

LOCAL PROGRAMS PROCEDURES

LPP 21-01

California Department of Transportation
Division of Local Assistance
Office of Guidance and Oversight



LOCAL PROGRAMS PROCEDURES 21-01

The scope of LPP 21-01 includes the formal incorporation of the following Office Bulletins (OB) into the noted chapters of the Local Assistance Procedures Manual (LAPM) and Local Assistance Program Guidelines (LAPG).

OB Number	OB Title	Affected Chapters
20-03	At-Risk Preliminary Engineering	LAPM 3
21-01	Revision to LAPM 20	LAPM 20
21-02	LAPG 6: Highway Bridge Program Update	LAPG 6
21-03	LAPM 4: Agreements Update	LAPM 4
21-04	LAPG 25: State Programs for Local Agency Projects	LAPG 25
21-05	Adopting LAPM Chapter 10	LAPM 10
21-06	Safe Harbor Indirect Cost Rate	LAPM 10
21-07	LAPG 9: Local HSIP Update	LAPG 9

Other technical updates including clarifications or corrections have been incorporated into the following Chapters/Exhibits:

LAPM Chapter 2	Roles & Responsibilities	
LAPM Chapter 3	Project Authorization	LAPM 3-A
LAPM Chapter 5	Invoicing	
LAPM Chapter 9	Civil Rights & DBE	
LAPM Chapter 10	Consultant Selection	Exhibit 10-R
LAPM Chapter 12	PS&E	Exhibits 12-D, 12-G
LAPM Chapter 16	Administer Construction Contracts	Pre-Construction Review Checklist
LAPM Chapter 19	Oversight & Process Reviews	
LAPG Chapter 18	Optional Federal Exchange & State Match Programs	

Significant additions are marked with blue text accompanied by a blue margin line on the right margin and are noted in the summary tables preceding each Chapter. Deletions to existing text are marked with red strikethroughs accompanied by a red margin line on the left margin. Minor typographical and grammatical changes were made throughout but are not documented in the summary table. The attached Chapters/Exhibits will only consist of the pages with impacted sections/paragraphs.

Effective Date: January 2022

Approved: _____

Dee Lam, Division Chief
Division of Local Assistance

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LAPM C.2 ROLES & RESPONSIBILITIES

LAPM C.2 Roles & Responsibilities

Section / Exhibit	Description of Changes
2.10 FHWA Responsibilities	Applicable text moved from LAPM Chapter 19, Section 19.3. to a new subsection: Program Reviews in Section 2.10.
2.11 Caltrans Responsibilities	Original text in Oversight subsection replaced with text from LAPM Chapter 19, Section 19.1: Introduction.
2.12 City, County and other LPA Responsibilities	Text moved from LAPM Chapter 19, Section 19.2. to a new subsection: Local Agency Records and Documentation in Section 2.12.

Program Reviews

FHWA (California Division) verifies Caltrans and LPA compliance with federal regulations via annual program reviews for Federal-aid projects and programs. The California Division uses the following reviews in their verification which typically result in observations, findings, and corrective actions that need to be implemented by the Division of Local Assistance:

Compliance Assessment Program Annual Reviews

Based upon random selection of LPAs or LPA federal-aid projects, FHWA performs reviews of the federal-aid program, and LPA federal-aid projects to establish a confidence level that verifies LPAs and their federal-aid projects fully comply with federal and state laws and regulations.

Financial Integrity Review and Evaluation (FIRE)

Improper Payment Reviews, Inactive Obligation Reviews, Financial Management Reviews and other reviews may be performed to fulfill, in part, the requirements of the FIRE Program established via FHWA Order 4560.1C. Performance of these reviews and other oversight activities are necessary to support FHWA's annual certification of the adequacy of the internal and financial controls in place to support the agency's financial statements. Improper Payment Reviews are one of the tools that can be used by FHWA in support of the FIRE.

Other Program Reviews

FHWA identifies high risk areas to the Federal-aid Program through annual risk assessments and on an ongoing basis based on information gleaned through day-to-day interactions with Caltrans and LPAs. Based on this information, FHWA performs program reviews of high-risk program areas. These reviews typically involve an assessment of policies and procedures, and their program and project implementation by Caltrans and LPAs. The goal of these reviews is to identify program improvements to mitigate program risks and increase compliance.

2.11 Caltrans Responsibilities

Caltrans is responsible and accountable to the FHWA for administering the successful implementation of federal-aid programs and projects in accordance with laws, regulations, and policies that govern the federal-aid program. Caltrans also administers the implementation of state funded programs and projects for the California Transportation Commission and State Legislature.

These responsibilities are divided into three areas: Policy and Procedures, Program Management, and Project Implementation.

