action
 Noise attenuation
 Advance land acquisitions (23 CFR 712 or 23 CFR 771)
 Acquisition of scenic easements
 Plantings, landscaping, etc.
 Sign removal
 Directional and informational signs
 Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities)
 Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes

Table 1 appears as Table 2 in the Federal Register, Vol. 58, No. 225

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EXHIBITS

Exhibits applicable to this Chapter can be found at:

<http://www.dot.ca.gov/hq/LocalPrograms/hbrr99/hbrr99a.htm#forms>

[Exhibit 6-A HBP Application/Scope Definition Form](#)

[Exhibit 6-B HBP Special Cost Approval Checklist](#)

[Exhibit 6-D HBP Scope/Cost/Schedule Change Request](#)

[Exhibit 6-E Sample Funding Commitment Letter](#)

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Chapter 6 Highway Bridge Program

6.1 INTRODUCTION

The Highway Bridge Program (HBP) is a safety program that provides federal-aid to local agencies to replace and rehabilitate deficient locally owned public highway bridges or complete preventive maintenance on bridges that are not deficient. This chapter explains eligibility requirements, the reimbursable scopes of work, how to apply for HBP or Bridge Preventive Maintenance Program (BPMP) funding, and the general programming process.

This program is funded by the Federal Highway Administration (FHWA) authorized by United State Code (USC) Title 23. This program is subject to Obligation Authority (OA) limits. See [Local Assistance Program Guidelines \(LAPG\), Chapter 2: Financing the Federal-Aid Highway Program](#), Section 2.2, for more information regarding OA.

The programming of HBP projects is managed through a 15-year plan. This multi-year plan provides the HBP funding to be programmed in the Federal Statewide Transportation Improvement Program (FSTIP). The FSTIP provides four years of HBP programming. See [LAPG Chapter 2: Financing the Federal-Aid Highway Program](#), Section 2.3, for information regarding what type of HBP projects may use the HBP programmed in the FSTIP.

The HBP has many statutory, regulatory, and policy limitations on how funds can be utilized on bridge projects. The purpose of these rules is to ensure that federal funds are dedicated to solving bridge safety problems. Since local agencies are financially accountable for meeting these requirements, it is essential that local agency decision-makers understand these guidelines.

The intent of the HBP is to remove structural deficiencies from existing local highway bridges to keep the traveling public safe. The HBP goal is to keep local highway bridges in good condition through a preventive maintenance program and to fix bridges that are in fair condition. A bridge that is in poor condition must be considered for rehabilitation or replacement.

Local agencies assume full liability for the safety of their bridges and eligibility of participating costs of their projects.

Definition of Terms

AASHTO - American Association of State Highway and Transportation Officials

AC- Advance Construction. The local agencies provide local funds initially to be programmed with a conversion to federal funding at a later time.

ADT- Average Daily Traffic

BIC - Bridge Investment Credit

CEQA - California Environmental Quality Act (1970)

CCO - Construction Change Order

Authorization to Proceed - Federal project funding eligibility approval for a particular phase of work by the Federal Highway Administration.

Highway Bridge Program

LAPM - Local Assistance Procedures Manual describes the processes, procedures, documents, authorization, approvals and certifications, which are required in order to receive federal-aid and/or state funds for many types of local transportation projects.

Mandatory Seismic Retrofit Program - The 1989 Mandatory Seismic Safety Retrofit program is a finite list of projects established under the Proposition 1B (Prop 1B) funding program.

MPO - Metropolitan Planning Organization.

NRHP - National Register of Historic Places. A listing of historically or archaeologically significant sites maintained by each state. The NRHP does not contain all significant sites. It only lists those currently identified and that the owner has allowed to be listed. There are many eligible sites that have not been registered, either because they have not been found or they have not yet been nominated.

NBI - National Bridge Inventory. This is an FHWA database containing bridge information and inspection data for all highway bridges on public roads, on and off Federal-aid highways that are subject to the National Bridge Inspection Standards.

NBIS - National Bridge Inspection Standards. 23 CFR 650 Subpart C.

NCHRP - National Cooperative Highway Research Program. Administered by the Transportation Research Board (TRB) and sponsored by the member departments (i.e., individual state departments of transportation) of AASHTO and FHWA. The NCHRP was created in 1962 to conduct research in acute problem areas that affect highway planning, design, construction, operation, and maintenance nationwide.

NEPA - National Environmental Policy Act. Federal environmental law requiring federal agencies to consider the environmental impacts of their action, evaluate least damaging alternatives and ensure decisions are made in the public's best interest based on a balanced consideration of the need for safe and efficient transportation.

NHS - National Highway System. Legislative designation of highways that are of national importance.

Nearly Ready to Advertise - A project is considered "nearly ready to advertise" when NEPA is clear, ROW will be certified prior to within 6 months of a HBP financially constrained program list and completion of final design plans are at 95% or greater. The ROW certification must be verified with Caltrans ROW staff.

Non-Participating Cost: A cost that is included in the project, but is not eligible for Federal reimbursement.

OFP - Office of Federal Programs

OPI - Office of Project Implementation

Off System - Functional classification given to rural and urban local streets and roads, and rural minor collectors, these routes are off the federal-aid system.

On System - Functional classification given to all roadways that are on the federal-aid system.

Highway Bridge Program

Participating Costs - A participating cost is an actual project cost paid for by the sponsoring local agency that is eligible for federal reimbursement in compliance with laws, regulations and policies.

PCI - Paint Condition Index is a 0–100 ranking system that utilizes the current paint condition of the various painted steel elements on a bridge. The PCI weighs the quantity and condition states of the various painted elements as well as the importance of that element in the bridge.

PE - Preliminary Engineering phase includes all project initiation and development activities undertaken after its inclusion in the approved FSTIP through the completion of PS&E. It may include preliminary Right of Way engineering and investigations necessary to complete the environmental document.

Prop 1B - Proposition 1B Bond funds to be utilized as local match to HBP for mandatory seismic projects.

PS&E - Plans, Specifications and Estimate.

Poor Condition - When the lowest rating of the 3 NBI items for a bridge (Items 58-Deck, 59-Superstructure, 60-Substructure) is 4, 3, 2, 1, or 0, the bridge will be classified as Poor. When the rating of NBI item for a culvert (Item 62-Culverts) is 4, 3, 2, 1, or 0, the culvert will be classified as Poor.

PM - Preventive Maintenance. See [BPMP Guidelines, December 2015 \(12/23/2015\)](#) to determine eligibility for HBP participation.

Public Road - Any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

Ready to Advertise - A project that has an approved NEPA document, approved Right of Way Certification and PS&E is complete.

RFA - Request for Authorization.

RTPA - Regional Transportation Planning Agency.

R/W - Right of Way. This phase includes the work necessary to appraise and acquire project right of way, relocate individuals or businesses, and revise or relocate utilities.

Scour Critical - A bridge with a foundation element that has been determined to be unstable for the observed or evaluated scour condition. (When the NBI item 113 is 3 or less.)

SHS - State Highway System. The network of public highway systems that is owned and maintained by the California Department of Transportation (Caltrans).

Structurally Deficient (SD) - A classification given to a bridge which has any component in poor or worse condition. (23 CFR 490.405)

SI&A - Structure Inventory and Appraisal

SLA - Caltrans Structures Local Assistance. See Section 6.2.

Sufficiency Rating (SR) - A method of evaluating highway bridge data by a complex formula defined in Appendix B of the National Bridge Inventory Coding Guide.

Highway Bridge Program

- STIP** - State Transportation Improvement Program. The STIP is a five year list of projects proposed in the Regional Transportation Improvement Program. The proposed STIP that are approved and adopted by the California Transportation Commission.
- STBGP** - Surface Transportation Block Grant Program. A category of federal-aid funding for general purpose transportation uses. See 23 USC 133.
- USC** - United State Code. The USC is the codification by subject matter of the general and permanent laws of the United States. Title 23 relates to Highways.
- VA** - Value Engineering Analysis – The systematic process of review and analysis of a project during the concept and design phases, by a multi-disciplined team of persons not involved in the project. For local HBP projects, a VA should be done when either the R/W or construction phase exceed \$40 million of federal funds. See [*LAPM Chapter 12: Plans, Specifications, & Estimate*](#), Section 12.5 for further procedures.

HBP Website

The HBP website provides information and references for local bridge owners. The website contains training opportunities, links to local agency bridge list, the HBP FTIP/FSTIP Program Lists, various reports, as well as the HBP and BPMP guidelines. The HBP website can be accessed from the following link:

www.dot.ca.gov/hq/LocalPrograms/hbrr99/hbrr99a.htm

Eligibility Requirements for HBP Funds

To be eligible to receive HBP funds, a bridge must be owned and maintained by a California local agency, in the National Bridge Inventory (NBI), be structurally deficient and have a Sufficiency Rating (SR) less than or equal to 80, be seismically vulnerable, scour critical or needs repainting. The information should be obtained from the most current Bridge Inspection Report (BIR) at the time of the application submittal. If a local agency needs to obtain a copy of a BIR, they should contact their DLAE.

Applying for HBP Funds

The steps to initiate and develop a HBP project are discussed throughout this chapter. A local agency should be knowledgeable about their bridge inventory and utilize an asset management system to prioritize their bridges for inclusion into the HBP for rehabilitation or replacement, or into a BPMP Plan list for preventive maintenance.

Agencies that have executed or that have the authority to execute State/Local Federal-Aid Master Agreements with Caltrans may apply for HBP funds. Federal funds provided under these guidelines may only be spent on bridges carrying public highways (including local streets and roads) not included in the State Highway System and not owned by Caltrans.

The following is an overview of the process:

1. The local agency should contact the DLAE to review the program requirements. The DLAE may schedule an optional pre-field review meeting and coordinate with SLA as needed.

Highway Bridge Program

2. The local agency sends an application, [Exhibit 6-A: HBP Application/Scope Definition Form](#) for HBP funds or a BPMP plan list and certification letter for preventive maintenance funds to the DLAE.
3. The DLAE reviews the application package for minimum requirements, makes recommendations, and forwards copies of the application to HBP Managers and if requested by the local agency to SLA.
4. HBP Managers will review the candidate project, if it is eligible, the candidate project will be added to the next project prioritization list. HQ HBP Managers will notify the DLAE the project will be prioritized.
5. Once all new eligible candidate projects are prioritized, the funding cutoff line is determined for on system and off system projects. The projects above the cutoff line will be entered and accepted into the HBP database. The projects below the cutoff line will be returned to the DLAE.
6. After the project is adopted into the FTIP by the MPO, the PE funds can be authorized. See [Section 6.7: Project Implementation](#).
7. The DLAE coordinates a field review with the local agency, if required. It may be scheduled after consultants have been retained by the local agency. The scheduling of optional cursory PS&E reviews should be discussed.
8. Work begins on the preliminary design and environmental process.
9. Once the environmental documents are approved, the local agency may commence with final design and proceed with R/W if needed.
10. When the PS&E is 65% complete, the local agency may request that Caltrans perform an optional cursory review of the PS&E. If this service is requested, the PS&E should be sent to the DLAE. The local agency must be clear regarding review deadlines to ensure the project meets the schedule of the local agency.
11. Once R/W is certified and the PS&E package is complete, the local agency may submit the request for construction authorization.
12. The DLAE processes the request for authorization and notifies the local agency of the FHWA approval. The local agency may now advertise the construction project.

6.2 ROLES AND RESPONSIBILITIES

Local Agency

The local agency is the project manager and is responsible for all aspects of the project. They assume full liability for the safety of their bridges and eligibility of participating costs of their projects. The local agency is accountable for how it spends federal funds on eligible projects and is responsible for following these program guidelines, the BPMP Guidelines and the procedures in the LAPM.

The local agency is responsible for requesting Caltrans funding approval for certain participating costs identified in [Exhibit 6-B: HBP Special Cost Approval Checklist](#).

Highway Bridge Program

Those local agencies that are performing their own seismic analysis and design are responsible for developing seismic retrofit projects from start to finish. This includes, but is not limited to, initiating the projects, performing (or overseeing consultant performance of) seismic analyses, presenting the retrofit strategy to Caltrans at mandatory strategy meetings, ensuring environmental compliance, preparing PS&E, advertising and administering the construction contracts.

Caltrans, District Local Assistance Engineer

The DLAE is the point of contact for all local assistance projects. Written communication, includes email, from Caltrans to the local agency that provides official policy direction (including eligibility, scope, or funding decisions) to the local agency will be from the DLAE. Copies of all written correspondence and appropriate email will be kept in the DLAE project files.

The DLAE is responsible for providing expertise in understanding these program guidelines and the federal process as documented in the LAPM and the LAPG. The DLAE is also responsible for ensuring that all “official” written (including e-mail) controversial correspondence to local agencies is copied to the HBP Managers and the Office of Project Implementation. Controversial correspondence includes any denial of funds to a local agency or an action on the part of Caltrans that delays the construction authorization of a local HBP project.

The DLAE is to coordinate all Caltrans internal activities for local assistance projects. The DLAE is pro-active in ensuring that local agencies are aware of HBP scoping issues and offering help to local agency to resolve those issues. The DLAE is to utilize the HBP Managers, Office of Project Implementation, SLA, District geometricians, District R/W and Environmental experts, and be familiar with the standards and AASHTO references identified in [LAPM Chapter 11: Design Guidance](#).

The DLAE is also responsible for ensuring that local agencies are aware of all Caltrans services available to local agencies that can improve the quality and timely delivery of HBP projects.

For current names, addresses, and email addresses, see the DLAE website:

<http://www.dot.ca.gov/hq/LocalPrograms/dlae.htm>.

Caltrans, Structures Local Assistance

SLA provides and coordinates technical services related to bridge projects in the areas of field reviews, feasibility studies, cost estimation, inspection, design, analysis, construction, consultant selection and contracting, including expertise in explaining these program guidelines. SLA works directly with local agency staff and management after coordination with the DLAE. However, all Caltrans official correspondence to local agencies is transmitted through the DLAE and HBP Managers.

SLA, at the request of the DLAEs, is responsible for working with local agencies in promoting the HBP and helping local agencies identify deficient bridges. SLA, in this function, should also promote the above mentioned services to improve the quality and timely delivery of local HBP projects.

Highway Bridge Program

Note: When SLA receives questions regarding bridge inspections, SLA may forward the questions to the appropriate bridge inspection engineering staff (either Caltrans staff or local agency staff authorized to inspect bridges).

Caltrans, Office of Federal Programs

HBP Managers work in this office and this office is responsible for:

- Prioritizing new HBP applications according to policy.
- Programming funds for local agency projects.
- Approving special costs identified in [Exhibit 6-B: HBP Special Cost Approval Checklist](#).
- Managing the statewide Local HBP apportionment fund balance.
- Establishing program policy and procedures to maximize the use of federal funds and comply with federal requirements.
- Working with the DLAE and SLA to resolve difficult project related policy issues.
- Conducting program reviews to determine local agency compliance with federal and State laws, regulations, and policy.
- High Cost Bridge Projects.

Caltrans, Office of Project Implementation

This office is responsible for the actual authorization of federal funds and the development of program supplemental agreements on projects processed by the DLAE.

It is the responsibility of this office to ensure that federal funds are authorized on projects in compliance with the LAPM. The OPI relies on information provided by the HBP Managers and the DLAE regarding the amount of participating HBP funds on a project. Funds authorized on a project shall not exceed amounts programmed in the HBP program lists.

6.3 REIMBURSABLE PROJECT SCOPES

Local agencies that develop HBP projects are required to ensure their projects are cost-effective and that the project scope address the bridge deficiencies. The three general project scopes participating under the HBP are bridge rehabilitation, replacement and seismic safety retrofit. However, the HBP does allow some limited stand-alone project scopes for painting, scour countermeasure and local seismic safety retrofit.

Bridge Inspection Program

The Bridge Inspection Program is a federally mandated program established under 23 USC 144(b), 23 USC 144(d), and 23 USC 151.

The intent of the program is to:

- Establish an inventory of bridges carrying public highways.
- Help local agencies manage their bridges.
- Identify safety problems related to bridges.

Highway Bridge Program

Generally, each bridge in the State carrying a public highway that has a minimum span greater than 20 feet is inspected every two years. Caltrans maintains the master bridge inventory for the State. The statewide inventory of bridges is available from the HBP website. Whenever a bridge is inspected, the owner of the bridge is sent a bridge inspection report that discusses the health of the bridge including recommended maintenance work. The report also includes a SI&A sheet. The SI&A sheet provides all the detailed ratings required by federal law.

Local agencies may request copies of the bridge inspection reports from the DLAE or SLA. Agencies that inspect their own bridges should work with their own inspection departments to acquire the reports.

A “deficient” bridge is defined as being in poor condition or structurally deficient.

When developing a rehabilitation or replacement strategy for a bridge it is necessary to understand the current deficiencies with the bridge to develop an appropriate scope of work that resolves the deficiencies of the bridge.

Local Seismic Safety Retrofit

The purpose of this scope of work is to address local bridge seismic safety concerns of publicly owned bridges that may be in danger of collapse under a maximum credible earthquake. There are two types of seismic safety retrofit projects, Mandatory and Voluntary.

The 1989 Mandatory Seismic Safety Retrofit program is a finite list of projects established under the Proposition 1B (Prop 1B) funding program. The funds for these projects are a combination of HBP and Prop 1B as the local match. New projects cannot be added to this list and are Voluntary.

For Voluntary Seismic Safety Retrofit projects when a local agency has new information about a bridge such as a new fault or vulnerability, and if they perform self-funded seismic analysis calculations that shows a potential for collapse of the bridge under a maximum credible earthquake, they should submit the analysis to Caltrans for review. If Caltrans concurs with the submitted document, a voluntary seismic retrofit project may be programmed under HBP for further analysis and possible retrofit. Once the voluntary seismic retrofit project is programmed, the process is identical to the Mandatory Seismic Safety Retrofit projects. See the Seismic Safety Retrofit flowchart below for an overview of the necessary processes.

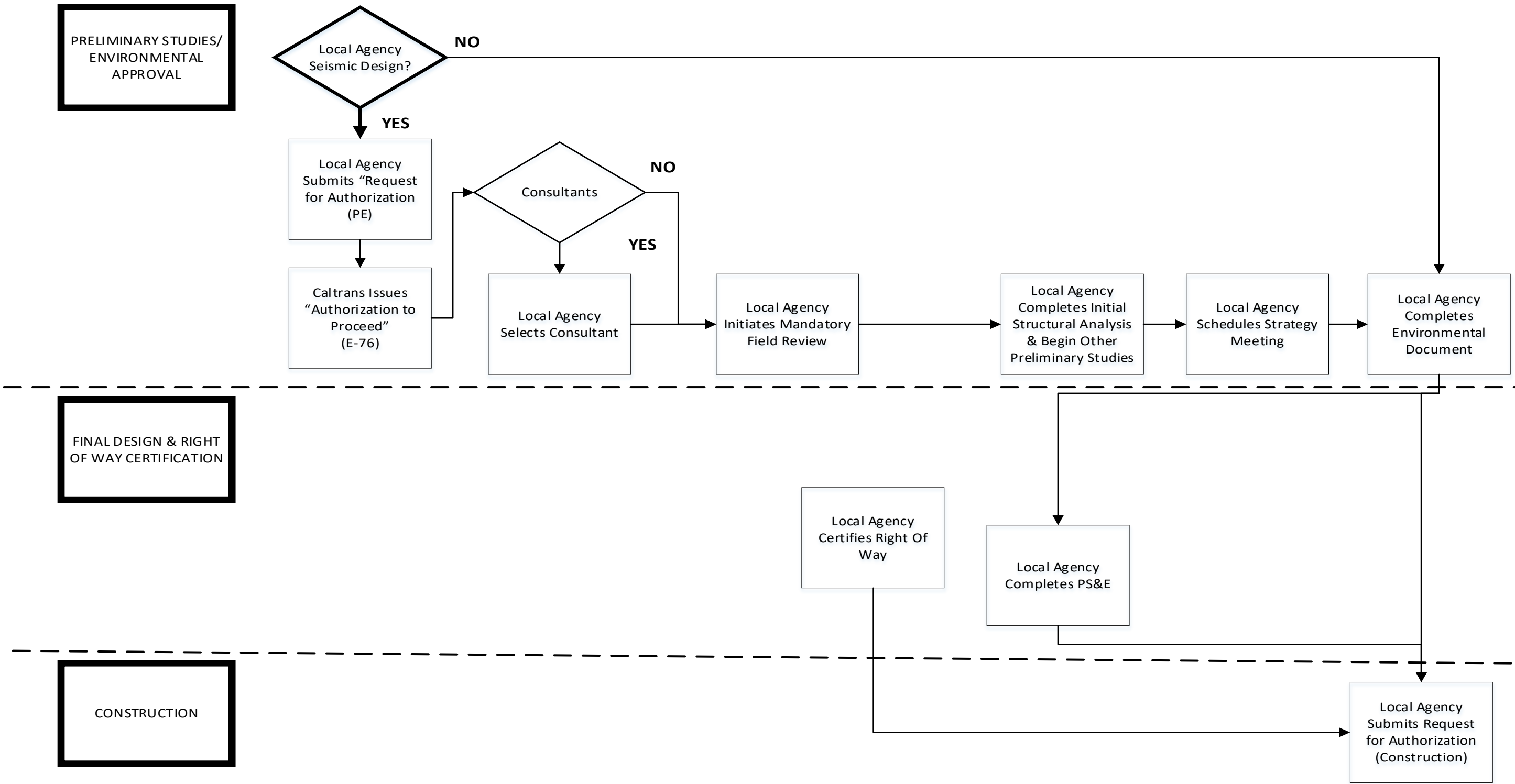


Figure 6-1: Seismic Safety Retrofit Flowchart

Bridge Rehabilitation

Bridges must be rated SD with a $SR \leq 80$ to be eligible candidates for rehabilitation. See the HBP website for instructions on determining SD and SR. All deficiencies of the bridge shall be reviewed to determine the project scope. See Section 6.9 regarding how the ratings are derived from the bridge inspection report data.

1. Rehabilitation funding is for major reconstruction of a bridge to meet current standards anticipating the transportation needs for a minimum of 10 years into the future. The development of a rehabilitation project shall correct major deficiencies including structural problems, load capacity improvement, bridge deck replacement, deficient deck geometry, seismic deficiencies, scour problems, and painting. Major reconstruction not triggered by the above deficiencies is not participating. (23 CFR 650.405(b)(2))
2. Constructing additional lanes (including turn lanes) on an existing bridge requires approval by the HBP Managers. Local agencies shall raise this issue for Caltrans review through the DLAE by providing supporting documentation demonstrating the need for widening. Supporting documentation may include discussion of specific AASHTO standards, planning studies, and master plans developed by MPOs or RTPAs. Discussion of proposed widening (including construction schedule) of the transportation corridor shall also be included if the corridor has not yet been widened to current standards.

Local agencies must have prior RTPA approval to program the capacity increasing project into the HBP.

3. Bridge replacement may be an appropriate “rehabilitation” option if a detailed cost analysis shows that replacement is the most cost-effective solution. HBP Managers’ prior approval is required to ensure the cost analysis is HBP eligible. Cost-effectiveness studies may include life cycle cost analysis. SLA written concurrence is required for bridge replacement projects where the $SR > 50$. Concurrence must be obtained prior to approving the environmental documents and proceeding with final design and R/W. The local agency shall discuss the level of detail in the cost analysis with SLA prior to its development. The level of detail will vary on a case-by-case basis. In cases where rehabilitation is not constructible or where the cost-effectiveness is self-evident, the detailed cost analysis may not be required, but SLA concurrence will still be required. HBP Managers concurrence is required prior to SLA written concurrence to the DLAE.
4. The cost comparison between rehabilitation and replacement shall not be the sole factor in deciding the best alternative. In special cases where the best alternative is not the most cost-effective, HBP eligibility approval shall be elevated to the HBP Managers through the DLAE.

Bridge Replacement

1. Bridges must be rated SD with the $SR < 50$ to be eligible candidate for replacement.
2. Even though a bridge may be eligible for replacement, rehabilitation shall still be considered to ensure the most cost-effective solution is selected. When appropriate, a

cost analysis should be included in the local agency's project file. The SR, by itself, shall not be the sole justification for bridge replacement. HBP Managers' prior approval is required to ensure the cost analysis is HBP eligible.

Bridge Painting

The purpose of this scope of work is to help local agencies fund eligible bridge painting projects as a stand-alone scope of work when the local agency does not wish to rehabilitate or replace a subject bridge.

1. The PCI for a bridge must be 65 or less, or SLA must provide concurrence for a bridge painting project to participate in the HBP. The PCI is available from the bridge inventory listing from the HBP website:
<http://www.dot.ca.gov/hq/structur/strmaint/local/localbrlist.pdf>
2. Minor rehabilitation of corroded structural members is an eligible participating cost under stand-alone paint projects. The cost of the rehabilitation effort shall not exceed 10 percent of the cost of the painting project (paint contract items only).
3. The costs of resolving major deficiencies causing the bridge to be SD are not participating in a painting project. If the bridge is SD with SR<80, rehabilitation should be considered prior to the development of a painting project. Background information supporting this consideration should be documented in the local agency's project file.
4. HBP funded bridge painting is for major scopes of work. Minor spot painting is considered preventive maintenance and is not participating work under the HBP. Minor spot painting can be programmed under the BPMP.

Scour Countermeasure

The purpose of this scope of work is to help local agencies implement scour countermeasures as a stand-alone scope of work when the local agency does not wish to rehabilitate or replace a subject bridge.

1. To receive funds the bridge must have a rating of NBI Item 113 ≤ 3 or SMI Hydraulics must provide a recommendation that scour countermeasure is necessary.
2. The participating cost of a scour countermeasure project is limited to installation of monitoring devices and/or modifying the bridge foundation or bank protection to resist scour damage. The repair of damage caused by scour without mitigating the scour problem is considered maintenance work and is not participating.
3. Correcting major deficiencies on a bridge is not a requirement of a scour countermeasure project. If the bridge is eligible for rehabilitation or replacement it should be considered prior to the development of a scour countermeasure project.
4. Scour countermeasure projects utilizing HBP funds must be designed to HEC-23 and SM&I has to be able to change the NBI 113 code to not be scour critical.

Bridge Preventive Maintenance Program

The purpose of program is to help local agencies fund bridge preventive maintenance work to keep their bridges in good condition. There are specific requirements for a local agency to request funding for BPMP projects, but the total cost of the proposed work needs to exceed \$100,000 for programming purposes. The BPMP has separate guidance that can be found on the HBP website that layout the requirements and timelines for submittal. Once programmed, BPMP projects follow the policy found in this chapter. See [BPMP Guidelines](#) for preventive maintenance requirements.

6.4 ELIGIBLE COSTS

Participating Cost Limits

To ensure the purpose of the HBP is being fulfilled by local agency projects, certain costs and types of work have participation limits. These limits apply to all projects funded under this chapter. See [Exhibit 6-B: HBP Special Cost Approval Checklist](#) for a summary of participating costs that require specific HBP Managers approval.

Approach Roadway Work

Federal participation for approach roadway shall be limited to the minimum necessary to make the facility operable consistent with current design standards. The approach roadway length is measured from the bridge abutment to the touchdown on the existing roadway alignment. The approach length from each abutment in excess of 200ft for on federal-aid system projects and 400ft for off federal-aid system projects requires advance approval by the HBP Managers. The HBP eligible approach roadway width will match the HBP eligible bridge width.

The following quote from the CFR identifies work that is not eligible for participation under the HBP:

"23 CFR 650.405(2)(c) Ineligible work. Except as otherwise prescribed by the Administrator, the costs of long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive earth structures, when constructed beyond the attainable touchdown point, are not eligible under the bridge program."

Preliminary Engineering Costs

HBP funds may not be used for general feasibility or general transportation corridor planning studies even if federally deficient bridges are on a corridor being studied for improvement. HBP participation in PE is for the development of specific HBP projects where the local agency is required to deliver a construction project.

Typical PE costs run 15-18% of bridge construction costs and Federal participation of total PE costs is limited to actual costs up to 25% of the estimated participating construction cost (excluding construction engineering and contingency). Participation beyond 25% must be approved by the HBP Managers.

HBP participation in consultant contract management and quality assurance costs shall not exceed 15% of a consultant's total charges.

For exceptions, local agencies must submit a justification in writing to the DLAE. The DLAE will review the request, provide recommendations and forward to the HBP Managers for approval.

For additional information, see [LAPM Chapter 3: Project Authorization](#), Section 3.1, for eligible participating work.

Contingency Including Supplementary Work Costs

HBP participation in Contingency and Supplementary Work in the planning phase of a project should not exceed 25% of the participating construction contract item costs. Contingency and Supplementary Work in the final engineer's estimate must not exceed 10% of the participating construction contract item costs, unless approved by the HBP Managers.

Construction Engineering Costs

HBP participation in total Construction Engineering must not exceed 15% of the participating construction contract item costs, unless approved by the HBP Managers. Local agencies must contact the DLAE for assistance.

Architectural Treatments

Architectural treatments (decorative fascia, tile work, architectural lighting, exotic bridge railing, belvederes etc.) generally are not participating. Location, public input, availability of funds, and cost-effectiveness play a role in the determination of HBP participation.

Architectural treatments should not exceed 2% of the total construction contract item cost. Local agencies are required to justify architectural treatments in their project files for future audits.

Local agencies shall notify the DLAE to request HBP participation of architectural treatments.

Environmental Mitigation

HBP projects and funds are to be used for the purpose of bridge safety. The environmental mitigation funding on a HBP project must relate to the purpose and need for taking care of the original bridge deficiencies and environmental mitigation beyond this may not be eligible. HBP funds can be used to reimburse local agencies for environmental mitigations for which the mitigation proposed actually results from the bridge project. Mitigations beyond the bridge project limits will require approval of the HBP Managers prior to sign off of the environmental document. The Caltrans District local assistance Senior Environmental Planner (SEP) is responsible for advising local agencies, the DLAE and the HBP Managers when proposed mitigation is excessive and/or if any of their mitigation may not be reimbursed with HBP funds.

HBP funds may be used for mitigation measures necessary to mitigate adverse impacts when the DLAE, HBP Manager and SEP mutually determines that:

- The impacts for which the mitigation is proposed actually result from the Administration action; and

- The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures.

The following items may be considered eligible for HBP funding:

- Mitigation that is accomplished within the scope of the project.
- Plant establishment and monitoring up to five years to allow for the permanent establishment of plants. The funding of plant establishment may be accomplished using an escrow account. Plant establishment and monitoring longer than three years must be approved by the SEP, DLAE and HBP Manager.
- Other participating mitigation, such as land bank mitigation purchases, may be required and must be documented in the NEPA documents and be approved by FHWA.

Federal funds (including HBP funds) may not be used for:

- Endowment funds for biological monitoring or maintenance activities in perpetuity;
- Maintenance work. Maintenance is the fiscal obligation of the local agency.

Local agencies should contact the DLAE and SEP for detailed discussion and field review to scope appropriate mitigation strategies. The DLAE will work with the District environmental reviewer and the HBP Managers to resolve difficult issues.

Replaced Bridges to Remain In Place

Sometimes when a bridge is replaced with a new bridge on a new alignment but on the same corridor, the old bridge does not need to be demolished. The old bridge can remain in place to carry pedestrian and bicycle traffic. The old bridge may not be rehabilitated with HBP funds unless it is of historical significance and is limited to the estimated cost of removal.

The CFR provides the legal background and an additional example:

23 CFR 650.411(c)(2) Whenever a deficient bridge is replaced or its deficiency alleviated by a new bridge under the bridge program, the deficient bridge shall either be dismantled or demolished or its use limited to the type and volume of traffic the structure can safely service over its remaining life. For example, if the only deficiency of the existing structure is inadequate roadway width and the combination of the new and existing structure can be made to meet current standards for the volume of traffic the facility will carry over its design life, the existing bridge may remain in place and be incorporated into the system.

Proposed work outside these examples requires HBP Managers approval. The local agency is responsible for requesting Caltrans approval.

Railroad Car Bridges

Permanent installation of railroad car bridges is not HBP eligible. Temporary railroad car bridges required for construction will be eligible.

The basis for not allowing HBP participation in the permanent installation of railroad car bridges is the following:

- It is very difficult for an engineer to certify that the structural members can meet Caltrans/AASHTO structural design standards.

- It is difficult to establish material properties.
- There are potential problems associated with meeting AASHTO minimum geometrics.
- It is expensive to inspect railroad car bridges due to the number of structural elements and welds.

Local agencies are encouraged to consider slab deck bridges as an appropriate cost-effective alternative.

Seismic Safety Retrofit Projects with Different Scope

A local agency may decide to develop a construction project that is more extensive than that approved at the strategy meeting. For example, a local agency may choose to replace a bridge when the strategy meeting recommended retrofit. Agencies may also expand the retrofit project to design to a higher performance standard than no-collapse, or to include bridge rehabilitation to address general bridge deficiencies. When these situations occur, the local agency is responsible for the extra cost beyond the program's committed funding towards the no-collapse retrofit project as recommended by the strategy. The program's funding commitment is the cost estimate included in the final strategy approval document. This funding commitment may be increased if additional cost items needed to complete the recommended project are identified by the local agency. Caltrans DLAEs and HBP Managers will review these additional costs. Appropriate costs will be allowed and added to the total project cost.

If a bridge qualifies as an HBP project and the extra work qualifies for HBP program funding, the extra cost may be participating. On combined Mandatory Seismic Safety Retrofit projects, the local agency should take the project to the strategy meeting to establish estimated capital costs for the seismic project. For capital cost of the combined project (R/W and construction), the state will provide the matching funds up to the estimated seismic retrofit cost established at the strategy meeting and the local agency will provide the matching funds to the cost in excess of the seismic cost.

Bicycle and/ or Pedestrian Access

HBP funds are eligible to accommodate bicycle and pedestrian access on replacement and/ or rehabilitation bridge projects, however the funds will be reimbursed at the minimum AASHTO Standard Specification for Highway Bridges, or Caltrans Highway Design Manual design standards for bicycle and pedestrian facilities which is typically 6 feet. When a bridge is being replaced or going under major reconstruction with HBP funds, replacing bicycle and pedestrian facilities in-kind, or providing new bike and pedestrian facilities as needed for consistency with the existing corridor is eligible for HBP funds. In addition, HBP funds can be used to provide bicycle and pedestrian access on bridges that are within corridors that have adopted bicycle and pedestrian corridor plans. The adopted bicycle and/or pedestrian plan must be included with the HBP application.

If a local agency disagrees with an eligibility determination and is unable to reach agreement with the HBP Program Managers. The local agency may appeal HBP eligibility determinations by following the dispute resolution process as outlined in Section 20.4 of Chapter 20 of the LAPM.

For rehabilitation projects, HBP may participate in the widening when other major deck reconstruction or lane/shoulder widening is needed. (Costs for bridge widening for bicycle facilities only are not participating.)

New bicycle facilities must be identified as “betterments” in the HBP application ([Exhibit 6-A: HBP Application/Scope Definition Form](#)) and must be justified. The justification must show that the betterments are needed by the community and are appropriate for the location.

Temporary Bridges

If a project is programmed and a bridge collapses, the HBP may participate in the installation and rental of a temporary bridge for up to three years. Rental costs exceeding three years will not be HBP reimbursable. Special covenants shall be included in the E76 and program supplemental agreement to this effect.

All NEPA documents must be approved according to the standard process ([LAPM Chapter 6: Environmental Procedures](#)). Additionally, the installation of the temporary bridge shall not preclude other more cost-effective bridge replacement options. In essence, the scope of the final project shall be determined prior to the installation of the temporary bridge.

The basis of this eligibility determination is that the work to install the temporary bridge is simply an advance of the detour work needed for the final bridge replacement construction. These participating costs would have occurred anyway; therefore, the costs are participating.

Limited HBP Participation in Replacement Projects

When an agency intends to design a bridge project beyond the recommended standards or intends a betterment in a design element (i.e. sidewalks exceeding the 6-foot minimum) or when a bridge is eligible for replacement and a cost analysis shows that a rehabilitation alternative is more cost-effective, the HBP may participate in the project up to the costs of a minimum standard project as in the rehabilitation project (support and capital costs) with the local agency using other funds for the remainder. Other funds could be but not limited to STBGP, STIP, or local funds. Note that federal funds may not be used to match federal funds.

Special Historic Bridge Work

It is the intent of the HBP to place value on maintaining the historic integrity of qualifying historic bridges. The requirements associated with bridge rehabilitation and replacement apply to this section, except where discussed below.

1. A “historic bridge” is a bridge that is listed on or eligible for listing on the National Register of Historic Places. This data may be downloaded from the Structure Maintenance website at <http://www.dot.ca.gov/hq/structur/strmaint/historic.htm>. For qualifying bridges, NBI data item 37, Historical Significance, is rated 1 or 2.
2. 23 USC 144(g)(4)(A) authorizes the use of HBP funds for the reasonable costs associated with actions to preserve, or reduce the impact of a HBP project on the historical integrity of a designated bridge.
3. When a rehabilitation project is proposed the local agency shall notify the DLAE to ensure that the proposed work is participating under the HBP. The DLAE will consult

analysis that a bridge will not collapse without any retrofit. In this case a “do nothing” strategy is an acceptable assessment. The designer must be cautioned to follow all load path demands and assure that no one portion of the resisting structural frame is deficient. Bridge replacement may also be an acceptable strategy when the existing bridge is in poor structural condition and the cost of retrofitting the bridge exceeds the cost of a new bridge with a similar configuration.