Policy and Procedures

Caltrans establishes uniform policies and procedures to assist the LPAs in meeting the program requirements for their projects. Caltrans, in collaboration with FHWA, interprets federal and state laws, rules and regulations, and provides guidance in the form of manuals, guidebooks, handbooks, reference materials and service, and training to assist the agencies in planning, designing, constructing, and maintaining their transportation systems.

Caltrans policy and procedure development are achieved in coordination and consultation with the FHWA, representatives of LPAs, MPOs, RTPAs, other affected agencies, and organizations.

- 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](#).

The individual chapters covering these topics should be consulted for details concerning the responsibilities. Where the FHWA has not delegated final approval, Caltrans monitors LPA activities, reviews or prepares documents, and makes recommendations to FHWA.

Caltrans also provides assistance to LPAs in interpreting the regulations, manuals and guidelines as they apply to specific project conditions. The District Local Assistance Offices and Headquarters DLA personnel are available to aid the LPA through the required process and procedural steps.

Where expertise is not otherwise available, the LPA may also request assistance from Caltrans technical specialists in solving special technical problems. Environmental issues, engineering services, right of way concerns, hazardous wastes, labor compliance, equal employment opportunity, Title VI, and Disadvantage Business Enterprise are among these areas where assistance is available. The use of this expertise must be requested early and be well coordinated to assure that Caltrans limited resources and personnel will be available when needed.

Oversight

~~As outlined in LAPM Chapter 19: Oversight and Process Reviews, Caltrans and FHWA will use the process review and other oversight methods to determine if local agencies are in compliance with all federal aid laws, regulations, and procedures. The oversight findings will be used to evaluate all aspects (including Title 23 requirements) of the local agencies federal-aid program and to improve local assistance procedures.~~

For purposes of this chapter, Oversight is defined as the act of ensuring that the federal highway program is delivered in accordance with applicable laws, regulations, and policies. Oversight is the compliance or verification component of the joint Federal Highway Administration (FHWA)/Caltrans stewardship activities. Narrowly focused, oversight activities ensure that the implementation of the FAHP is done in accordance with the applicable laws, regulations, and policies. Broadly focused, oversight activities enable both agencies (the FHWA and Caltrans) to ensure the effective delivery and operation of the transportation system envisioned in governing laws and regulations. Oversight activities include process reviews, program evaluation, program management activities, and project involvement activities. Oversight procedures apply to all federal-aid projects.

Project oversight is used to evaluate all aspects (which primarily emanate from the LAPM) of the Caltrans oversight and management of LPA federal-aid and state funded projects, and to identify areas and procedures needing improvement. One major goal of Caltrans oversight is to demonstrate that requirements imposed by the federal and state governments are being met and that correct procedures are being followed and performed by LPAs administering federal-

aid projects. A second major goal of Caltrans oversight is to maintain a continual process of updating and improving local assistance procedures which will lead to a more efficient and effective federal-aid as well as state funded local assistance program.

Maintenance Reviews

Annually, Caltrans reviews project maintenance for selected agencies using federal-aid funds so that every agency is covered during a four-year cycle. [LAPM Chapter 18: Maintenance](#) describes these maintenance review procedures in detail.

2.12 City, County and Other Local Public Agency Responsibilities

The cities, counties, joint power authorities, transit agencies and other public agencies have the primary responsibility for implementing the specific projects which carry out the programs described in this manual. Nonprofit entities may also qualify for this. For the purpose of this manual, these agencies/entities are commonly called LPAs.

Project Implementation

The LPA is responsible for the conception, planning, programming, environmental investigation, design, right of way, construction and maintenance of the projects on their local transportation system. It must ensure that its staff members, consultants, and contractors comply with the applicable state and federal laws, regulations and procedures in developing, and constructing its projects.

If an LPA has never implemented a federal-aid or state funded project, or does so infrequently, it should review the processes with the DLAE prior to beginning any implementation activity. It may wish to seek the administrative services of another agency, which is more familiar with the process and procedure details.

Caltrans exercises its FHWA delegated authority by further delegating federal authority to LPAs to the greatest extent possible for those federal-aid projects that are located off of the State Highway System. The LPA is delegated decision-making authority and responsibility for most design and construction-related activities of federal-aid projects. These include:

- Getting the project into the FSTIP
- Preparing the Request for Authorization for each project phase
- Determining Project DBE contract goals
- For ITS projects and other projects with ITS elements, make a preliminary classification of High-Risk, Low-Risk, or Exempt
- Selecting consultant and approving consultant contracts
- Approving local design standards for projects off the NHS
- Approving design exceptions for projects on or off the NHS
- Preparing and certifying PS&E (Caltrans must approve the LPA PS&E procedures for most NHS projects and FHWA for Projects of Division Interest)
- Qualifying/selecting right of way consultants
- Right of Way acquisitions and relocation
- Preparing and approving Quality Assurance Programs

Data Universal Numbering System (DUNS) Number

In compliance with the Transparency Act reporting requirements and 2 CFR 25.100, LPAs must acquire a DUNS Number. DUNS Number assignment is required for all federal-aid recipients and can be requested at no charge at: <http://fedgov.dnb.com/webform>.

Local Public Agency Records and Documentation

Upon request, LPAs must make all project documentation and backup records available for inspection by Caltrans and FHWA reviewing personnel. Use of a uniform project record-keeping system, together with diligent maintenance of the system, greatly facilitates a process review and positive findings. Good records of all project related activities clearly demonstrate to all concerned that project supervision and control were maintained on the project. As stated in the Master Agreement, project records are to be retained by LPAs for a period of three years from state payment of the final voucher.

2.13 California Transportation Commission (CTC)

The California Transportation Commission (CTC) has programming and fund allocation responsibility for some federal-aid and state funded programs used for local assistance projects. It is the LPA's responsibility to submit a request for allocation on time per the CTC preparation schedule. Refer to <https://dot.ca.gov/programs/transportation-programming/office-of-ctc-liaison-octl>.

Programming

The CTC currently selects federal Active Transportation Program projects for inclusion in the STIP.

Fund Allocation

When a project is ready for implementation, the CTC must vote to allocate funding to the programs. This action is commonly called the second vote.

2.14 Metropolitan Planning Organizations, Regional Transportation Planning Agencies and County Transportation Commissions

These organizations have broad transportation planning duties and responsibility for programming most projects using federal-aid or state allocations from the programs described in this manual.

These organizations are responsible for providing each LPA with their application rules, procedures and timelines. They are also responsible for providing the LPA with results of the decisions about its projects and the agency, CTC, and federal approval dates.

The LPA must work closely with these organizations to ensure that its projects are placed in the appropriate TIP with the correct funds in the proper years. Federal funds and many state funds cannot be obtained without this programming step.

[Caltrans Project Development Procedures Manual \(PDPM\), Chapter 4: Programming](#) discusses the programming process in more detail.

LAPM C.3 PROJECT AUTHORIZATION

LAPM C.3 Project Authorization

Section / Exhibit	Description of Changes
3.1 General	OB #20-03: At-Risk PE text additions.
3.3 Preliminary Engineering	OB #20-03: At-Risk PE text addition including new subsection.
3.3 Project End Date	Updated language for PED invoicing.
LAPM 3-A	At-Risk PE changes.

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, [excluding At-Risk Preliminary Engineering \(At-Risk PE\) described in Section 3.3](#), 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.

Terms and Definitions

Advance Construction (AC) – Advance Construction is a project authorization technique that allows the Federal Highway Administration to authorize a project without obligating Federal funds. FHWA is required to fully obligate the federal share of a federal-aid project at the time it executes a project agreement. Under an AC authorization, FHWA approves a project as being eligible for Federal funding but does not commit to funding the project. As such, the project must meet all Federal requirements except for the requirement to obligate funds. Projects authorized under Advance Construction procedures will not receive federal reimbursement until Federal funds become available and are obligated on a subsequent sequence.

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.

the DLAE by June 30 of each year for the following FFY (see [LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprise](#)).

Each LPA must provide the Caltrans DLAE with a completed [Exhibit 9-C: Local Agency ADA Annual Certification Form](#) by June 30 of each year for the following federal fiscal year (October 1 to September 30). The form must be received prior to submitting a Request for Authorization to proceed with a federal-aid project.

If a Cooperative Agreement is necessary for the project, it should be executed prior to requesting authorization to proceed (see [PDPM Chapter 16: Cooperative Agreements](#)).

3.3 Request for Authorization

The project sponsor identified in the FTIP/FSTIP to receive the federal funds is responsible for requesting the federal Authorization to Proceed. The project sponsor must prepare and submit a Request for Authorization to Proceed package to the appropriate Caltrans District Local Assistance Office. The request package should include, as a minimum, the agency's Request for Authorization to Proceed (see [LAPM 3-A: Project Authorization/Adjustment Request](#) and all required support documentations).

If the Request for Authorization package is complete and all federal and state requirements have been satisfied, a minimum of three (3) weeks processing time should be allowed to receive federal Authorization to Proceed for Delegated projects. More time will be required for Projects of Division Interest projects. Additional time may also be required near the beginning or end of the FFY.

If the Request for Authorization to Proceed package is incomplete, unacceptable or missing information that cannot be quickly obtained by FAX, telephone, e-mail, or other source, the package will be returned to the LPA for resubmittal.