Some agencies may desire to retrofit their bridges to a service level performance standard. They would like to retrofit their bridges not only to withstand earthquakes but to suffer only minor damage that could be quickly repaired to allow resumption of service. This would typically require extra or different retrofit measures that cost more than the standard no-collapse retrofit. Requests like this will be treated the same way as those with expanded scope. The local agency will be responsible for any cost above and beyond that of the standard no-collapse retrofit.

Exceeding Minimum AASHTO Standards

HBP project eligibility begins at the minimum AASHTO standards, exceeding these must be justified and approved by HBP Managers. Where proposed design solutions exceed AASHTO’s “[A Policy on Geometric Design of Highways and Streets](#)” guidelines, the associated extra costs are not HBP participating. Minimum standards may be exceeded based on intermodal transportation considerations, serviceability issues, and good geometric design practice, and may not be HBP eligible.

Establishing Bridge Geometrics

Many areas of California are experiencing population growth and are demanding more diverse modes of transportation than in recent years. Major capital projects such as bridge rehabilitation and replacement projects can involve difficult environmental problems and expensive construction. For this reason it is important that local agencies properly plan their bridge projects from a transportation facility point of view rather than just a “replace in kind” approach or simply rehabilitate a bridge using current ADTs.

Local agencies need to work closely with their RTPA and consult AASHTO’s “A Policy on Geometric Design of Highways and Streets” or “Geometric Design of Very Low Volume Roads” to ensure that their bridge rehabilitation and replacement projects will meet their needs.

Bridge geometrics should be established based on future ADTs, but may also be based on other appropriate transportation planning studies involving Design Hourly Volume analysis or other rational analysis. In many cases RTPAs have adopted transportation models that should be inputted to the geometric design of new or rehabilitation bridge projects.

HBP One Lane Bridge Policy

The cost of rehabilitating one lane bridges or the new construction of one lane bridges may not be HBP participating. The problem with these kinds of projects is the project scope fails to meet the requirements of Section 6.5 of the HBP Guidelines. Specifically, the project should raise the bridge’s sufficiency rating to greater than 80 and the bridge must not be structurally deficient.

Section 6.5 also says that “Exceptions based on cost-effectiveness or in the public interest of historic structures must be approved by the Office of Federal Programs”. Even when this

flexibility is exercised, design decisions must be approved by the local agency in accordance with Chapter 11 of the LAPM.

Special Circumstances: Historic Bridge

A bridge that is registered or eligible to be registered in the National Register of Historic Places is exempt from the requirement that all geometric deficiencies be corrected by a local agency. Local agencies may consider “replacing” the historic bridge with a new bridge on the same corridor with minor roadway realignments. See Section 6.4 of the HBP Guidelines for more information.

It is strongly encouraged that historic bridges be brought up to current load capacity design standards. Where increasing the load carrying capacity of a historic bridge impacts the historic characteristics of the bridge, then the scope of the rehabilitation project need only bring the bridge to as-built design standards, provided that public safety is not compromised.

Special Circumstances: Cost-effectiveness

The HBP also allows flexibility in the design of new or the rehabilitation of one lane bridges even if an existing bridge is not historic. Where widening a bridge to meet AASHTO standards is not cost effective because a local road is only one lane, the curb to curb geometrics should be established using AASHTO’s Guidelines for Geometric Design of Very Low Volume Local Roads ($ADT \leq 400$). Holding queues will be eligible for HBP funds. As noted above, any design decision must be approved by the local agency in accordance with Chapter 11 of the LAPM.

For non-historic bridge, the rehabilitation or replacement projects are required to meet current load carrying design standards. Design exceptions will not be permitted.

Local agencies must provide written concurrence that local law enforcement and local firefighting officials concur with the proposed geometrics of the one lane bridge rehabilitation or replacement projects.

As explanation must also be provided by the local agency showing how the public’s safety is being improved by the project. If there is no significant improvement to the public’s safety, then the primary intent of the HBP is not being met and HBP funds cannot be used on the project. See Section 6.1 of the HBP Guidelines for information on the intent of the program.

6.6 APPLICATION PROCESS

Agencies that have executed or that have the authority to execute State/Local Federal-Aid Master Agreements with Caltrans may apply for HBP funds. Federal funds provided under these guidelines may only be spent on bridges carrying public highways (including local streets and roads) not included in the State Highway System and owned by the local agency applying.

When Caltrans receives the application, the DLAE and HBP Managers will review the proposed work to ensure HBP eligibility. Compliance with eligibility requirements is the responsibility of the local agency. This is especially the case where the project evolves during

PE phase. Local agencies needing further assistance in eligibility review should ask the DLAE for a field review. All new applications must be submitted to the DLAE no later than November 30 of odd years.

When Caltrans determines that the project is eligible for HBP funds, it will need to be prioritized against all the other new applications that have been received. The HBP Managers will take the prioritized list to the HBP Advisory Committee for a funding cutoff determination. Projects that are above the funding cutoff line will be accepted into the HBP and programmed. Projects below the funding cutoff line will be sent back to the DLAE.

Note: Federal authorization for any phase of work must be in place BEFORE reimbursable work is performed. Do not confuse the programming process with the federal authorization process as reimbursement work done prior to authorization is not eligible.

Application Period

For all projects other than those considered High Cost Bridge Projects, applications will be accepted on a continuing basis. High Cost Bridge Project requirements are discussed in [Section 6.7: Project Programming Policy and Procedure](#).

Application Requirements

The following information must be included in a HBP application package:

1. A cover letter from the local agency requesting that Caltrans program the project.
2. The HBP Application form, [Exhibit 6-A: HBP Application/Scope Definition Form](#), and attachments must be complete. Local agencies needing help with the application should contact the DLAE.
3. [Exhibit 7-B: Field Review Form](#) and [Exhibit 7-C: Roadway Data](#) from [LAPM Chapter 7: Field Review](#). The local agency should fill out only known data.
4. Applications for High Cost Bridge Projects will only be accepted by the DLAE after a solicitation for candidates has been transmitted from the DLAE's to local agencies. See [Section 6.7: Project Programming Policy and Procedures for](#) information on High Cost Bridges.

The DLAE is responsible for ensuring the application package meets the above requirements prior to forwarding copies of the package to the HBP Managers. The DLAE should identify any potential difficulties and provide recommendations.

Optional SLA Review of Application

The HBP Managers or DLAE may request SLA review of a project. This level of oversight is consistent with [LAPM Chapter 7](#), which places the responsibility of project scoping on the local agency. Local agencies requesting optional technical support for project scoping may request an optional field review in the application. The level of service provided by Caltrans will be dependent on available staffing.

When HBP Managers request SLA to review an application or scope change, a request for construction authorization shall not be processed by the DLAE until SLA's review is complete.

At the discretion of the HBP Managers, PE authorization may be withheld pending the results of the SLA review.

SLA shall notify the DLAE and the HBP Managers of any findings as a result of the application review. The HBP Managers will also notify the DLAE and SLA of the status of the application package. Any issues raised need to be resolved by the local agency, SLA, the DLAE, District R/W or the District Environmental Reviewer. The DLAE is responsible for the coordination of the resolution of issues raised.

After the project is programmed, the DLAE will initiate the field review if required by [LAPM Chapter 7: Field Review](#), if the field review has not yet taken place. Field reviews should be scheduled appropriately to include the local agency's consultants.

Project Prioritization Policy

The National Bridge Inventory (NBI) coding from the Bridge Inspection Reports will be used in the prioritization process. The prioritization below will be used to determine programming priorities for developing financially constrained HBP lists. The priority established will determine when the Preliminary Engineering (PE) phase will be programmed. New projects will only be available for programming into the two additional years of a new FTIP/FSTIP cycle.

The lowest priority number is the highest priority.

PRIORITY 1:

Seismic retrofit projects and Scour countermeasure projects or rehabilitation and/or replacement of scour critical bridges (NBI Item 113≤2).

PRIORITY 2:

Bridges that have major structural deficiencies causing the bridge to be posted or closed. The NBI Item 41 Structure Open, Posted, or Closed to Traffic will be utilized to determine the sort order. The sort will be:

1. K = bridge closed to traffic
2. D = bridge open, would be posted or closed except for temporary shoring
3. P = bridge posted for load
4. R = bridge posted with restrictions not load.

PRIORITY 3:

Scour countermeasure projects or rehabilitation of scour critical bridges (NBI Item 113=3).

PRIORITY 4:

Projects that are eligible for replacement. Structurally Deficient with a sufficiency rating less than 50.

PRIORITY 5:

Projects that are eligible for rehabilitation. Structurally Deficient with a sufficiency rating 80 or less.

PRIORITY 6:

Bridge Preventive Maintenance Plan Projects.

PRIORITY 7:

Projects that are Functionally Obsolete with application dated prior to October 1, 2016.

PRIORITY 8:

Low water crossing projects with application dated prior to October 1, 2016.

Each of these 8 priorities, may have two additional levels of prioritization within each priority depending upon the number of projects in each priority.

The second level of prioritization will be based upon the length of bypass or detour, in miles. This is documented in NBI Item 19. The detour length will be ordered longest to shortest.

The third level of prioritization will be based upon the future ADT on the route. This is documented in the NBI Item 114. The Future ADT will be ordered highest to lowest.

6.7 PROJECT PROGRAMMING POLICY AND PROCEDURE

Policy

This policy and procedure provide details for compliance with the FTIP regulations and CTC Policy. The CTC policy is to maximize the use of federal HBP funds. CTC Resolution LBS1B-G-0708 established the Proposition 1B Seismic Program as the top priority for programming HBP funds.

It is CTC's intent that the Department also program funds for the bridge inspection program and critical safety non-seismic projects. Bridges with serious structural deficiencies as a top priority for funding.

The statewide financially constrained program list will be ranked based on the Ranking Policy in compliance with federal regulations and developed in cooperation with the Local Assistance Highway Bridge Program Advisory Committee.

The HBP will be programmed consistent with the delivery schedule for Proposition 1B seismic projects provided by local agencies constrained by available federal funds.

These procedures will provide a basis for fully utilizing HBP funds and obtaining the policy goals of the HBP through the federal transportation programming process.

Procedure

1. At the beginning of every FTIP Cycle, the FTIP (all years) will be programmed to reflect the most current cost and schedule data for the Proposition 1B Seismic projects. Safety non-seismic bridge projects may also be programmed based upon the Department's project ranking policy.

2. The DLAEs shall date stamp every seismic and non-seismic Request for Authorization (all phases) when the DLAE determines the package is complete and ready to obligate. The DLAE shall update the FileMaker HBP programming database with the revised funds and schedule in the current year of the FTIP. The date stamp shall be keyed into the FileMaker HBP programming database when funds cannot be obligated due to problems including but not limited to scope issues, delays in modifying the FTIP, or if the project phase is programmed in a future year. The DLAE shall not transmit the RFA for obligations until scope and FTIP issues are resolved.
3. Post programming changes for construction phase for HBP or seismic projects must be elevated to HBP Managers for funding approval as soon as the DLAE has reviewed the RFA package for completeness. Complete [Exhibit 6D: HBP Scope/Cost/Schedule Change Request](#) to provide justification for cost increase. The DLAE must sign the [Exhibit 6D](#) recommending approval.
4. Beginning in January of every year and completed on February 15th of every year:
 - a. The HBP Managers will review the quarterly status updates that local agencies are required to maintain through the LA-ODIS database. This review will flag which seismic projects in the current year cannot be delivered and which seismic projects can be advanced.
 - b. The DLAEs will review projects programmed in the current year to evaluate if the project phases programmed can potentially be delivered. DLAEs, depending on staff resources, may need to coordinate with Local Agencies to ensure request for authorization packages are being developed.
 - c. The DLAEs will maintain the “ready to advertise” or “nearly ready to advertise” flags in the HBP FileMaker database. These flags impact a project’s ranking and must be maintained by the DLAE.
 - d. The HBP Managers will select the projects ready to obligate for inclusion into the FTIP, if needed, or for funding projects advanced under EPSP or post programming changes.
5. Revised program lists may be released to the MPOs on March 30th of every year to ensure all current year federal funds are obligated. These lists would advance projects outside the 4 year element of the FTIP so the projects could be obligated by September 30th of the current year, provided OA and apportionment are available at that time.
6. After March 30th of every year, EPSP and Post Programming procedures will be implemented for all projects funded in the 4 year element of the FTIP until federal apportionment or OA is exhausted. Some reserves may be held if there were delays in processing FTIP amendments based on the previous October program lists. The HBP Managers will review this situation on a case by case basis.
7. Starting in July of each year, the DLAEs will survey their local agencies for next year’s needs. The surveys will be provided by the HBP Managers to the DLAEs. The HBP FileMaker database must be updated by DLAEs by the end of September. The HBP Managers will release new statewide program lists to the MPOs for inclusion into the FTIP by the end of October of each year.

The HBP Managers update program lists every October and March to incorporate project cost and schedule updates and new funding requests from local agencies. Once developed, the HBP Managers release program lists to the MPOs for inclusion in to the FTIP and the program lists are posted on the Division of Local Assistance website at http://dot.ca.gov/hq/LocalPrograms/hbrr99/HBP_FSTIP.html.

Note that these program lists do not fulfill the federal programming requirements. Inclusion into the FTIP by MPOs must precede fund authorization for any activity for which HBP funds are being sought.

The HBP programming process is summarized in the following table:

Table: 6-1: HBP Programming Process Summary

Start	End	Responsible Party	Action
Oct. 1	Mar. 30	HBP Manager	EPSP, Post Programming changes suspended, unless approved by HBP Managers.
Jan. 1	Feb. 15	HBP Manager	Review LA-ODIS for project slippage/advancement.
Jan. 1	Feb. 15	DLAE	DLAEs review current year programmed projects, reprogram funds in FileMaker database as needed.
Feb. 15	Mar. 30	HBP Manager	Determine if new statewide program lists need to be developed and released to regions.
Mar. 30	Sept. 30	HBP Manager	EPSP, Post Programming changes enabled. Fund obligated until balances are zero. Statewide programming lists should be sent to MPOs if needed.
Jul. 1	Sept. 30	DLAE	DLAEs survey local agencies for next year's needs and update HBP database. HBP managers provides DLAE with survey forms.
Oct. 1	Oct. 30	HBP Manager	New program lists developed and released to MPOs to amend their FTIPs.

Programming Tools to Advance Projects

Expedited Project Selection Procedures allow most project programming in the 4 year element of the FTIP to be advanced for authorization and obligation, provided OA and apportionment are available to fund the project and programming capacity is available in the year of obligation of funds. For local assistance federal HBP, EPSP is managed by the HBP Managers. New project that have been prioritized, the PE phase can not utilize EPSP.

Post programming changes are changes to phases of work that have already been authorized and obligated and require additional funds. No pre-approved FTIP amendment is required to obligate additional funds for a post programming change provided there is not scope change to the project. Post programming changes must be reflected in future FTIP amendments to ensure that the FTIP always reflect total project costs and is financially constrained. Post programming changes are subject to approval of the HBP Managers.

1. EPSP and post programming Policy

- a. Due to limited federal funds, funds programmed in the current year of the FTIP will be reserved specifically for the project in the current year of the FTIP. These funds will be held in reserve until March 30th of any given year.
- b. Effective October 1st of every year, EPSP and Post programming changes will be suspended for all projects, unless otherwise approved by the HBP Managers. Exceptions will be granted provided there will be no impact to the delivery of current year programmed projects. The HBP Managers will try to hold back a reserve of un-programmed capacity each year to fund construction change orders, cost overruns, and other mid-phase cost increases to help ensure smooth project development activities.

2. Advancing non Proposition 1B Seismic Project (other HBP projects)

- a. “Advancing” means obligating funds on a project where the funds are not programming in the current year of the FTIP.
- b. If there is a schedule slippage or savings in current year programmed projects, and no Proposition 1B Seismic projects can be advanced to use current year funds, the Department will make HBP funds available to other HBP funded bridge projects programmed in future years within the 4 year element of the FTIP.
- c. The priority for programming federal HBP funds will be based on having a complete request for authorization package in the possession of the DLAE, the type of work, the deficiencies with the bridge, and having approved scopes of work.

Project Ranking Policy

Subject to budgetary constraints, the PE phase for eligible projects is programmed only in one of the two new years of a new FSTIP cycle to facilitate the development of new projects.

Also subject to budgetary constraints, the R/W phase for eligible projects is programmed in the last year of the FTIP. Funding for the R/W phase may be advanced to the year requested once full compliance with the provisions of NEPA has been documented and approved by Caltrans.

The ranks below will be used to determine funding priorities of the construction phase for developing the financially constrained HBP program lists. After projects are prioritized and funds reserved, Caltrans submits the financially constrained program lists to the MPOs for inclusion into the FTIP.

The lowest number rank is the highest priority for construction. Within each rank, projects are sorted by the AASHTO Sufficiency Rating to reflect the general condition of the bridge. The lowest SR is the highest priority. This means that lower priority projects will have PE and R/W funded even though construction may be pushed out of the 4 year element of the FTIP. When these projects are ready for construction authorization, the ranking system will allow these projects to receive a high priority for construction programming within updated statewide program lists.

These project ranks will be applied to programmed projects to financially constrain any program list needed to update the FTIP. The DLAEs are responsible for maintaining fields in

the HBP FileMaker database that indicate a project's readiness to advertise. Local agencies are responsible for closely coordinating with the DLAEs on project status, schedule, and estimates as documented in these guidelines.

Rank 0

This is not technically a project rank. All projects with HBP funds obligated for construction fall in this rank for listing purposes only. These projects cannot be pushed out of the 4 year element of the FTIP because funds have been obligated for construction. Local funded Advance Construction projects not subject to cash management commitments. Local funded AC conversion can be converted to HBP funds when programming capacity is available.

Rank 1A

Projects for the general support of the federally mandated Bridge Inspection Program.

Rank 1B

Projects that are ready to advertise AND;

Are critical HBP funded rehabilitation or replacement projects. These bridges must have major structural deficiencies causing the bridge to be posted or closed. The NBI data item 41 must be coded B, D, E, K, P, or R.

Rank 1C

Cash management projects with future AC conversion commitments by the Department. Projects may or may not be ready to advertise for construction. Federal HBP funding commitments are case by case, approved by the Department.

Rank 1D:

Projects are ready to advertise AND;

Are Proposition 1B funded projects or;

Are scour countermeasure projects, rehabilitation or replacement of scour critical bridges (NBI item 113≤3).

Rank 1E:

All other projects ready to advertise.

Rank 2A:

BPMPs are grouped listings of bridges that need PM work. This means construction funds are distributed over multiple years based on how projects in the BPMP are actually authorized. Stand-alone PM projects not part of a BPMP are excluded from this rank and will be treated like rehabilitation projects.

Rank 2B: Individually listed projects with Construction in the 4 year element of the FTIP.

High priority regionally significant or non-air quality exempt (line item) projects that are not subject to cash management. Construction funding year is determined based on readiness to deliver and subject to Department case by case review. This rank highlights the sensitivities in rescheduling projects impacting regional air quality conformity determinations.

In the event of construction schedule slippage, the Department may push the project funding in the FTIP a minimum of two years out, after consultation with the MPO. If no programming capacity can be found, the project will need to be pushed out until the next FTIP cycle. Local agencies will be required to program local funded AC if the project is only slipping one year or the HBP cannot afford to fund the project according to the new project schedule. Local agencies will need to work with their MPOs/RTPAs to ensure the AC is programmed correctly in the FTIP.

If NEPA or R/W is not clear and R/W includes lengthy property acquisition, the construction funding should be pushed outside the 4 year element of the FTIP.

Rank 3A:

All projects nearly ready to advertise within six months of a new financially constrained program list being generated AND;

Are critical HBP funded rehabilitation or replacement projects. These bridges must have major structural deficiencies causing the bridge to be posted or closed. The NBI data item 41 must be coded B, D, E, K, P, or R.

Rank 3B:

All projects nearly ready to advertise within six months of a new financially constrained program list being generated AND;

Are Proposition 1B funded projects or;

Are scour countermeasure projects or rehabilitation or replacement of scour critical bridges (NBI item 113≤3).

Rank 3C:

All projects nearly ready to advertise within six months of a new financially constrained program list being generated.

Rank 4:

Projects that are not ready to advertise. NEPA documents and R/W are not clear. Bridge must have major structural deficiencies causing the bridge to be posted or closed. NBI data item 41 coded B, D, E, K, P, or R.

Rank 5:

Includes Proposition 1B seismic projects that are not ready to advertise. NEPA and R/W are not clear. Includes scour countermeasure projects and rehabilitation or replacement of scour critical bridges (NBI data item 113 ≤3). NEPA and R/W are not clear.

Rank 6:

All types of projects with STIP matching funds or other federal STBGP funds for enhanced project scopes. Projects are not ready to advertise. NEPA and R/W are not clear.

Voluntary seismic retrofit projects (no Proposition 1B seismic involvement). Projects are not ready to advertise. NEPA and R/W are not clear.

Rank 7:

General bridge rehabilitation or replacement and other stand-alone scopes of work, including stand-alone PM. Projects are not ready to advertise. NEPA and R/W are not clear.

Annual Project Survey

Prior to the development of program lists in October, the DLAE will request that status of currently programmed projects from local agencies. Cost and schedule information provided from the survey will be incorporated into the program lists. Failure to provide status may result in project cancellation. The programming as provided in the financially constrained lists provided to the MPOs may have different funding in a different federal fiscal year than requested by the local agency in the survey. The financially constrained program lists are based upon the Rank Policy.

High Cost Projects Programming Policy

To ensure that HBP funds are made available throughout the state on a fair and equitable basis, in compliance with federal regulations, high cost projects have additional programming policy. It has been demonstrated that high cost project commits large sums of federal funds but cannot spend the funds in one year due to local agency contract processes, time to mobilize the contractors and the time it takes to actually construct large project. These idle federal funds could be used to advance other projects. Cash management of high cost projects is critical to effective stewardship of the local HBP. The HBP Managers will identify the high cost projects and through the DLAE, make contact with the project sponsors to explain the policy.

When a high cost project phase is ready to be programmed in the 4 year element of the FTIP, the local agency will notify the DLAE and discussions on programming the phase will begin.

- A funding commitment letter will be issued when a high cost phase of work needs to be programmed in the FTIP or as needed for a FHWA required Projects of Division Interest Project Financial Plan. NEPA and/or R/W clearance along with status of the PS&E package will play a role in determining the need for the funding commitment letter.
- The HBP Managers will issue a funding commitment letter, [Exhibit 6-E: Sample Funding Commitment Letter](#), and associated funding sheet, [Exhibit 6-F: Sample Funding Sheet for](#)

[Commitment Letter](#), to the local agency for a high cost project that commits the Department, subject to state and federal budget legislation and other limitation, to specify HBP in the FTIP over a multiple year period.

Local agencies will need to secure the availability of local funds (budget authority) to back the AC commitment.

- Local agencies that cannot obtain a source of local funds for AC will not have R/W or construction programmed within the 4 year element of the FTIP using HBP funds. These agencies may appeal this policy and request a meeting with the Department for review the specific situation. Members of the Local Assistance Highway Bridge Program Advisory Committee (Committee) representing the League of California Cities and the California State Association of Counties may be invited to the meeting to offer advice to the Department on implementing the policy as applied to the project in question.
- The sum of cash managed high cost projects in any federal fiscal year should not exceed 50% of the annual revenue for that federal sub-apportionment for which the project is eligible without concurrence from the Committee.
- Funds allocated to a project for AC conversion should not exceed \$20 million per year without concurrence from the Committee.
- High Cost projects will not be accepted into the local assistance HBP if all (including high cost projects) projects cannot be funded over a 15 year period. If the project is not accepted into the local assistance HBP, local agencies have the option of proceeding with their own funds using AC, but the Department will not budget the project(s) for AC conversion using HBP funds.
- AC conversion in the year programmed will not be obligated unless at least 50% of the prior years' federal funds have been invoiced. This keeps the federal funds available to advance other projects that could be delivered.
- In reference to non-high cost project FTIP programming procedures, the advancement of future year AC conversion using EPSP for high cost projects will be after April 15th of each year instead of after March 30th. This will provide smaller projects programmed in future years the opportunity to advance before the high cost project use up available HBP funds.
- After April 15th of any year, conversion of AC for high cost projects will be prioritized and prorated as follows:
 - High cost projects with eligible costs that could be immediately reimbursed with AC conversion will be first priority for conversion and proration will be based on outstanding reimbursable expenditures.
 - Second priority will be advancing AC conversion amongst the high cost projects with remaining AC even if there are no project expenditures that could be immediately reimbursed.

- Depending on current year delivery of the HBP and other local assistance programs, the Department may delay AC conversion of eligible projects in the above two bullets to a later date.

Bridge Investment Credit

Federal-aid highway funds provides valuable financial resources to local agencies in making improvements to transportation facilities on local roads. Federal funding also comes with many requirements that need to be met in carrying out a project. Ideally, the most efficient use of federal funds is to maximize federal funds on fewer, larger projects, funding smaller projects with non-federal funding sources such as local funds.

The BIC is a new element in the HBP aimed at encouraging local agencies to invest in making improvements to bridges on local roads using local or non-federal funds and receive credit to use as match funds for future HBP projects. The BIC allows local agencies to replace, rehabilitate and do PM work on HBP eligible bridges using local funds, then receive credit for up to 100 percent of the eligible work. The credit, in turn, serves as the required non-federal match for a future local federal-aid bridge project.

To be eligible for BIC, a bridge must meet the current eligibility criteria for HBP as outlined in the current Bridge Preventive Maintenance Program Guidelines and this Chapter of the LAPG. Eligible HBP projects determined to be noncontroversial and PM projects are the best candidates to be funded by local agencies under this policy.

Eligible HBP projects that local agencies choose to design and build with local funds do not need to comply with Federal requirements, however the project must meet current minimum AASHTO design standards with the California amendments to received credit.

1. Project Programming for Banking BIC:

Local agencies using local funds on an eligible HBP project to earn credits under the BIC must submit an [Exhibit 6-A: HBP Application/Scope Definition Form](#), which clearly defines scope and cost of the project. For BPMP's they must submit a certification letter and a BPMP plan list. Cost on the submittals should be 100% local funds. HBP Managers approval of the scope and cost for the BIC program is required prior to commencing work. If scope and cost is approved, the project will be programmed in the HBP database with 100% local funds.

2. Project Administration for Banking BIC:

The project sponsor is responsible for following all the applicable state and local laws and requirements in designing and constructing the project. Upon completion of the project, the sponsor must submit documentation including final project cost and as-built plans to Caltrans.

Caltrans will review the documentation and may field review the completed project to confirm it was constructed in accordance with all applicable standards and to the approved scope. Caltrans will approve the credit as it was originally requested or as shown in the final project cost, whichever is lower. Upward cost adjustment is not allowed. Credit will be banked at the completion of the project and the sponsor notified.

- Establish alternative acceptable procedures to satisfy retrofits when unusual problems are encountered.
- Recommend alternative analysis when appropriate.
- Inform the project engineer of solutions to similar problems encountered by Caltrans, consultants, or other local agencies.
- Provide local agency personnel with information regarding potential traffic control, right-of-way, utility, and environmental problems.
- Achieve consensus agreement on economical and practical retrofit strategies.

The strategy meeting should be attended by:

- Design Consultants (Structural, Geotechnical, and Traffic if necessary)
- Local agency staff
- Caltrans Division of Engineering services staff from Earthquake Engineering, Design, Construction, Maintenance and/or Geotechnical.
- Structures Local Assistance Representative
- District Local Assistance Engineer

The designer or project engineer is expected to have performed the diagnostic analysis using the appropriate static and dynamic analysis, summarized the condition of columns, restrainers/hinges and abutments, and a proposed solution prior to scheduling a strategy meeting. The designers should be prepared to discuss solutions considered and reasons for rejection of alternatives. At a minimum, a General Plan employing a legend of retrofit work and location of work, along with a table outlining the controlling design ductility ratios, should be presented. Additional tables and proposed details may also be necessary.

The following materials are required for the Mandatory Strategy Meeting:

- Draft Strategy Report, including the General Plan, Sufficiency Rating, as-built plans, photographs, and an estimate of costs (capital and engineering). These materials (a minimum of 10 copies) should be submitted to the DLAE. The DLAE should forward the package to Structures Local Assistance Office in Sacramento two weeks prior to the scheduled strategy meeting.
- Any plans or reports pertinent to the proposed work (utility layout, right-of-way maps, etc.)

The Strategy meeting should result in a general consensus regarding the acceptable analysis and retrofit approach should be reached by the strategy meeting attendees. Additional strategy meetings should not be necessary if all the information noted above is provided prior to and during the meeting. The conclusions reached should be outlined and summarized by the agency responsible for seismic design in “strategy meeting minutes” and documented in the Final Strategy Report. A copy of the minutes should be sent to all attendees. A copy of the Final Strategy Report will be kept on file in the Structures Local Assistance Office

- Item 62 - Culvert and Retaining Walls.
- [Item 62 applies only if the last digits of Item 43 are coded 19.]

The **Sufficiency Rating (SR)** is an overall “health” indicator for the bridge and is calculated by a complex formula defined in Appendix B in the National Bridge Inventory Coding Guide.

6.10 REFERENCES

[Local Assistance Program Guidelines](http://www.dot.ca.gov/hq/LocalPrograms/lam/lapg.htm)

<http://www.dot.ca.gov/hq/LocalPrograms/lam/lapg.htm>

[Local Assistance Procedures Manual](http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm)

<http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm>

[California Transportation Commission Resolution G97-05](http://www.dot.ca.gov/hq/transprog/ctcliaison/resolutions/GRes-1978-1997.pdf)

<http://www.dot.ca.gov/hq/transprog/ctcliaison/resolutions/GRes-1978-1997.pdf>

[California Streets and Highways Code Sections 2411 and 2413](https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=SHC)

<https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=SHC>

[United States Code Title 23, Section 144](http://uscode.house.gov/view.xhtml?req=(title:23%20section:144%20edition:prelim))

[http://uscode.house.gov/view.xhtml?req=\(title:23%20section:144%20edition:prelim\)](http://uscode.house.gov/view.xhtml?req=(title:23%20section:144%20edition:prelim))

[Code of Federal Regulations](https://www.archives.gov/federal-register/cfr)

<https://www.archives.gov/federal-register/cfr>

[National Bridge Inventory Recording and Coding Guide](https://www.fhwa.dot.gov/bridge/nbi.cfm)

<https://www.fhwa.dot.gov/bridge/nbi.cfm>

CHAPTER 13 INTELLIGENT TRANSPORTATION SYSTEMS (ITS) PROGRAM

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13.1 INTRODUCTION

13.1.1 GUIDELINES OVERVIEW - ROADMAP TO ITS COMPLIANCE

The process is summarized immediately below and described in full detail in the following sections. The process varies depending upon degree of **risk** involved. As shown in Figure 13-1, there are three steps in the project funding and delivery process shown in Figure 13-1.

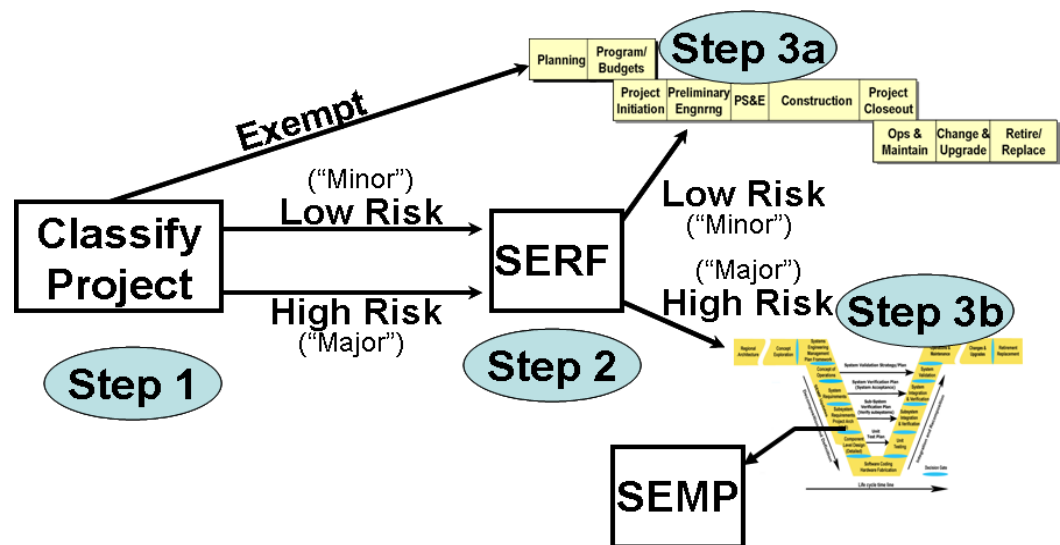


Figure 13-1: Steps to ITS Compliance

Step 1 occurs when the ITS project is added to the Transportation Improvement Program (TIP). The lead agency makes a **preliminary** classification of the project as **High-Risk**, **Low-Risk**, or **Exempt**. If the project is **Exempt**, then the remainder of the process is exactly the same as for a traditional roadway project. **Low-Risk** and **High-Risk** projects proceed to Step 2.

Step 2 occurs when initial funding is requested. As part of the E-76 application package, the Project Manager must fill out a Field Review Form and a Systems Engineering Review Form (SERF). SERF consists of seven questions. Based on the answers, the project is classified as **Low-Risk** or **High-Risk**, then proceeds accordingly.

Step 3a – For **Low-Risk** projects, the remainder of the process (after the E-76 is approved) is *exactly the same* as for a traditional roadway project.

Step 3b – For **High-Risk** projects, the traditional project delivery process is **not** appropriate. Instead, the best approach is a Systems Engineering process and Systems Engineering is required for High-Risk projects. A Systems Engineering Management Plan (SEMP) must be completed early in the process to help manage the detailed system design, implementation, and testing.

13.1.2 HOW TO USE THESE GUIDELINES

The ITS Program Guidelines are written for a diverse set of audiences, including: MPO/RTPA planners, local-agency project implementers, Caltrans Division of Local Assistance (DLA), and FHWA ITS staff. Some readers have ITS experience, others none.

Oversight of ITS projects focuses on management of risk. Any new users of these ITS Program Guidelines should familiarize themselves with the entire chapter. Over time the users will likely return to specific sections. For example, to clarify which type category a project falls into, the user may want to revisit section 13.2 on “Types of ITS Projects.” To initiate project funding, the user may revisit section 13.5 on “Funding Process Step-By-Step Procedures.”

13.1.3 PURPOSE OF THESE GUIDELINES

The ITS Program Guidelines describe best professional practices for planning and implementing ITS projects. They also establish the roles and responsibilities for all parties who are involved in the federal-aid ITS process, as well as define the process required for all ITS projects that will utilize federal funds (in any amount). 23 CFR 940 requires that all federal-aid projects:

- be consistent with **the Regional ITS Architecture**,
- use applicable **ITS Standards**,
- perform a **Systems Engineering Analysis** that is commensurate with the scope of the project.

Designing and developing ITS projects represent a paradigm shift in the engineering mindset, compared to traditional highway projects. For example, ITS projects may not have a clear break between the preliminary engineering phase and construction phase. Furthermore, some ITS projects may not include a construction phase and will not be suitable for “low-bid” construction contracts. The nature of the engineering development for ITS projects also implies a greater risk and uncertainties to successful completion.

Although not a requirement, FHWA strongly encourages the use of the FHWA/Caltrans “*Systems Engineering Guidebook for ITS*” (<http://www.fhwa.dot.gov/cadiv/segb>) as a reference for organizing the ITS project tasks, defining work products, and managing the development. The terminology used in these ITS Program Guidelines is defined fully at the Systems Engineering guidebook website.

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13.1.4 TARGET AUDIENCES

The ITS Program Guidelines will be used by several audiences:

- 1.) **Planning agencies**, who will program the funds in the TIP and maintain the regional ITS architecture.
- 2.) **Local agencies**, who will carry out the projects. This includes their consultants, who may provide assistance with project management, and/or provide systems engineering technical assistance.
- 3.) **Caltrans DLA**, who will be the contracting agency for federal funding.
- 4.) **FHWA Division Office**, who will obligate federal funding and oversee some aspects of High-Risk projects.

Some of these participants may have little or no expertise in ITS, therefore, every effort is made to simplify the definitions and language in this guideline. A point to make is that no individual is expected to understand everything there is to know about systems, telecommunications, electronics, etc. in order to manage ITS projects.

As a relatively new field for most public-sector transportation managers, the knowledge required to successfully implement these projects varies widely. In particular, highly complex and risky projects require special knowledge and skills, which are often not available with local agencies. A certain amount of education and training will be necessary to comprehend and assure compliance with ITS regulations. Periodic training may also be necessary in order to keep up with technological changes in ITS.

For more information on ITS and Systems Engineering training opportunities, please see the USDOT ITS Professional Capacity Building Program website: <http://www.pcb.its.dot.gov>.