Preliminary Engineering

Eligible preliminary engineering (PE) work includes location and environmental studies, NEPA approval ([LAPM Chapter 6: Environmental Procedures](#)), preliminary utility investigations and engineering work associated with utility relocation, final design (Plans, Specifications and Estimates, PS&E) and other related work including the cost of advertising leading to physical construction of a project. Preliminary R/W activities that may be considered eligible and authorized as part of PE include pre-acquisition activities such as estimating, title search and preliminary property map preparation and studies, as needed for NEPA compliance (see [LAPM Chapter 13: Right of Way](#)).

After a construction contract has been awarded, support activities should typically be included under Construction Engineering rather than the Preliminary Engineering phase.

Only work performed after the date of federal authorization is eligible for federal reimbursement unless [At-Risk PE is utilized](#). The preliminary studies portion of PE may be authorized prior to an optional or mandatory field review (see [LAPM Chapter 7](#)). This allows for the reimbursement of selecting consultants and other specialists who may be needed for field review.

At-Risk Preliminary Engineering

Section 1440 of the FAST Act (Section 1440) authorizes FHWA to reimburse recipients and subrecipients for preliminary engineering (PE) costs incurred prior to project authorization, assuming the costs are for otherwise eligible activities on eligible projects, and the project and phase are included in a federally-approved Federal Statewide Transportation Improvement Program (FSTIP) document or amendment. If eligible, and once federal authorization is received, incurred costs can be reimbursed back to the effective date of the FAST Act, October 1, 2015 or the federal approval date of the FTIP/FSTIP, whichever occurs later.

Section 1440 does not waive any additional Federal-Aid Highway Program requirements. Projects must still meet all applicable cost eligibility conditions, and all conformity requirements of the Clean Air Act must be met. Section 1440 does not waive any federal A&E requirements and approvals (as documented in Chapter 10 of the Local Assistance Procedure Manual), such as for Consultants in a Management Support Role (CMSR), nor does it release LPAs from establishing DBE goals and requirements and evaluating GFE's.

However, until authorized and obligated, these funds are still considered "At-Risk". There is no guarantee of Federal funding for any pre-authorized/pre-obligated PE work. Recipients and subrecipients invoking Section 1440 authority assume all risk.

Reimbursements of funds can begin after funds are authorized and obligated by FHWA via the E-76. To ensure timely processing of invoices, LPAs will need to include the Effective PE Reimbursement Date on all invoices (LAPM 5-A) for reimbursement of incurred PE costs on all projects invoking Section 1440.

Policy

- Except for projects with federal funds that require allocation by the California Transportation Commission (CTC) (e.g., Active Transportation Program, Trade Corridor Enhancement Program, and State Transportation Improvement Program funds), LPAs may begin reimbursable PE work prior to receiving federal authorization for such work, assuming the project and phase are included in a federally-approved FSTIP document or amendment prior to incurring costs. Programming projects in the FSTIP or starting reimbursed work prior to authorization does not necessarily constitute eligibility of such projects for federal aid reimbursement.
- For projects with federal funding that require CTC allocation, only costs incurred after CTC allocation are eligible for reimbursement.
- Full funding for a subsequent phase of the project (final design, right-of-way acquisition, or construction) must be included in an approved FSTIP document or amendment before the NEPA document can be signed. Also, all project phases must be included in the fiscally constrained Regional/Metropolitan Transportation Plan before a NEPA document can be signed. If the "No Build" alternative is selected, the project may still be eligible for reimbursement under Section 1440.

Provided by LPA

- To invoke the flexibilities allowed under Section 1440 when submitting a request for authorization for the PE phase (LAPM 3-A), the LPA must provide both the original and current FSTIP document listing or amendment as supporting documents. As an alternative, only the current FSTIP listing may be provided if it references the date of the original FSTIP listing. However, in such instances, the original listing must be provided if

requested by Caltrans to meet programming requirements or if there are any questions or concerns for funding authorizations. The original FSTIP federal approval date documenting inclusion of the PE phase will be the “Effective PE Reimbursement Date”, whereby all otherwise eligible costs incurred on or after this Effective PE Reimbursement Date will be reimbursable. The original FSTIP listing does not need to specify federal funds to begin reimbursable work; however, federal funds will need to be included in the current FSTIP when an agency submits their authorization request.

Preliminary Engineering Phases Over Ten Years

[23 CFR 630.112\(c\)\(2\)](#), as well as [USC Title 23 102\(b\)](#), 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 LPA 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](#).
- For any project in the PE phase that is within two years of reaching the 10-year deadline, the LPA 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.
- LPAs 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 Public 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.

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 on the [LAPM Forms webpage](#).

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](#).