13.1.5 DEFINITION OF ITS

The definition of ITS has changed dramatically over the past decades, and it continues to evolve. Several decades ago, most people considered a computerized traffic signal to be “state-of-the-art” ITS. Today, every traffic signal is computerized and most people do not call them “ITS” – they are just “hardware” now. As state and local agencies have installed more and more electronic equipment over the past two decades, the emphasis of ITS has shifted from **internal** operational improvements to **external** coordination with other agencies, which enable each agency to achieve their mission more effectively. This **inter-agency cooperation** is the major objective of the Regional ITS Architecture (RA).

In 2001, 23 CFR 940 defined ITS as “...*electronics, communications, or information technology, used singly or in combination, to improve the efficiency or safety of the surface transportation system.*” This is a broad definition, covering the range from small, simple devices (like traffic signals) up to large and complex systems. In addition to this legal definition, most people say that **ITS must include comprehensive management strategies and apply technologies in an integrated manner.** The purpose of ITS integration is to share information and reduce redundant spending between jurisdictions. ITS Integration includes both **technical** and **inter-agency** aspects of system development.

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The inter-agency (or “institutional”) challenge is to take advantage of the investment in infrastructure that has occurred over the years and use it to tackle **regional** mobility challenges. This means removing the institutional barriers that have existed in order to benefit a region as a whole. One example of institutional integration is sharing information between transit, arterial, and freeway agencies to improve flow for buses on the transportation network. Another type of integration is when agencies use technologies that are compatible with each other, such as traffic signals and emergency vehicle preemption to enable emergency vehicles to respond faster.

These ITS Program Guidelines reflect the latest ITS concepts by emphasizing “best professional practices” and requirements for ITS projects that are more complex and that include external cooperation. In contrast, procedural requirements for simple and Low-Risk projects have been simplified or eliminated.

To gain a basic understanding of ITS applications, please see the following USDOT website:
https://www.its.dot.gov/factsheets/ITSJPO_overview.htm

13.1.6 RISK MANAGEMENT

A successful ITS project is one which completes on schedule, within budget, and delivers all capabilities required. ITS projects that are prone to failure typically involve new technology, a new process that the lead agency has not done before, and/or the need to coordinate with other agencies. This might include new technology or new software, or new communications, or joint efforts with new partners. Because of the high risk of failure for certain ITS projects, System Engineering procedures are required to help mitigate those risks to avoid the waste of taxpayer’s funds that occurs when ITS projects fail to meet user needs and system requirements.

Project risk may be defined in terms of schedule, cost, quality, and requirements. These risks can increase or decrease significantly based on several identified factors associated with ITS projects. The factors are:

- 1.) Number of jurisdictions and modes
- 2.) Extent of software creation
- 3.) Extent of proven hardware and communications technology used
- 4.) Number and complexity of new interfaces to other systems
- 5.) Level of detail in requirements and documentation
- 6.) Level of detail in operating procedures and documentation
- 7.) Service life of technology applied to equipment and software
- 8.) Experience of agency staff implementing similar projects
- 9.) Clarity of user needs and/or system requirements

The following Section 13.2 will address the level of each of these risk factors for types of ITS projects. For more information on Risk Management, the reader is encouraged to access the FHWA/Caltrans *Systems Engineering Guidebook for ITS* website at:
<http://www.pcb.its.dot.gov/>.

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13.2 TYPES OF ITS PROJECTS

13.2.1 SUMMARY – TYPES OF PROJECTS

For purposes of these Guidelines, ITS projects are divided into three types: **Exempt, Low-Risk, and High-Risk projects**. The planning and development process to be followed is different for these three types.

The following attributes can often be used to classify ITS projects as exempt, low, or high risk.

Exempt ITS projects do not require a Systems Engineering Analysis (SEA) and are not covered under these ITS Program Guidelines. All activities of the traditional roadway project development life-cycle process will be followed. No further ITS-specific action is necessary. They can be *any* the following:

- 1.) Upgrades to an existing traffic signal – This may include, for example, adding or revising left-turn phasing or other phasing, adding pedestrian-crossing displays.
- 2.) Installing an “isolated” traffic signal – This is a signal not connected to or coordinated with any other signals or any type of external signal-control system, nor likely to be in the future because of its isolation.
- 3.) Traffic signal timing projects – This includes all “studies” whose purpose is to change the coordination parameters for controlling a group of signals – but with **no** installation of new hardware or software.
- 4.) Studies, Plans, Analyses – This includes ITS Master Plans, Deployment Plans, Technology Studies, etc. whose product is only a document, with no new hardware or software installed.
- 5.) Routine Operations – This includes operating and maintaining any ITS elements or systems – again with no new hardware or software installed.

Low-Risk ITS projects are often referred to as ITS infrastructure expansion. Standard Plans, Standard Specification, and Standard Special Provisions are well documented. They will have **all** of the following characteristics:

- 1.) Single jurisdiction; single transportation mode (highway, transit or rail)
- 2.) No software creation; commercial-off-the-shelf (COTS) or proven software
- 3.) Proven COTS hardware & communications technology
- 4.) No new interfaces
- 5.) System requirements fully detailed in writing
- 6.) Operating procedures fully detailed in writing
- 7.) Project life-cycle not shortened by technology service life

A common example of Low-Risk ITS projects includes connecting a new or existing traffic signal to one or more signals for coordination.

High-Risk ITS projects are often referred to as ITS “System Developments.” They have **one (or more)** of the following characteristics:

- 1.) Multi-Jurisdictional or Multi-modal
- 2.) Custom software, or modification of software, is required
- 3.) Hardware and Communications are “cutting-edge” or not in common use
- 4.) New interfaces to other systems are required
- 5.) System requirements not detailed or not fully documented
- 6.) Operating procedures not detailed or not fully documented
- 7.) Technology service life shortens project life-cycle.

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Examples of high risk projects include creation of Transportation Management Centers, Integrated Corridor Management, parking management systems, and creation or expansion of toll lanes. In addition, certain Low-Risk projects that are implemented by agencies that do not have direct experience with such systems, and/or will rely heavily on consultants to operate the system, may also be High-Risk.

These risk factors are discussed in more detail in Table 13-1.

Table 13-1 – Risk Assessment for ITS Projects

	<u>Low-Risk Project Attributes</u>	<u>High-Risk Project Attributes</u>	<u>Risk Factors</u>
1	Single jurisdiction and single transportation mode (highway, transit or rail)	Multi-Jurisdictional or Multi-modal	With multiple agencies, departments, and disciplines, disagreements can arise about roles, responsibilities, cost sharing, data sharing, schedules, changing priorities, etc. Detailed written agreements are crucial!
2	No software creation; uses commercial-off-the-shelf (COTS) or proven software	Custom software development is required	Custom software requires additional development, testing, training, documentation, maintenance, and product update procedures -- all unique to <u>one</u> installation. This is very expensive, so hidden short-cuts are often taken to keep costs low. Additionally, integration with existing software can be challenging, especially because documentation is often not complete and out-of-date.
3	Proven COTS hardware and communications technology	Hardware or communications technology are “cutting edge” or not in common use.	New technologies are not “proven” until they have been installed and operated in a substantial number of different environments. New environments often uncover unforeseen problems. New technologies or new businesses can sometimes fail completely. Multiple proven technologies combined in the same project would be high risk if there are new interfaces between them.
4	No new interfaces	New interfaces to other systems are required.	New interfaces require that documentation for the “other” system be complete and up-to-date . If not (and often they are not), building a new interface can become difficult or impossible. Duplication of existing interfaces reduces the risk. “Open Standard” interfaces are usually well-documented and low risk.
5	System requirements fully-detailed in writing	System Requirements not detailed or not fully documented	System Requirements are critical for an RFP. They must describe in detail all of the functions the system must perform, performance expected, plus the operating environment. Good requirements can be a dozen or more pages for a small system, and hundreds of pages for a large system. When existing systems are upgraded with new capabilities, requirements must be revised and rewritten.
6	Operating procedures fully-detailed in writing	Operating procedures not detailed or not fully documented	Standard Operating Procedures are required for training, operations, and maintenance. For existing systems, they are often out-of-date.

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7	None of the technologies used are near end of service life	Some technologies included are near end of service life	Computer technology changes rapidly (e.g. PC's and cell phones become obsolete in 2-4 years). Local area networks using internet standards have had a long life, but in contrast some mobile phones that use proprietary communications became obsolete quickly. Similarly, the useful life of ITS technology (hardware, software, and communications) is short. Whether your project is a new system or expanding an existing one, look carefully at all the technology elements to assess remaining cost-effective service life.
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13.2.2 Examples of ITS Project Types

An example of an **Exempt** ITS project would be the installation of traffic signal hardware (traffic controller/software, cabinet, detectors, etc.) to control an isolated intersection in City A. It meets the signal warrants found in Chapter 4 of the California MUTCD, but there is no current or foreseen need to interconnect to other signals. No software development is needed; merely adjusting programmable settings and parameters for control. Standard plans, specifications, identified special provisions have been well documented over the years for the design and construction of signal control field equipment. The traditional roadway project development process will be used. Typical of this kind of project is for plans, specifications, and estimate (PS&E) to be developed, and construction contracts handled through a low-bid selection.

An example of a **Low-Risk** ITS project is the addition of 30 full matrix changeable message signs to an existing system that has five identical signs already deployed. Project sponsor's needs and project requirements are well defined. No changes are needed to the existing central or field equipment. The system was initially designed to accommodate these additional signs so no additional software is needed. Assumptions are: 1) the initial system has been completed and the system is working well, 2) the contractor will deploy the signs, poles and foundations, controllers, and wire the controllers into the signs, and 3) the agency will add configuration information about the signs at the central computer. Updates to the existing plans have been reviewed to ensure that the original design and implementation is not adversely affected as a result of adding the elements.

During the design process, it may be discovered that a number of changes to the existing system are needed in addition to adding the expansion elements. This need could arise because of new and better technologies (or the old hardware is no longer available), or because of the desire to improve or expand the functionality of the "previous" system, or because of the need to use the system in a different way (e.g. sharing control with another party). **Any of these instances would elevate the project to a High-Risk implementation.**

Additional examples of **Low-Risk** ITS projects include:

- Adding new or existing signals to a new or coordinated signal system.
- Adding five identical CCTV cameras to the existing 20 – with no other changes to the system or how it's used.
- Adding 50 identical new loops to the existing 200 – no other changes.
- Installing an existing parking management system at 2 additional garages – with no changes
- Expanding the pre-existing system/network by adding several more XXXX units – with no changes. (XXXX can be almost any ITS element).
- Expanding existing communications systems – this consists of extending existing fiber-optic or wireless communications systems, using the same technology and specifications as the pre-existing system.

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- Leasing turnkey services only (e.g., website-based information service) – with no hardware or software purchases.

High-Risk ITS projects are often referred to as ITS System developments. For example, a High-Risk ITS project will result from adding the following new requirement to the previously described Low-Risk project: “The changeable message signs will have shared control with a partner Agency B.” For this example, Agency B manages events at two activity centers. As part of the installation, Agency A will be installing six signs that would assist agency B for their event management. Agency B would use the CMS to divert traffic to get the attendees in and out of the event faster and more safely. To enable this shared control, new software may need to be developed and integrated into the existing system. With this requirement for new functionality (shared control), new risks and complexity are introduced. Although the traditional roadway Design/development and construction process is needed for the signs and controllers at each location, there will be a need for systems engineering to address the software development and integration efforts. In this example, revisions to the existing “concept of operations” and development of agreements for interagency coordination will be especially important to clarify expectations and avoid future disputes.

Additional examples of **High-Risk** ITS projects include:

- Development and/or deployment of applications for mobile computing devices that involve safety or liability considerations or integration with larger systems.
- Creation of a Traffic Management Center or centralized signal management facility.
- Local agency using consultants to operate a TMC and/or centralized signal management facility.
- Multi-jurisdictional or multi-modal system implementation -- Because of the external interfaces required, these projects generally include substantial software development. For example:
 - A traveler information system that collects data from multiple agencies or modes
 - A Bus Traffic Signal Priority system between City Traffic and Regional Transit, or one that crosses multiple jurisdictions.
- The first stage of an “umbrella” system implementation. During this first stage, the full system engineering process would be used to develop the overall system framework plus the first implementation of that framework. For example:
 - New Traffic Signal Coordination system design plus implementation at an initial number of signals, with more signals added in later project(s).
 - New Traffic Information System design plus the first implementation in Cities X and Y, with more cities added in later project(s).
 - New Electronic Fare-Payment System design and initial implementation on Metro buses, with other transit agencies added in later project(s).

If subsequent stages replicate the initial implementation, they would not be high risk. Instead, they fit the definition of a low risk ITS project, expanding the existing system with no new capabilities, and no new interfaces.

13.3 ITS PROJECT DEVELOPMENT AND FUNDING

The three types of ITS projects (Exempt, Low-Risk, and High-Risk) are linked to specific process by way of their risk characteristics. The traditional project delivery process as shown in Figure 13-2 has been used for many years. Design and installation is well documented. Over the years, requirements have become well defined, product performance is solid, and the technology is proven. As with roadway elements (pavement, drainage), ITS field elements (signals, CMS, CCTV, RWIS) are designed and constructed with Standard Plans, Standard Specifications, and Standard Special Provisions that are well documented. Risk of failure is low for these ITS projects, except when changing to new technology.

For **Exempt and Low-Risk** ITS projects, the traditional single-phase PE obligation and authorization process will be followed. Work will include all activities of the traditional roadway project development life-cycle process leading up to construction. Funding steps for Low-Risk ITS Projects can be seen in Figure 13-2.

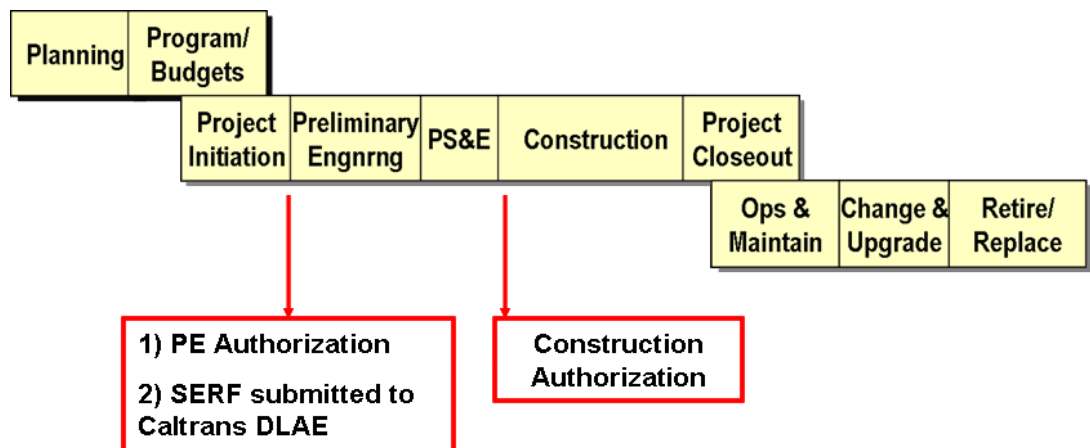


Figure 13-2: Process and Funding Steps for Low-Risk ITS Projects

More complex ITS projects lead to higher risk of failure (termination, time delays or cost increases and not meeting user needs). As such, the Code of Federal Regulations requires complex ITS projects to include a Systems Engineering (SE) analysis to mitigate these risks. The SE process is a supplement to the traditional project delivery process. The Systems Engineering approach is graphically depicted in Figure 13-3. To learn more about the Systems Engineering process, see the USDOT ITS Professional Capacity Building Program website: <http://www.pcb.its.dot.gov>, and FHWA/Caltrans “Systems Engineering Guidebook for ITS” at: <http://www.fhwa.dot.gov/cadiv/segb/views/process/index.htm>.

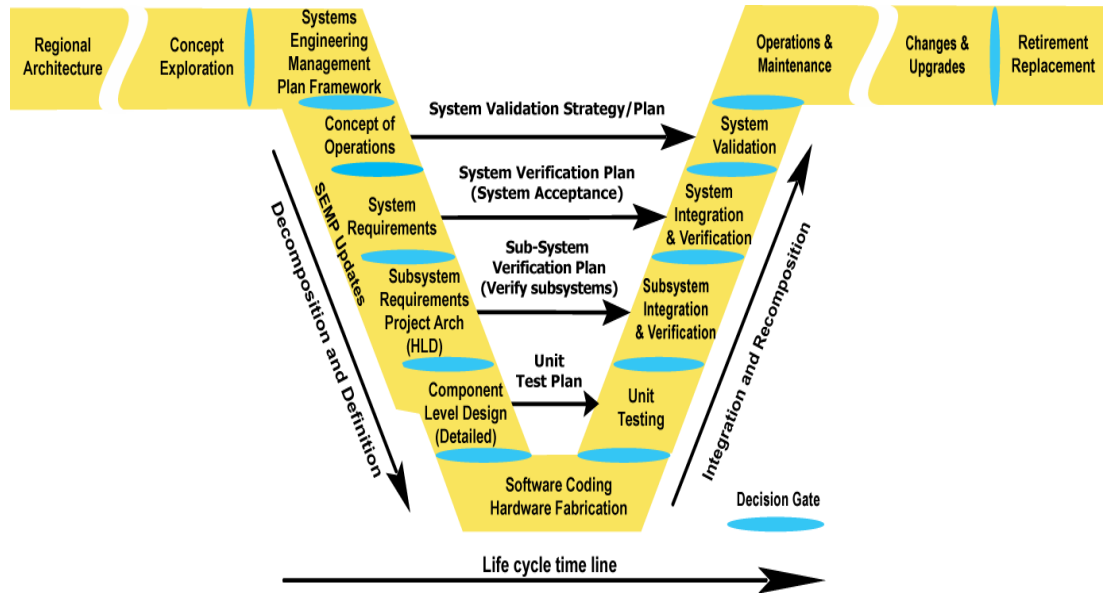


Figure 13-3: Systems Engineering Vee Life Cycle Process

For **High-Risk** ITS PE obligation and authorization is followed by two approval actions for project development to proceed. Figure 13-4 pinpoints where each approval occurs. A separate construction obligation and authorization will be needed for traditional roadway (infrastructure) improvements that accompany system development. Figure 13-4 does not infer that work provided by the PE contractor ends with Construction authorization. As shown in Fig 13-6 in Section 13.9, the same PE contractor will often be involved in system engineering activities on the right side of the Vee Life Cycle Process supporting verification and validation.