Project End Date

The Period of Performance is defined as the date when FHWA authorizes the project agreement to begin incurring costs for the identified phase and scope of work. The E-76 authorization date is the start date for the period of performance for the applicable work phase, such as PE, RW, Construction, State Planning and Research (SP&R), and "Other." The end of the Period of Performance is when the agency has reached the estimated Project End Date of the work phase.

The Project End Date (PED) is the date that an agency must estimate 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. [Invoicing needs to be submitted within 120 calendar days of the PED for FHWA to consider it eligible for reimbursement](#). The PED is established by adding twelve (12) months to the LPA'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 LPA must also revise the PED. Revisions to the PED require Caltrans concurrence and FHWA approval. If the PED is revised after the authorized PED has past, any costs incurred between the expiration of the authorized PED and the revised PED are ineligible for reimbursement.

Establishing the PED

Effective immediately, LPAs are required to estimate the PED and include it at the time of their authorization request. The PED is required to be shown on the [LAPM 3-A: Project Authorization/Adjustment Request](#) and submitted with every Request for Authorization package for the project. When preparing the E-76, the DLAE will enter this date into the Project End Date field in the Caltrans Federal Aid Data System (FADS). After Caltrans concurrence and FHWA approval, Caltrans will notify the LPA of the established PED along with the project authorization.

LAPM 3-A

Functional Classification	<input type="checkbox"/> Located on SHS	CRS Map No.	ITS Risk	Project Oversight	Estimated Phase Completion Date	PED
Authorization	<input type="checkbox"/> PE <input type="checkbox"/> R/W <input type="checkbox"/> CON <input type="checkbox"/> CE <input type="checkbox"/> NI			<input type="checkbox"/> Advance Construction	<input type="checkbox"/> CTC Allocation Required	Federal Amount Requested 0.00
Adjustment	<input type="checkbox"/> PE <input type="checkbox"/> R/W <input type="checkbox"/> CON <input type="checkbox"/> CE <input type="checkbox"/> NI					
Invoking Section 1440 of the FAST ACT? (aka At-Risk PE)? <input type="checkbox"/> No <input type="checkbox"/> Yes						

PROJECT FUNDING

Invoking Section 1440 of the FAST ACT? <input checked="" type="checkbox"/> Yes	First Date PE was Approved in the FSTIP	Estimate of Cost Under Section 1440	<input type="checkbox"/> No	See proposal below
PROJECT FUNDING Previously Authorized Phase(s) <input type="checkbox"/> PE <input type="checkbox"/> R/W <input type="checkbox"/> CON <input type="checkbox"/> CE <input type="checkbox"/> NI				

Estimate of Cost Under Section 1440

Change this wording to "Estimate of cost incurred under Section 1440 (costs incurred before Federal authorization)"

Invoking Section 1440 of the FAST ACT? <input type="checkbox"/> Yes <input type="checkbox"/> No	First Date PE was Approved in the FSTIP	Estimate of Cost Under Section 1440	<input type="checkbox"/> No	Estimated End Date At-Risk PE
Invoking Section 1440 of the FAST ACT? <input checked="" type="checkbox"/> Yes	First Date PE was Approved in the FSTIP	Estimate of Cost Under Section 1440	<input type="checkbox"/> No	 If the Agency selects "Yes", change the "No" to "Estimated End Date At Risk PE" with the pull down calendar function.

LAPM C.5 INVOICING

LAPM C.5 Invoicing

Section / Exhibit	Description of Changes
5.2 Federal-Aid Project Authorization	OB #20-03: At-Risk PE cross-references added.
5.2 State-only Funded Project Allocation	New subsection added to address reimbursement for state-only funded projects.
5.5 General Guidelines	Added clarification for submittal of invoices.

Note: Costs incurred prior to the authorization date are not eligible for FHWA reimbursement except for [At-Risk Preliminary Engineering](#), Emergency Opening and Preliminary Engineering work that is part of the Emergency Relief program; see [LAPM Chapter 3 \(Section 3.3: At-Risk Preliminary Engineering\)](#) and [LAPG Chapter 11: Emergency Relief Program](#) for additional details.

For additional information about phases of work and the project authorization process refer to [LAPM Chapter 3](#).

State-only Funded Project Allocation

For projects funded with state-only funds, reimbursable work begins the day of fund allocation. For more information on allocation procedures go to [LAPG Chapter 25: State Programs for LPA projects](#).

Invoice Submittal

The LPA may submit monthly invoices for reimbursement of participating costs (costs eligible for state and/or federal reimbursement). Amounts claimed must reflect the cost of completed work, which has been paid for. The LPA must claim all reimbursable work within 180 days of project completion or prior to the expiration date of the project agreement, whichever comes first. Per the Master Agreement, an invoice must be submitted at least every six months to avoid being classified as inactive.

Towards the end of the state fiscal year (June 30), it is very important for LPAs to submit invoices timely for all incurred project costs so that accrued expenditures are properly identified on Caltrans financial statements.

Each fiscal year, the Division of Local Assistance (DLA) will notify LPAs regarding projects funded from lapsing appropriations (funds that will expire/not be available for spending June 30 of that fiscal year). They will be notified of the deadline for submitting invoices for these projects.

Award Package

The LPA must submit a complete Award Package to the DLAE within 60 days of the award of the construction contract and prior to the LPA's first invoice for construction capital costs. The DLAE will forward a copy of the Award Package to DLA and [Exhibit 15-L: Local Agency Contract Award Checklist](#) to CLPA for processing.

If the DLAE does not receive a copy of the Award Package with the first invoice for construction capital costs, the invoice will be returned to the LPA unpaid. No award package is required if the LPA utilizes only its own work forces (force account); however, a Public Interest Finding (Exhibit 12-F) approved by the DLAE must be included with the first invoice. Note: an Award Package is not required prior to Construction Engineering reimbursement.

The Award Package for Federal-Aid funded construction contracts must consist of the documents outlined in Award Package; see [LAPM Chapter 15: Advertise and Award Project \(Section 15.7: Award Package\)](#).

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

The Award Package for state-only funded construction contracts must consist of the completed Award Information for STIP Projects (see [LAPG 25: State Programs for Local Agency Projects](#)).

Caltrans also requires a voided check or a savings deposit slip for the checking or savings account, into which the EFT payments will be electronically deposited, to be mailed to Caltrans along with the Enrollment Form. The voided check or savings deposit slip will aid in verifying the bank account and routing transit numbers.

After the Enrollment Form is completely filled out, mail it along with the voided check or deposit slip to:

Department of Transportation
Division of Accounting - MS 33
P.O. Box 168043
Sacramento, CA 95816-8043
Attn: Payee Data Records Unit

Do not mail the Enrollment Form to Local Program Accounting

Caltrans will process the EFT Enrollment packet and work with the LPA's financial institution to establish the EFT payment processing of LPA invoices. During the initial set up period (up to 30 days), Caltrans will regularly perform pre-note tests to verify that all financial routing and transit numbers are accurate while continuing processing payments of the LPA invoices the usual way. Once the EFT information has been verified, CLPA will begin making all payments via the EFT payment process.

For additional information about the EFT program, please visit the [Caltrans EFT website](#).

5.5 Invoice Guidelines, Format, and Checklist

The LAPM 5-A: Local Agency Invoice replaces all previous invoice templates and is to be used for all reimbursements (with the exception of PPM funds \$300k or less which can be invoiced upfront with a single lump sum payment). It includes the invoice, billing summary, invoice checklist, and instructions. CLPA no longer accepts invoices created by LPAs.

General Guidelines

1. The LPA may submit invoices once a month for reimbursement, but must submit an invoice at minimum every six months to avoid inactivity on a project.
2. The first time that an LPA invoices Caltrans, they must fill out a Payee Data Record Form, STD 204. This Payee Data Record Form is required in lieu of IRS Form W-9 when doing business with the State of California. This form is also used to set up the vendor's account in the Caltrans financial system.
3. Progress and final invoices are submitted directly to the DLAE, and should include, an original invoice and two copies (see Table 5-3). **Submit invoices by April 1st to avoid funds lapsing on the June 30th reversion date and to allow sufficient time for CLPA and SCO year-end closing procedures.**
4. Final invoices must include the Final Report of Expenditures (FROE) package. The DLAE verifies the project completion and approves payment before forwarding the Final Report of Expenditures package, including the original and two copies of the final invoice to CLPA. More information regarding final invoice procedures are described in [Section 5.6: Final Report of Expenditures & Final Invoice](#).

LAPM C.9 CIVIL RIGHTS & DBE

LAPM C.9 Civil Rights & DBE

Section / Exhibit	Description of Changes
9.7 Setting the DBE Contract Goal	The second paragraph has been removed due to conflicting information.
9.7 DBE Participation Not Counted	Minor clarification added as follows: "Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward the state-wide DBE goal ."

9.7 DBE Participation on the Contract

Participation Opportunities

The LPA should structure its contracts and cost estimates by task to provide opportunities for DBE participation. Participation by DBEs is possible during the Preliminary Engineering, Environmental, Final Design, Right of Way, and Construction phases of the project, and includes work as lead consultants, prime contractors, sub-consultants, subcontractors, suppliers, vendors and truckers.

DBE Contract Goals

All federal-aid contracts that have subcontracting opportunities must have a DBE goal set. This includes, but is not limited to construction, consultant services such as project specific Architectural & Engineering (A&E), and master on-call A&E contracts. A DBE contract goal is a percentage of the total contract amount that is expected to be performed by certified DBE firms. The DBE contract goal will vary depending on the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract.