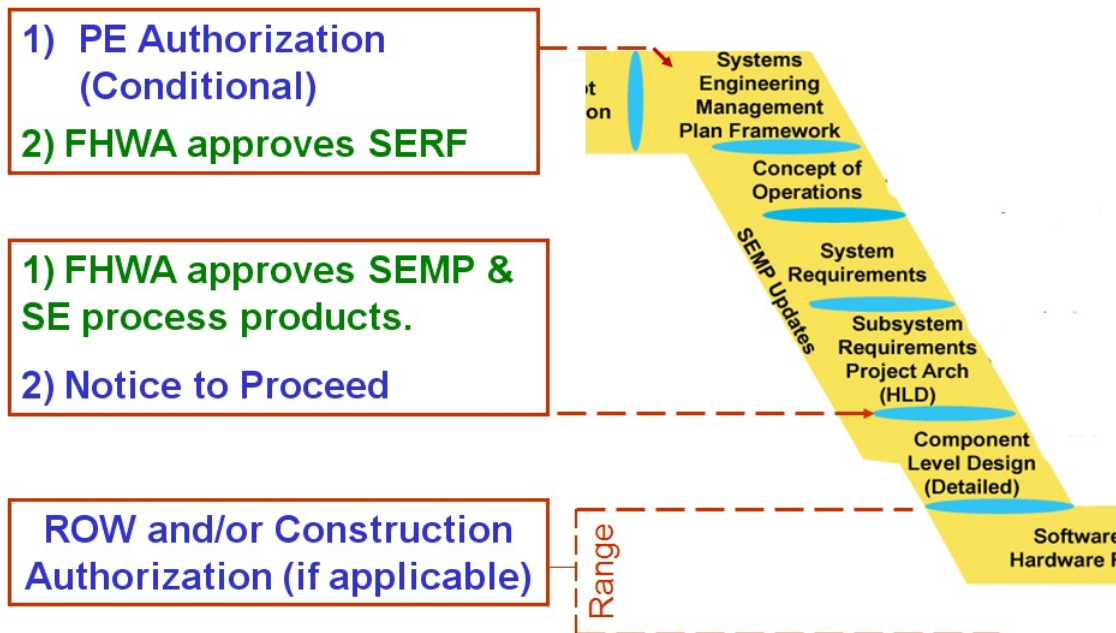


Figure 13-4: Funding Steps for Systems Engineering Process

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Early determination of risk leads to early determination of type of ITS project, which leads to an early determination of budgeting approach. The systems engineering Vee process concentrates more time and cost on the up-front engineering activities relative to the traditional project delivery process that typically concentrates funding and scheduling priorities to the construction (back-end) phase.

For more information on Systems Engineering, the reader is encouraged to access the FHWA/Caltrans *Systems Engineering Guidebook for ITS* website at:
<http://www.fhwa.dot.gov/cadiv/segb/views/process/index.htm>.

13.4 GENERAL ITS RESPONSIBILITIES

This section describes ITS responsibilities, during planning and implementation of the project, from the perspective of four different roles:

- 1.) Regional/Metropolitan Transportation Planning Agency (RTPA/MPO)
- 2.) Local agency (including their consultants in a project management role)
- 3.) Caltrans Division of Local Assistance
- 4.) FHWA Project Engineer
- 5.) Communities

The user *should* read the section that corresponds to their role. The other sections are optional. For each role, the responsibilities are described for each of the three steps in the Roadmap below in Figure 13-5, which can be briefly described as Planning, Funding, and Implementation.

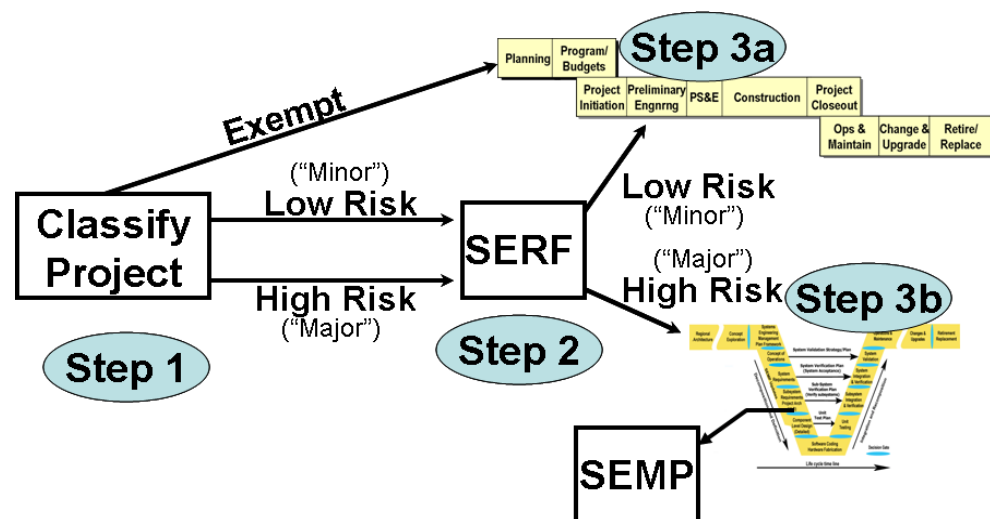


Figure 13-5: Steps to ITS Compliance

13.4.1 Regional/Metropolitan Transportation Planning Agency

Step 1 Roadmap Step 1

All ITS projects must be listed on the FTIP prior to obligation of funds. However, many ITS projects are not required to be listed individually, since they are classed as air quality exempt. Such projects may be lumped together in the FTIP. If a traditional roadway design project contains an ITS element, then the requirement for FTIP listing is determined by the overall project.

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Because of this variation in project classification, projects with ITS elements may not be identified. For this reason, the MPO or RTPA is encouraged to coordinate with the local agencies (project sponsors) to “flag” ITS projects, or at least note the High-Risk ITS projects, within their FTIP submittal to Caltrans/FHWA. This may be a symbol designation within the current FTIP format, a separate page listing, or some other reporting means.

By delineating operational improvements from the rest of the capital program, this gives FHWA ITS Engineers opportunity to make pre-authorization outreach visits to project sponsors to assess degree of education, technical assistance, and oversight that will be needed before the project reaches its funding year. This can reduce risk of project failure.

Step 2 Roadmap Step 2

The regional planning agency (RTPA or MPO), as owner/maintainer of the regional ITS architecture, will assist the ITS project sponsor (local agency) to address the architecture aspects of the Systems Engineering Review Form (SERF).

For more information on regional ITS architectures, the reader is encouraged to access USDOT ITS Architecture website at: <http://www.its.dot.gov/arch/index.htm>.

Step 3 Roadmap Step 3

As each ITS project is implemented, the regional ITS architecture will need to be updated to account for any expansion in ITS scope, and to allow for the evolution and incorporation of new ideas. When actually defined or implemented, a project may add, subtract or modify elements, interfaces, or information flows from the regional ITS architecture. Because the regional ITS architecture is meant to describe the current (as well as future) regional implementation of ITS, it must be updated to correctly reflect how the developed projects integrate into the region.

Updates will be submitted by the local agency project manager. This can occur at two points in time during project development process. The first time is upon documentation of the project architecture at completion of the High-Level (functional) Design. Additionally, during implementation, project architectures may change. If so, the project manager will submit those changes at project completion.

A regional ITS architecture maintenance process is documented in the region, and used to make any changes.

13.4.2 Local agency (include consultants in project management role)

Step 1 Roadmap Step 1

The local agency is responsible for submitting their projects to the MPO/RTPA for inclusion in the State Transportation Improvement Program for Federal approval (FTIP). For projects that include ITS elements, the local agency makes a **preliminary** classification of the project’s risk as exempt, low, or high. It may take a number of months for the project to be added to the FTIP, so Step 1 should be performed well ahead of the expected project start date.

If the project is considered **Exempt**, then all activities of the traditional roadway project development life-cycle process will be followed. Exempt projects are not considered “ITS” for purposes of these procedures and no further ITS-specific action is necessary.

Step 2 Roadmap Step 2

To initiate federal funding of the ITS project, the local agency verifies that the project is listed in the FSTIP and submits to Caltrans District Local Assistance Engineer (DLAE) the “Request For Authorization To Proceed With Preliminary Engineering” (LAPM Exhibit 3-A and associated data sheets (LAPM Exhibit 3-E). This is often referred to as the “E-76 Package” and the process of submitting and approving it is often referred to as the “E-76 Process.”

This PE request will include the completed Field Review Form (*LAPM* Exhibit 7-B) and associated Data Sheets (*LAPM* Exhibit 3-C to 3-I). This Field Review Form will include ITS administrative and financial elements to be addressed when applicable. The Field Review Form shall be submitted with the request for authorization to proceed. See Chapters 3, “Project Authorization” and Chapter 7, “Field Review,” of the *LAPM* for more information.

The completed Field Review Form includes an ITS Systems Engineering Review Form (SERF) that is required for all ITS projects. The SERF (*LAPM* Exhibit 7-I) provides responses to the seven requirements for systems engineering analysis within 23 CFR 940 Part 11. The SERF will assist the local agency in determining if the project is Low-Risk or High-Risk. If the local agency does not have enough information to answer all seven questions, the project is probably high risk.

This determination of risk is delegated to the local agency (project sponsor). Completion of the SERF is an opportunity to verify (or perhaps change) the preliminary determination of risk made during project programming in the Roadmap Step 1.

If the ITS project is **Low-Risk**, the response to the SERF will be complete and will document conformance to 23 CFR 940. If DLAE agrees that the project is Low-Risk, then the PE obligation and authorization process is use.

If the ITS project is **High-Risk**, response to some of the seven questions in the SERF cannot be decided at this early stage. Responses in the SERF will identify the tasks when each question will be answered during the systems engineering process. PE is conditionally authorized after submittal of the initial request for authorization by the local agency. The condition specifies that a Concept of Operations and SEMP be approved and a Notice-to-Proceed (NTP) be granted by FHWA before the local agency may proceed with project implementation. Expenditures for such work prior to NTP are NOT eligible for reimbursement.

Step 3 Roadmap Step 3

Step 3a For **Low-Risk** ITS projects, the agency’s project development process used for regular roadway projects will be followed. These activities are denoted as Step 3a in the “Roadmap to ITS Compliance”. For purposes of these procedures, no further ITS-specific action is necessary. Refer to *Section 13.9 Procurement/Construction* for more information on procurement options.

Step 3b For **High-Risk** ITS projects, conformance to 23 CFR 940 will be completed in Step 3b of the “Roadmap of ITS Compliance” as the systems engineering tasks on the left side of the Vee process are undertaken (i.e., Concept of Operations thru High-Level Design).

If the project architecture - defined as part of the High-Level (functional) Design - adds, subtracts or modifies elements, interfaces, or information flows from the regional ITS architecture, these changes need to be submitted to the RTPA/MPO who maintains the regional ITS architecture. This can be done upon completion of the SEMP. In addition, if similar changes occur during implementation, the project manager should submit those changes at project completion.

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Prior to the Component-Level Design task within the SE Vee process, the local agency submits to DLAE the Systems Engineering Management Plan (SEMP) and Systems Engineering process products. Upon receiving final SEMP approval and Notice-to-Proceed, the local agency may proceed with project implementation. Expenditures for such work prior to NTP are NOT eligible for reimbursement.

13.4.3 Caltrans Division of Local Assistance

13.4.3.1 District Local Assistance Engineer (DLAE) –

Step 1 Roadmap Step 1

The DLAE has no responsibilities during Step 1.

Step 2 Roadmap Step 2

The DLAE reviews the request from the local agency for PE authorization, with the Field Review Form and the SERF, to assure satisfactory completion. The DLAE will prepare and submit the E-76 for PE to Headquarters DLA Implementation.

The DLAE verifies that the risk determination made by the local agency is correct. If the DLAE agrees that the project is **Low- Risk**, the PE obligation and authorization process will be used and no further ITS-specific action is necessary.

If the project is determined to be **High-Risk**, the DLAE forwards the SERF to DLA Implementation and FHWA concurrently for review and approval. The DLAE verifies from the E-76 system that PE is conditionally authorized and that FHWA has obligated the funds before issuing authorization to proceed with PE. The condition specifies that a SEMP be approved and a Notice-to-Proceed (NTP) be granted by FHWA before the local agency may proceed with project implementation.

In the instance where the Field Review Form follows Federal PE authorization, further verification of the earlier determination of risk is performed. Where the information leads to a change in project type (Low to High or vice-versa), a corrected E-76 is submitted to DLA Implementation. In the instance of a Low- to High-Risk change, the corrected E-76 will either de-obligate the PE dollar amount for system design and implementation or will include a conditional statement that limits Notice-to-Proceed (NTP) to only the systems engineering tasks (Concept of Operations to High-Level Design) on the left side of the SE Vee.

Step 3 Roadmap Step 3

Step 3a For **Low-Risk** ITS projects, the project development process used for regular roadway projects will be followed by DLAE, noted as Step 3a in the “Roadmap to ITS Compliance.” Refer to *Section 13.9 Procurement/Construction* for more information on procurement options.

Step 3b For **High-Risk** ITS projects, the systems engineering tasks on the left side of the Vee process are undertaken (i.e., Concept of Operations thru High-Level Design). The Systems Engineering Management Plan (SEMP) is sent to DLA Implementation and FHWA concurrently for review and approval. The DLAE transmits the SEMP approval and Notice-to-Proceed from FHWA to the local agency. System implementation can begin with receipt of the Notice-to-Proceed. Expenditures for such work prior to NTP are NOT eligible for reimbursement.

13.4.3.2 Headquarters DLA Implementation –

Step 1 HQ DLA Implementation has no responsibilities during Step 1.

Step 2 For High-Risk ITS projects, DLA Implementation forwards the SERF to the FHWA ITS Engineer for review and approval. Upon notification of FHWA approval, DLA Implementation notifies DLAE, and PE may be authorized.

Step 3b DLA Implementation forwards the SEMP to FHWA for review and approval. Upon notification of FHWA approval and NTP granted, DLA Implementation notifies DLAE, who in turn notifies the local agency.

13.4.4 FHWA ITS Engineer

Step 1 Roadmap Step 1

The FHWA Project Engineer has no responsibilities during Step 1.

Step 2 Roadmap Step 2

If the project is a **High-Risk** (formerly “Major”) ITS project, the SERF is submitted to FHWA for review and determination of level of federal oversight of the systems engineering process.

The following information defines the FHWA oversight of the Systems Engineering (SE) process for **High-Risk** ITS projects. Please note that **this oversight is limited to the ITS portions of the project only**. General oversight for all other aspects of the federal aid process will continue to be handled through the *Caltrans/FHWA Joint Stewardship & Oversight Agreement*.

The FHWA oversight process is built upon the common SE practice of using "control gates" as a project-management tool. It assumes that implementation of the ITS project (or the ITS elements within a larger construction project) will follow a pre-determined sequence of steps, with each step (or "milestone") being judged by the project manager to be satisfactorily completed before substantive work begins on the next step.

FHWA will exercise its oversight responsibilities primarily via review of deliverable(s) produced at each of the milestones in the SE process (e.g. Concept of Operations, Acceptance Tests, etc.). They will do this in a manner that avoids unnecessary delays to the project. The action at each step will take ONE of the following forms:

- Review and Approval – This typically applies to the Systems Engineering Review Form, Systems Engineering Management Plan, the Concept of Operations and, in unusual cases, could apply to other documents. For the initial submittal of these documents, FHWA will provide comments within 30 days of receipt. For subsequent submittals of the same document, FHWA will review the agency’s response to comments within two weeks of receipt. If additional changes are made to the document (other than just responding to FHWA comments), additional review time may be needed.
- Information Only - Upon completion of the milestone, the project manager shall email the associated document to FHWA. No "approval" by FHWA will be needed. Upon emailing the document, the project may begin the next task immediately.

This determination of level of oversight, along with SERF approval, will be transmitted to DLA Implementation and DLAE concurrently.

Step 3b Roadmap Step 3b

Regardless of the level of oversight determined for each SE process milestone deliverable, the completed Systems Engineering Management Plan (SEMP) must always be submitted to FHWA for review and approval at completion of the system definition tasks (generally after the “High-Level Design” task). This approval and the Notice-to-Proceed will allow for the local agency to proceed with system design and implementation. Specific SEM development and documentation guidance can be found at the “*Systems Engineering Guidebook for ITS*” website (https://www.fhwa.dot.gov/cadiv/segb/views/document/sections/section3/3_4_2.cfm).

The FHWA review process can be expedited by documents being sent via email to FHWA simultaneously with distribution to Caltrans and/or other stakeholders involved in the project development. Paper copies are **not** required, unless the materials cannot be sent electronically.

13.5 FUNDING PROCESS STEP-BY-STEP PROCEDURES

This section presents an **integrated view** of the funding process, combining all four of the perspectives described separately above. Thus, it presents a more comprehensive picture of all activities and responsibilities during each step of the funding process. As before, the steps are discussed chronologically. The chronological steps for **High-Risk** projects are discussed first, followed by the procedures for **Low-Risk** and then **Exempt** ITS projects.

13.5.1 High-Risk ITS Projects

High-Risk federal-aid ITS projects shall follow the regular federal-aid procedures outlined in the LAPM, with the inclusion of two approval actions by FHWA to assure conformity with the federal regulation 23-CFR-940. Application and control of the Systems Engineering process is a key reason for the approval actions as specified below.

Step 1 Roadmap Step 1 -
Transportation Planning:

1. The local agency submits project to the regional planning agency for inclusion in the Federal Approved State Transportation Improvement Program (FSTIP). The local agency makes a **preliminary** designation of risk for the project.
2. The MPO or RTPA is encouraged to coordinate with the local agencies (project sponsors) to “flag” ITS projects, or at least note the High-Risk ITS projects, within their FTIP submittal to Caltrans. This may be a symbol designation within the current FTIP format, a separate page listing, or some other reporting means.
3. The regional planning organization reviews the project for consistency with the Caltrans transportation planning process before submitting the FTIP to Caltrans HQ.
4. Caltrans HQ incorporates the FTIP in the FSTIP, and submits the FSTIP to the FHWA Division for review and approval.
5. The FHWA Division reviews and approves the FSTIP.

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Step 2 Roadmap Step 2 -
Project Development (PE1):

6. The local agency verifies that the project is listed in the FSTIP, and then submits a PE request package to the DLAE.
7. The DLAE enters a conditional approval statement into the E-76 system that states:
“No work for ITS system component detailed design, integration, and testing will be undertaken until FHWA approval of Systems Engineering Management Plan (SEMP) and Notice to Proceed by FHWA is granted. Expenditures for such work prior to NTP are NOT eligible for reimbursement.”
8. When the PE package is satisfactory, the DLAE forwards the package, and submits E-76 for PE to DLA Implementation
9. When the PE package is satisfactory, DLA Implementation executes the E-76, and submits it to the FHWA for obligation, with a copy to the DLA ITS Coordinator.
10. The DLAE verifies from the E-76 system that FHWA has obligated the funds before issuing authorization to proceed with PE.
11. The local agency submits the completed Field Review form with SERF (Exhibit 7-I System Engineering Report Form) with the PE request to the DLAE.