The contract goal may be zero in situations such as extremely limited subcontracting opportunities, the lack of certified DBEs available in the district for the work to be performed, or other reasons. The LPA will need to keep documentation in the project file when a zero percent DBE contract goal is deemed appropriate.

Some contracts, such as Emergency Opening, Sole-source, Nonprofit do not require a DBE goal. Work performed through Force Account also does not need a DBE goal. In these cases, there is no contract goal (different from zero percent goal).

Setting the DBE Contract Goal

When setting a DBE goal, the LPA may use contract goals only on those federal-aid contracts that have subcontracting possibilities. The goal for a specific contract may be higher or lower than the percentage level of the statewide overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by the State's overall goal, the LPA must set contract goals, and these individual contract goals will cumulatively result in meeting any portion of the state's overall goal. The actual DBE participation for each of the LPA's contracts contributes to the calculation used to determine if the statewide goal has been met.

~~Caltrans approval of each contract goal is not necessarily required. However, Caltrans may review and approve or disapprove any contract goal the local agency establishes. The local agency's contract goals must provide for participation by all certified DBEs and must not be subdivided into group specific goals.~~

DBE contract goals are established to encourage more participation of DBEs for federal-aid transportation contracts. The bullets below provide a summary guidance of how to set the DBE contract goal. For a detailed set of instructions and a template example, please refer to [Exhibit 9-D: DBE Contract Goal Methodology](#).

- The project analysis starts with finalizing the cost estimate and determining potential sub-contractable items of work in the Exhibit 9-D: DBE Contract Goal Methodology template.

Materials and Supplies

Count expenditures with DBEs for materials or supplies toward DBE participation as provided in the following:

- If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE participation.

Note: For purposes of counting DBE participation, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

- If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE participation.

Note: For purposes of counting DBE participation, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- To be a regular dealer, the firm must be an established business that regularly engages, as its principal business and under its own name in the purchase and sale or lease of the products in question.

- A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not considered regular dealers for purposes of counting DBE participation. With respect to materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees or transportation charges for the delivery of materials or supplies required on a job site toward DBE participation, provided the LPA determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. However, do not count any portion of the cost of the materials and supplies themselves toward DBE participation.

DBE Participation Not Counted

If a firm is not currently certified as a DBE at the time of the execution of the contract, do not count the firm's participation, except as provided for under Decertification of this section.

Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified [toward the state-wide DBE goal](#). Do not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or the LPA's overall participation until the amount being counted toward the participation has been paid to the DBE.

LAPM C.10 CONSULTANT SELECTION

LAPM C.10 Consultant Selection

Section / Exhibit	Description of Changes
10.1.1 Introduction	Added clarification language.
10.1.2 Title VI Assurances	New subsection added.
10.1.2 Estimated Cost of Consultant Work	Added clarification language.
10.1.2 Determine Type of Contract	Language moved from section 10.1.7
10.1.2 Determine Method of Payment	Added clarification language.
10.1.2 Cost-Plus-Fixed Fee	Added clarification language.
10.1.3 Safe Harbor Rate	OB #21-06: New subsection for Safe Harbor Indirect Cost Rate language added.
10.1.3 Financial Review Performed Prior to Contract Execution	Added requirement to match Exhibit 10-A.
10.1.5 Prepare RFP	Title VI bullet added.
10.1.5 Issue/Publish RFP	Subsection title deleted and combined with previous subsection: Advertise for Consultants.
10.1.5 Negotiate Contract with Top-Ranked Consultant	Language clarified related to submission of Exhibit 10-C.
10.1.6 Negotiate Contract with Top-Ranked Consultant	Language clarified related to submission of Exhibit 10-C.

LAPM C.10 CONSULTANT SELECTION

10.1.7 Combined RFQ/RFP	Selections moved to Section 10.1.2.
10.1.8 Execute Contract and Issue Notice to Proceed to Consultant	Added clarification language.
10.1.8 Invoicing (or Progress Payments)	Additional bullet added.
10.1.8 Contract Amendments	Added clarification language.
10.1.10 Program Management	OB #21-05: requirements for adoption of LAPM Chapter 10 listed.
10.2.1 General	Added clarification language.
10.2.3 Minimum Audit Requirements	Added clarification language.
10.3 Example of Determining Non-A&E	Added LRSP to list.
10.4 A&E Oversight Program and Process Review	Applicable content from Chapter 19, Section 19.7 moved to LAPM Chapter 10.
10.5 Sanctions	New section added.
Exhibit 10-R ARTICLE VIII RETENTION OF RECORD/AUDITS	Clarification added for record retention requirement of real property per 2 CFR 200.334.
Exhibit 10-R ARTICLE XVIII DBE PARTICIPATION	Changes made to the use of the CUCP and NAICS to mirror the requirements on Exhibit 12-G.
Exhibit 10-R ARTICLE XXXII TITLE VI ASSURANCES	New Article inserted for Title VI Assurances Appendices A - E as required by U.S. Department of Transportation Order No. 1050.2A and must be included on all federally funded contracts.