In the SERF, the local agency must provide as much information as possible for each of the following ITS requirements. If any of these items are not known at this time, the Local Agency must include a commitment to address them in detail during system design.

- a) Identification of portions of the RA being implemented
 - b) Identification of stakeholders, communities and participating agencies roles and responsibilities
 - c) Requirements definitions
 - d) Analysis of alternative system configurations and technology options to meet requirements
 - e) Procurement options
 - f) Identification of applicable ITS standards and testing procedures
 - g) Procedures and resources necessary for operations and management of the system
12. The DLAE forwards the field review package including SERF to DLA Implementation with a copy to the DLA ITS Coordinator.
 13. The DLA Implementation forwards the package to FHWA.
 14. FHWA reviews the SERF for FHWA oversight determination, comments on the SERF, and sends the information back to the DLA Implementation.

FHWA oversight will consist of approval of the Systems Engineering Management Plan (SEMP). That oversight can also consist of approval of products from each step of the Systems Engineering process, or portions thereof, or merely participation in scheduled process technical review points. FHWA is also available to provide the local agencies with additional ITS technical assistance and guidance as needed.

15. The DLA Implementation relays the information to the DLAE, who relays it to the local agency.
16. Upon receipt of the Field Review package, the DLA Implementation prepares a Program Supplement, with ITS covenants added. After approval by Caltrans Local Program Accounting, the Program Supplement is transmitted directly to the local agency for signature.
17. The local agency signs the Program Supplement and returns it to DLA Implementation.

Step 3b Roadmap Step 3b –

18. Prior to component detailed design, the local agency submits the completed SEMP as well as the Systems Engineering process product(s) mentioned in Step #14 above, through the DLAE and DLA Implementation (with a copy to DLA ITS Coordinator) for FHWA's review and approval.
19. FHWA notifies the DLA Implementation that they approved the SEMP, and grants the Notice-to-Proceed (NTP) with project implementation.
20. The DLA Implementation relays the approval and NTP to the local agency thru the DLAE with a copy to the DLA ITS Coordinator.
21. The DLAE checks for environmental approval before transmitting the SEMP approval and NTP to the local agency.
22. Upon receiving final SEMP approval and NTP, the local agency may proceed with project implementation. Expenditures for such work prior to NTP are NOT eligible for reimbursement.

Construction:

23. If the ITS project includes activities defined as construction; the local agency must submit a PS&E package requesting construction authorization. The request includes the necessary federal-aid paperwork and approvals.
24. Beyond this point, normal federal-aid procedures apply for completing the project. Use Form 17-C "Final Inspection Form" of the LAPM to finalize the project.

13.5.2 Low-Risk ITS Projects

Processing Low-Risk ITS projects will follow the traditional federal-aid PE procedures (see Exhibit 13-B for detail). The SERF (Exhibit 7-I, System Engineering Report Form) must be filled out as part of the field review package. However, SERF review and approval by FHWA are **not** required.

13.5.3 Exempt Projects

Processing Exempt ITS projects will follow the traditional federal-aid PE procedures. The **SERF will not be required** as part of the field review package.

installation requires digging trenches in the ground and those trenches disturb a pedestrian facility or travel route, then that facility or travel route must be rebuilt to ADA standards. If the trench is within the roadway itself, all legal crossings and crosswalks are considered pedestrian facilities or travel routes and the portion of the roadway that is disturbed must be rebuilt to ADA standards.

- b) "Wireless" communications require antennas, which can be mounted on poles, buildings, roadside signs, or other structures. If these structures already exist and **no** pedestrian walkways are disturbed during installation or operation of these communications systems, then ADA does not require any changes to nearby walkways.

4.) Public Websites or Kiosks

ITS Integration Projects sometimes include a website, which may be accessible to the public or restricted to designated parties. If the website (or kiosk) will be available to the public (e.g. for distributing traveler information), then it must meet the requirements of Section 508 of the Rehabilitation Act of 1973 (as amended in 1998). This means that the website must include features that enable the use of "assistive technology", by people with certain types of disabilities. Section 508 is a requirement for recipients of federal funds and for federal agencies. If the kiosk or website is not intended for public use, then both the recipient and the federal agency must ensure that accessibility for the information on the technological device is available for any employees.

For more information on ADA Requirements, please see the following websites:

www.ADA.gov and www.section508.gov.

13.8 RIGHT OF WAY

Generally, new right of way is rarely needed for ITS projects. Easements may be needed for communications cabling. Occasionally, an ITS project may involve utility relocations or the purchase of right of way for construction of a traffic management center building or information kiosk. For guidance on right of way procedures, see Chapter 13, "Right of Way" of the LAPM.

13.9 PROCUREMENT / CONSTRUCTION

The federal-aid procurement regulations as set forth in 23 CFR 172, 635, 655, and 49 CFR 18, define the requirements that state and local agencies must adhere to when procuring projects with federal-aid highway funds. These procurement regulations identify possible contracting options available for designing and constructing projects including such contracts as "engineering and design related services," "construction," and "non-engineering/non-architectural." The regulations also require use of competitive contract award procedures for any project financed by federal highway funds. Use of a qualified on-call consultant may be acceptable if the list of on-call consultant(s) resulted from a competitive, qualifications-base process.

The regulations require state and local agencies to award:

- Construction contracts on the basis of competitive bidding,
- Engineering and Design services contracts on the basis of qualifications-based selection,
- Non-engineering/non-architectural contracts use state approved procurement procedures in accordance with 49 CFR 18.

The procurement approach required for construction projects (as defined by 23 USC 101 and the related FHWA regulations) does **NOT** always apply to ITS projects. Many standalone ITS projects do not meet the FHWA definition of construction.

- **ITS Construction** – If field devices and/or communications infrastructure are being physically installed in the roadway, then that work and required equipment usually meets the definition of construction. Examples are the purchase and installation of new traffic signals, new controller cabinets, vehicle detectors, and conduit for cabling. Selection of contractors under a federally funded construction contractor are selected based on lowest responsive bid, as required by 23 CFR 635.
- **ITS Engineering & Design** – The purchase and installation of **electronic** equipment (as long as it does not involve “construction” as defined above), **can** be performed as part of P.E phase under an Architecture and Engineering contract. This includes the computers and electronic equipment at a central site, and also the electronic components within the field equipment. Examples are the controller inside a signal cabinet, or the electronic tolling pricing display panels and associated electronics inserted into panel cutouts of changeable message signs already in place. Procurement for Architecture and Engineering services is based on a competitive process based on qualifications, as required by 23 CFR 172.

An agency also has the option of procuring electronic equipment as part of a construction contract (e.g. a complete changeable message sign including electronics). This might be useful when the project is primarily construction, and the electronic equipment is a minor element. However, development of new software should never be included in a “construction” contract.

The Engineering and Design Services contracting mechanism has been successfully used to retain System Engineers and System Integrators that can provide the entire spectrum of services required to implement an ITS project, such as a traffic management center. This might include the specification, procurement, configuration and installation of all hardware and software to provide the functionality required. For these types of services, the consultant selection procedures (qualifications-based) in Chapter 10 of the LAPM must be followed. Figure 13-6 depicts typical contracting arrangements for most High-Risk ITS projects.

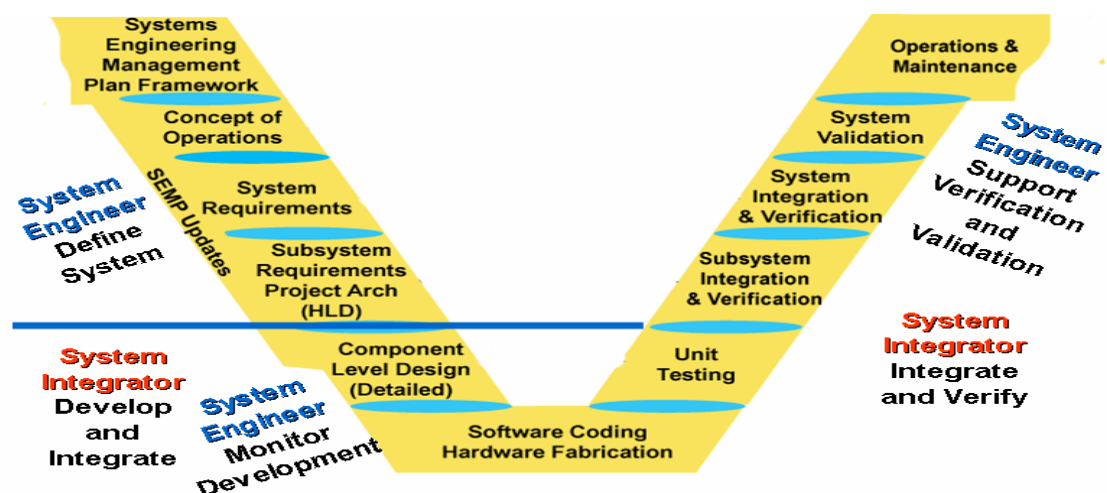


Figure 13-6: Contracting Systems Engineering Services

If an ITS project includes *minor* amounts of construction, up to approximately 10% of the cost of the project, then *flexibility is allowed to have the entire project deployed under the other phase, without a separate construction phase*. This option can be very valuable to many ITS projects.

[Back to top](#)

- LAPM, Chapter 15, Advertise and Award Project
- LAPM, Chapter 16, Administer Construction Contracts
- LAPM, Chapter 17, Project Completion

13.12 WEB SITES

USDOT ITS Websites:

- ITS Overview: https://www.its.dot.gov/factsheets/ITSJPO_overview.htm
- ITS Applications: https://www.its.dot.gov/factsheets/ITSJPO_overview.htm
- ITS Benefits: www.itsbenefits.its.dot.gov/
- ITS Costs: www.itscosts.its.dot.gov/
- ITS Lessons Learned: www.itslessons.its.dot.gov/
- ITS Deployments: www.itsdeployment.its.dot.gov/
- ITS Library: www.its.dot.gov/library.htm
- ITS Research: www.tfhr.gov/its/its.htm

ITS Architecture Resources:

- National ITS Architecture: <http://www.its.dot.gov/arch/index.htm>
- CA Statewide ITS Architecture: <http://www.dot.ca.gov/trafficops/switsa/>

Systems Engineering Resources:

- S.E. Handbook – Introduction: <https://ops.fhwa.dot.gov/publications/seitsguide/>
- S.E. Guidebook – Comprehensive “how to” guide: <https://www.fhwa.dot.gov/cadiv/segb/>

ITS Training Websites:

- ITS Prof. Capacity Building: <http://www.pcb.its.dot.gov>
- National Highway Institute: www.nhi.fhwa.dot.gov/training/brows_catalog.aspx
- (then click on topic #137 – ITS)
- UC Berkeley Tech Transfer: <https://www.techtransfer.berkeley.edu/home>
- CITE (training via Internet): <http://www.citeconsortium.org/>

Americans with Disabilities Act Websites:

- USDOJ Americans with Disabilities Act website: www.ADA.gov
- USGSA website: www.section508.gov

FHWA Federal-aid Procurement Regulations and Contracting Options Website:
<https://www.fhwa.dot.gov/cadiv/segb/>

13.13 DEFINITIONS

Architecture – See *ITS Architecture* and *National ITS Architecture (NA)* below.

Configuration Management - A process developed to control change in complex information technology based systems.

Center Subsystems - Subsystems that provide management, administrative and support functions for the transportation system. Also one of four general subsystems defined in the NA.

ITS Architecture - Defines how systems functionally operate and the interconnection of information exchanges that must take place between these systems to accomplish transportation services.

ITS Strategic Plan - A guide for long-term implementation of ITS in the state, metropolitan area or region. It normally includes identifying regional transportation needs and then defining ITS elements to be implemented over time, aimed at meeting those needs. RA is typically a core component of an ITS strategic plan.

Legacy System - Existing transportation systems, communication systems or institutional systems.

Life cycle - Denotes the strategic cycle or sequencing of a specific process.

Logical Architecture - This relates primarily to the software part of the system. It defines the thought or logic processes that perform ITS functions and the information or data flows that are shared between these processes.

Low-Risk ITS Project – An ITS project that has none of the seven risk factors identified in Section 13.2 (above) is generally considered a low-risk ITS project. (See also “*High-Risk ITS Project*.”)

Maintenance Plan - A description of configuration control and update guidelines for regional and/or project ITS architectures. The primary purpose of the maintenance plan is to maintain an architecture baseline.

Market Package – A group of ITS elements that can be combined to perform a *User Service*. A Market Package is generally made up of one or more *Equipment Packages*.

National ITS Architecture (NA)- A common established national framework for ITS interconnectivity and interoperability. It comprises the logical architecture and physical architecture that satisfy a defined set of user services. Maintained by the U.S. Department of Transportation (USDOT), under contract at: <http://itsarch.iteris.com/itsarch>.

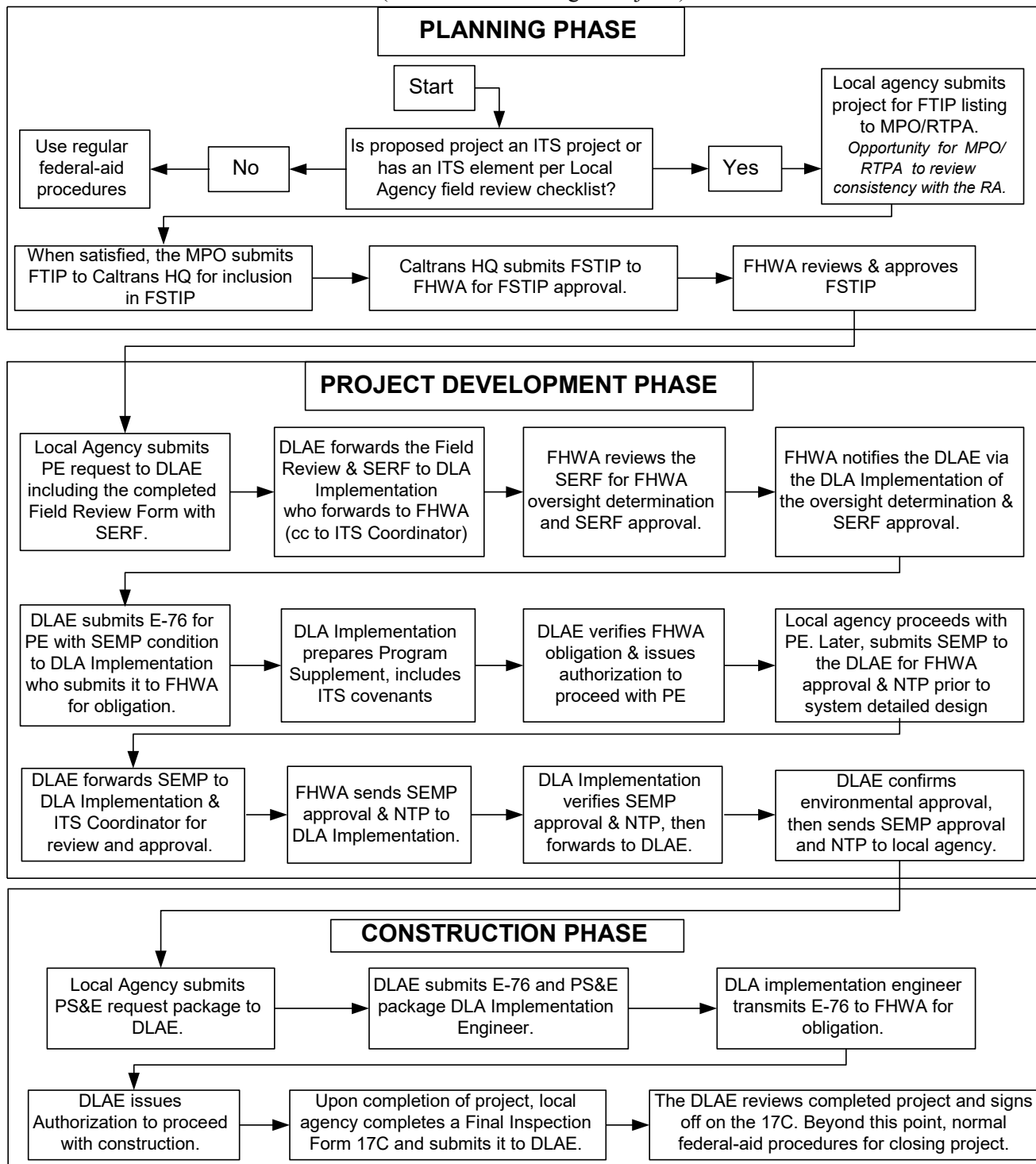
Physical Architecture - This is primarily the hardware part of the system. The part of the NA that provides a physical representation of the important ITS interfaces and major system components. The principal elements of the physical architecture are the subsystems, terminators and the communication interface between them.

Process Specification (PSpec) - The textual definition of the most detailed process identified in the logical architecture view of the NA. The PSpec includes an overview, a set of functional requirements, a complete set of inputs and outputs, and a list of user service requirements that are satisfied by the PSpec.

Project ITS Architecture (PIA)- A framework that identifies the institutional agreement and technical integration necessary to define an ITS project and its interface with other ITS projects and systems.

Protocol Communications - A set of rules for how messages are coded and transmitted between electronic devices. The equipment at each end of a data transmission must use the same protocol to successfully communicate. It is like human language that has an alphabet, vocabulary, and grammar rules used by everyone who speaks that language.

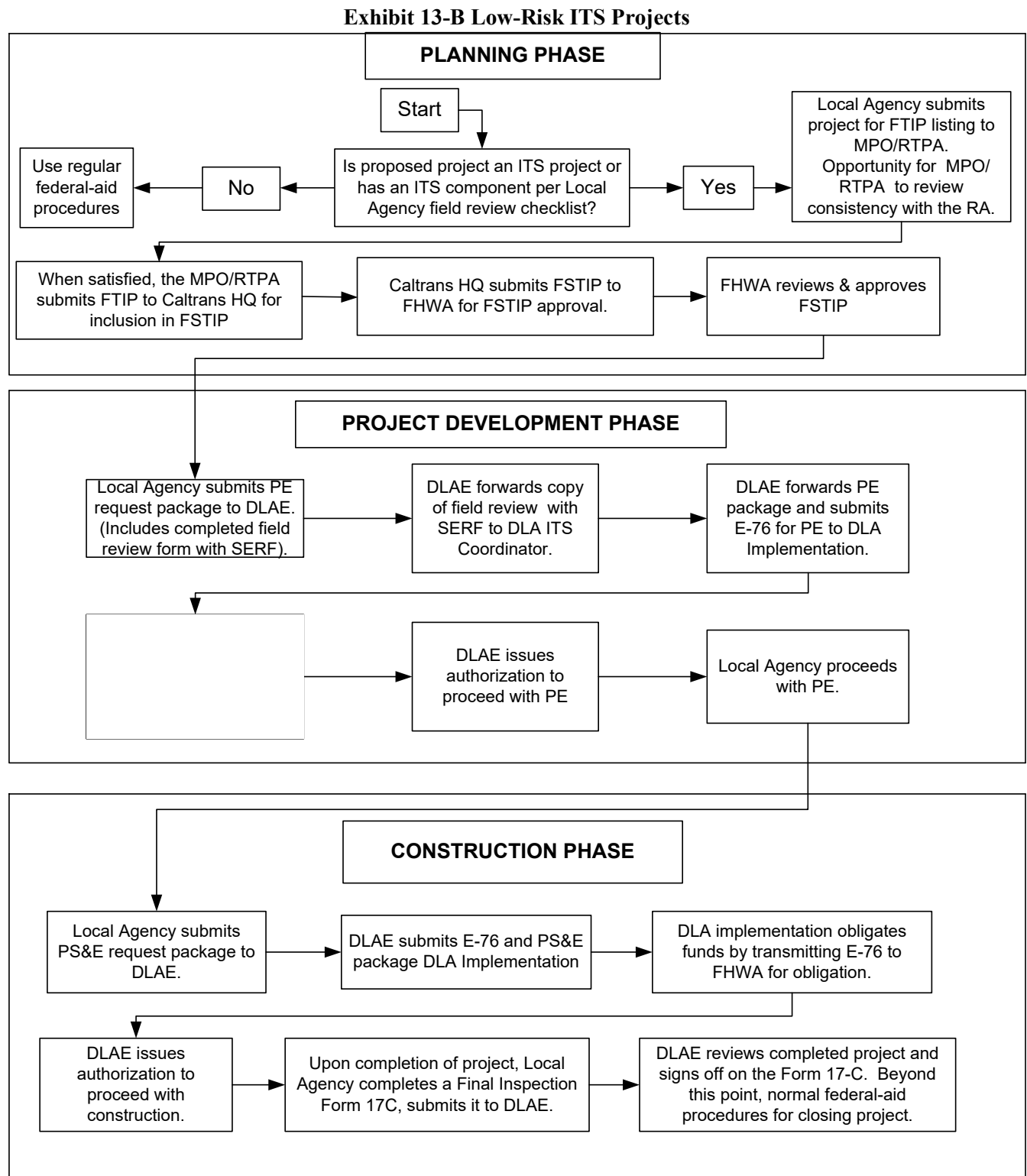
Exhibit 13-A Process Flowchart – High-Risk ITS Projects
(FHWA Full Oversight Projects)



Note:

This PE procedure requires FHWA review of the SERF, approval of the SEMP, and Notice-to-Proceed (NTP) granted. **Expenditures for system detailed design, implementation, and testing prior to NTP are not eligible for FHWA reimbursement.**

- FHWA Full Oversight for PE phases on all major ITS projects.
- FHWA Full Oversight for E-76 purposes.
- For simplicity, the right of way phase is not shown in this chart. If right of way is involved, refer to Chapter 13, "Right of Way," of the LAPM for information and procedures.
- For FHWA list of criteria for full oversight projects, refer to Section 2.4 of the LAPM.

**Note:**

- This flow chart process does not apply to the earmarked ITS Deployment Projects (QT80 projects).
- Minor ITS projects will follow the above traditional single phased PE procedures.
- No FHWA oversight for procedure shown on this flowchart (SERF review and SEMP approval not required).
- State-Authorized for E-76.
- For simplicity, the right of way phase is not shown in this chart. If right of way is involved, refer to Chapter 13, "Right of Way," of the LAPM for information and procedures.

JANUARY 1, 2019



EXECUTIVE SUMMARY

LAPG CHAPTER 22: ACTIVE TRANSPORTATION PROGRAM

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
Division of Local Assistance

A. Introduction

The Active Transportation Program (ATP) is a competitive statewide grant program created under [Senate Bill 99 \(Chapter 359\)](#) and [Assembly Bill 101 \(Chapter 354\)](#). The main purpose of this program is to encourage and increase the use of non-motorized active modes of transportation such as walking, bicycling and to promote a healthy lifestyle to name a few.

This chapter covers a broad spectrum of necessary details, guidance, and information needed by the administering agency to successfully delivery their projects. The information listed below is created to highlight key documents, dates and other pertinent information that the agency needs to be aware of. This is just a supplement and it is the full responsibility of the administering agency to understand the detailed guidance and information provided in this chapter.

B. Purpose and Objective

The intent of this executive summary is not to divert the local agency from reading [Chapter 22](#) in its entirety, but to give the agency a quick reference and to highlight key items that most agencies may not recognize due to complexities and copious information of the Local Assistance and CTC guidelines.

The main objectives of this is to:

- To summarize the documents
- To eliminate confusion
- To facilitate faster submittals of allocation requests

Chapter 22 Active Transportation Program

CTC Allocation

To request an allocation, the following shall be submitted to the DLAE (generally 8 weeks) prior to the CTC meeting requested for allocation (per the CTC Meeting Calendar).

<http://www.dot.ca.gov/hq/transprog/ctcliaison.htm>

Request for Allocation of Funds (CTC)

#	Documentation	PA&ED (E&P)	PS&E / R/W	Construction/ CE
1	LAPG Exhibit 22-N: Allocation Checklist , LAPG Exhibit 22-O: Allocation Request (For MPO/RTPA awarded projects: MPO/RTPA signatures maybe needed)	X	X	X
2	LAPG Exhibit 22-C: State Only Finance Letter	X	X	X
3	Copy of MTIP showing programmed funds	X	X	X
4	CEQA and NEPA (federally funded)		X	X
5	R/W Certification			X
6	Engineer's Plans and Detailed Estimate (Plans: Cover Sheet, Layouts, X-sections, and Striping)			X

Note:

ATP projects that are **100% State Only Funded (SOF)**

- For PS&E Allocation: CEQA is needed.
 - PS&E and R/W can be allocated at the same time.
- For CON Allocation: CEQA and Right of Way Certification (**Agency's R/W self-certification**) are needed.
 - For ATPNI – [LAPG Exhibit 22-R: NI Work plan](#) approved by HQ, **prior to allocation vote.**
- The Allocation approval is the authorization to begin work. RFA is not needed.
- Use [LAPG Exhibit 22-A](#) when submitting Award information.

ATP projects that are **Federally Funded (Partially or Fully)**

- For PS&E Allocation: Both CEQA and NEPA are needed.
 - PS&E and R/W can be allocated at the same time.
- For CON Allocation: NEPA and R/W Cert ([LAPM Exhibit 13-A](#) or [LAPM Exhibit 13-B](#)) are needed.
 - For ATPNI – [LAPG Exhibit 22-R: NI Work plan](#) approved by HQ, **prior to allocation vote.**
- Each Allocation requires a Request For Authorization (RFA) submittal in order to receive E-76 authorization.
 - Allocation and RFA can be submitted concurrently to the District.

- **Consultant Contracts:** Can be advertised prior to receiving the E-76. However, eligible work must be **after** the E-76 date in order to be eligible for federal reimbursement.
- **Construction Contracts:** Cannot be advertised prior to receiving the E-76.
- Use [LAPM Chapter 15](#) forms when submitting the Award Package information (i.e. [Exhibit 15-L](#), [Exhibit 15-G's](#), etc.)
- Use [LAPM Chapter 17](#) forms when submitting Final Report of Expenditures (i.e. [Exhibit 17-A](#), [Exhibit 17-C](#), etc.)

Timely Use of Funds Deadlines: (Click [HERE](#))

- Allocation – project components must be allocated in the year in which they are programmed.
- Award – construction contracts must be awarded within six (6) months of the construction allocation. Notify Caltrans District when construction contracts are awarded.
 - Notification is required within 60 days of contract award. Projects not awarded within four (4) months are required to be reported to the CTC on a monthly basis.

Request for Time Extension

- Use [LAPG Exhibit 22-B: Request for Time Extension](#).

ATP Project Reporting: (Click [HERE](#))

- Progress Reporting
 - Progress reports are due quarterly through June 2019.

Due Date to Caltrans	Timeframe to Cover	Presented to Commission
September 5, 2018	March 1, 2018 – August 31, 2018	October 17-18, 2018
October 8, 2018	July 1, 2018 – September 30, 2018	December 5-6, 2018
January 17, 2019	October 1, 2018 – December 31, 2018	March 2019
April 18, 2019	January 1, 2019 – March 31, 2019	June 2019
August 22, 2019	April 1, 2019 – June 30, 2019	October 2019

- Progress reports will be semi-annual beginning July 2019

Due Date to Caltrans	Timeframe to Cover	Presented to Commission
January 15, 2020	July – December 2019	March 2020
August 15, 2020	January – June 2020	October 2020

- Use [LAPG Exhibit 22-S: ATP Project Progress Report](#)
- Completion Report
 - Due within six months of construction contract acceptance or the project becoming operable (open to the public), whichever comes sooner.

- The Final Delivery Report (link below) is currently under construction to serve as both the Completion Report and the Final Delivery Report.
- Final Delivery Report
 - Due within 180 days of conclusion of all remaining project activities beyond acceptance of the construction contract.
 - Use [*LAPG Exhibit 22-T: ATP Final Project Report*](#)

Project Amendments

- The 2018 CTC guidelines allow for Scope and Programming amendments.

Baseline Agreements

- Sets the foundation for the Commission's in-progress and follow-up accountability, identifying the responsible agency and the expected project benefits, scope, schedule and cost.
- For the ATP funded projects, the BA is required when the project has either a total project cost of \$25 million or greater, or a total programmed amount of \$10 million or greater.
- If a project meeting the BA criteria is adopted into the SB 1 program and has CEQA clearance, the BA must be executed within four months of the adoption.
- If a SB1 project, meeting the BA criteria, does not yet have CEQA clearance, the BA is due six months after the CEQA document is completed (e.g. filing of NOE or NOD).
- If a project with CEQA clearance is adopted into the SB1 program and meets the requirement for a BA, the project BA must be executed within four months of the project program adoption date.
- If a SB 1 project with a completed CEQA document receives an increase in funding, causing the project to exceed the BA requirement threshold, the project must have an executed BA within 60 days of when the change is identified.
- If a BA is required, but not executed within the required timeframe, the CTC may delete the project from the STIP.
- Projects requiring a BA may not allocate phases beyond PA&ED until the BA has been executed.

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EXHIBITS

Exhibit	Description	Page Number
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Normally, additional lead-time is needed to prepare the Request for Funding Allocation and prepare an agenda item for CTC action. Therefore, the funding allocation request may precede the Request for Authorization to Proceed. However, if all required information is available, both requests should be submitted at the same time.

Note: When beginning work ahead of allocation (see Section 23.3.2 of this chapter), the Request for Authorization to Proceed Package must be approved by the FHWA prior to the start of reimbursable work or advertisement of a construction contract on federally-funded projects, regardless of the allocation request date.

MASTER AGREEMENTS

The Administering Agency-State Master Agreements for Federal-aid Projects (see Chapter 4, “Agreements,” Exhibit 4-C of the LAPM) defines the general terms and conditions which must be met by the local agency to receive federal-aid and state funds. Caltrans currently has Master Agreements with most agencies with candidate projects in the STIP or FTIPs. Projects implemented by agencies with no recent experience using federal-aid funds administered by the FHWA (from the STIP or other sources) will require a new Federal Master Agreement before the local agency may start reimbursable work.

A separate Master Agreement for State Funded Projects has been developed for state-only funded projects. Caltrans will initiate a new state-only Master Agreement when local agencies submit their first request for funding allocation for projects with no federal funding.

THE COMMISSION FUNDING ALLOCATION

All appropriate submittals noted in the sections above must be complete before Caltrans will forward the request with the funding recommendation to the CTC for approval. Caltrans may request a copy of the PSR, or equivalent, to resolve issues regarding the project description and/or scope of the project. Incomplete submittals will be returned for correction.

FEDERAL AUTHORIZATION TO PROCEED (E-76)

For those local agencies that have a Master Agreement for Federal-aid Projects in place, Caltrans will submit the local agency Request for Authorization to Proceed (E-76) to the FHWA upon notification that the CTC has approved the allocation request. For agencies without a Master Agreement in place, an agreement will be initiated upon receipt of the initial Request for Authorization to Proceed

Note: For federally-funded projects programmed in the STIP where work will be started ahead of allocation pursuant to the guidelines in Section 23.3 of this chapter, the local agency will need to have an approved Request for Authorization to Proceed (E-76) prior to beginning reimbursable work or advertising the construction contract. The federal funds must be programmed in the approved FTIP prior to federal authorization at the time of Advance Construction (AC). The project component will be authorized using AC procedures, but federal funds will not be obligated until after allocation.

Note: Submitting the Allocation Request for Authorization to District concurrently is encouraged.

PROCEDURES FOR SIMULTANEOUS SUBMITTAL OF ALLOCATION/ AUTHORIZATION REQUESTSLocal Agency

For any given STIP or ATP project component for which federal funds are programmed, when requesting a CTC allocation of these funds, local agencies will now have the option to simultaneously submit:

- Complete and accurate package for CTC Allocation to District Local Assistance Engineer (DLAE).
- Complete and accurate package for federal Request for Authorization (RFA) to DLAE.

District Local Assistance Engineer (DLAE)

- DLAE reviews both Allocation and Authorization requests for completeness and accuracy.
- If both Allocation and Authorization requests (including the E-76) are complete and accurate, the DLAE may submit them both to HQ Office of Implementation simultaneously within CTC's published Preparation Schedule, and with a note on the E-76 FADS FUNDSUM Screen Status Comment field: "On Hold for CTC Allocation".
- If only the Allocation request is complete and accurate, the DLAE submits it to HQ Office of Implementation within the CTC's published Preparation Schedule.
- When the Authorization request (including the E-76) is complete and accurate, the DLAE submits it to HQ Office of Implementation and notes in FADS FUNDSUM Screen Status Comment field: "On Hold for CTC Allocation".

HQ DLA Office of Implementation

- Upon receipt of the Allocation request, HQ Office of Implementation will review and process it as usual and according to the CTC's published Preparation Schedule.
- Upon receipt of the RFA (E-76), HQ Office of Implementation will review and process it as usual, yet will transmit it to FHWA only after the CTC allocates the funds for the project and posts the Actions Taken Report on its website. HQ Office of Implementation will monitor these E-76s as the corresponding allocation requests make their way through the allocation process.
- If CTC does not allocate the funds for the project, HQ Office of Implementation will return the E-76 to the DLAE. The DLAE will resubmit the E-76 back to HQ Office of Implementation at a future date coinciding with CTC allocation.

Optional SB184 Simultaneous Allocation/Authorization Procedure

The SB 184 procedure described in LAPG Ch. 23 and Section 64A of the CTC Adopted STIP Guidelines gives a regional or local agency the option of starting work on a STIP project in advance of the CTC Allocation. For agencies choosing to use this procedure the following items apply:

- The SB184 process, as described in the STIP Guidelines, must be followed.
- Funds must be programmed and authorized as Advanced Construction (AC). If not programmed as AC in the FTIP, agency must complete that step first before the RFA can be processed.

- Agency simultaneously submits requests as described above.
- The regional or local agency must submit a project allocation request that includes notice of the agency's intent to expend its own funds for the project prior to the allocation approval.
- STIP guidelines apply.

START OF REIMBURSABLE WORK

Generally, the earliest date for which work may be reimbursed is the date project funds are allocated by the CTC unless the local agency has previously submitted a project allocation request that includes a notice of the agency's intent to expend its own funds for the project prior to the allocation approval. In that case, if the agency has complied with all other applicable statutes and regulations, the CTC's allocation will specify the date of earliest reimbursement based on the original notification date. Caltrans will issue an allocation letter that states the effective date for the start of reimbursement for the particular project component. If federal funds are included in the allocation, the earliest date of reimbursement will not be earlier than the date of approval of the Federal Authorization to Proceed (E-76). For each reimbursable work phase, an E-76 is required for all federal-aid projects, including those projects where work begins prior to STIP fund allocation (see Section 23.3.2 of this chapter).

Note: Beginning work prior to allocation does not protect funds subject to the timely use of funds rules described in Section 23.2.1 of this chapter. Work performed prior to the adoption of the project or project component in the STIP is not eligible for reimbursement.

Execution of the program supplement agreement will be deemed a contractual obligation by the state for the payment of the state share of the project for eligible costs incurred after the effective date. Actual reimbursement for the eligible cost of work cannot occur in advance of entering into the program supplement agreement and, for federal projects, execution of the E-76 document.

23.4.2 REIMBURSEMENT

After the CTC allocates the funds and the start of reimbursable work has been authorized with an effective date, the following actions must be completed before the local agency can actually be reimbursed for the work:

- Appropriation of funds in the Budget Act
- Project specific agreement(s) is/are prepared and executed
- Local agency submits progress invoices

A summary of these procedures is listed below.

APPROPRIATION OF FUNDS IN THE BUDGET ACT

Funds for the Regional Improvement Program must be appropriated by the Legislature in the Budget Act before they may be encumbered.

PROJECT AGREEMENT

As a general policy, the State will use Federal funds only on State highway system projects. Projects off the State highway system should be proposed under the assumption that they will be funded with State and local funds only. This will simplify the process for local agencies. This policy is subject to change if State revenues decline, or new Federal programs or funding policies are set up in the FAST Act of 2015. Exceptions to this general policy will primarily apply to large projects where Federal funds could conserve a significant amount of State resources. The State will attempt to identify such exceptions at the time of program adoption, because current Federal procedures will have to be followed throughout the project process.

C. ELIGIBLE COSTS

As a general rule, all costs attributable to a transportation project are eligible for funding. These include direct costs for engineering, right-of-way, and construction, and indirect agency overhead costs related to the project. Agency costs for program administration are not eligible. State reimbursement for certain kinds of costs is limited, as laid out below in Chapter IV.

All direct costs are generally eligible:

- Project Development: Eligible costs include all preliminary work up to contract award related to the project, including but not limited to environmental studies, preliminary surveys and reports, laboratory work, soil investigations, preparation of plans, designs, specification, advertising for bids and awarding contract as well as Project Development Oversight, Project Development Contract Administration and Right of Way staff support costs;
- Right of Way: Costs associated with real property acquisition including relocation assistance payments, property demolition and clearance, certification, utility relocation costs and right of way staff support, are eligible for reimbursement. Any costs associated with acquisition and disposal of excess land and any right of way acquired prior to environmental clearance or prior to the project's adoption into the State program are not reimbursable;
- Construction Engineering: Eligible costs include actual inspection and supervision of construction work, construction staking, laboratory and field testing, preparation and processing of field reports and records, estimates, final reports, and allowable expenses of employees/consultants engaged in such activities; and
- Construction: Eligible costs include all work performed through construction contracts and contract change orders, as well as State or local agency furnished materials and equipment.