10.1.1 General

Introduction

A Local Public Agency (LPA) may engage consultants to perform architectural, engineering, and related services to develop a federal-aid funded project. LPAs requesting federal funds to reimburse A&E Consultants must follow the selection and contracting procedures detailed in Section 10.1 of this chapter. LPAs using local funds to procure an A&E Consultant on a federal-aid funded project and will not seek federal reimbursement for the consultant cost may choose not to follow the selection and contracting procedures detailed in Section 10.1 of this chapter. LPAs using local funds to procure a consultant in a management support role are required to obtain FHWA approval, see Section 10.1.9: Retaining a Consultant as an Agency Engineer or in Management Support Role of this chapter.

Definition of an Architectural and Engineering Consultant

23 CFR 172 and Government Code 4252 further defines A&E services as 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 LPAs to award federally funded engineering and design related contracts based on fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 CFR 172), at a fair and reasonable price (48 CFR 31.201-3).

Cost proposals submitted to the LPA must be sealed and must not be included as a criterion for rating such consultants. After ranking, cost negotiations ~~may~~ will begin with the most qualified consultant and only their cost proposal will be opened. Should negotiations fail or result in a price that the LPA does not consider fair and reasonable, negotiations must be formally terminated, and the LPA 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 LPA 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 LPA.

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:

Assessment (EA)/Finding of No Significant Impact (FONSI) and Chapter 32: Environmental Impact Statement (EIS). Final design must 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.

Title VI Assurances

Title VI Assurances Appendices A and E must be included in each consultant contract. Include Title VI Assurances Appendices B, C, and D if applicable. The consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract. Include Title VI Assurances Appendices B, C, and D if applicable. Refer to Exhibit 10-R: A&E Boilerplate Agreement Language, Article XXXII Title VI Assurances.

Non-Discrimination Clause

The Non-Discrimination Clause ([Exhibit 10-R: A&E Boilerplate Agreement Language](#), Article XVI Non-Discrimination Clause and 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 an LPA 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 must be~~ prepared ~~in advance of requesting a~~ prior to opening the cost proposal from the top-ranked consultant, so the LPA'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 LPA'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 LPA 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 and maximum total contract dollar amount. 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 must 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 must be~~ stated in the solicitation. The maximum dollar amount is the aggregate of the on-call contracts anticipated to be awarded. ~~Setting maximum amount on each on-call contract under a multiple on-call solicitation does not meet the intent of 23 CFR172.~~ 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).~~

There are two options on how task orders must be awarded under multiple on-call contracts for the same type of service under the same solicitation:

1. Through an additional qualifications-based selection procedure also known as mini-RFP.

- Solicit task order to the multiple on-call consultants on the master on-call contracts
 - Master on-call contracts are contracts awarded to on-call consultants at the initial RFQ/RFP procurement process.
 - Solicitation may be informal, e.g. email, letter, etc.; documentation is required.
 - Evaluation criteria must be included in the solicitation. 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 criteria can include:
 - i. availability of personnel,
 - ii. staff capabilities,
 - iii. DBE (10% or less of overall score); the overall DBE goal was established at the master on-call contract,
 - iv. completion of time,
 - v. experience of consultant
 - vi. specialized expertise, and past performance.
- Evaluate and rank proposals and select from the multiple on-call contracted consultants
 - Recommend at least three panel members to evaluate and rank
 - Evaluate based on criteria in mini-RFP solicitation
- Negotiate and award to the on-call contracted consultant
 - 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.
- If only one proposal is received or there is an emergency, a Non-Competitive process must be justified, and an Exhibit 12-F must be documented and signed by the DLAE
- Awarding task order to the multiple on-call consultants on a rotational basis does not meet the intent of the qualifications-based selection
- Exhibit 10-G must be used to track percentage of DBE per task order

2. Regional basis where each on-call consultant is contracted to a designated area.

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 LPA 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.~~ Task order work performed after the master on-call contract has expired will result in the costs being ineligible for federal or state reimbursement.
- 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 LPA 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 must 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 must send written notification to Consultant and each of the other consultants entering into the CM Services Task Order Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Agency must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.”

Determining the Project Schedule

The LPA 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. The following four methods are permitted under 23 CFR 172.9(b) depending on the scope of services to be performed:

- 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 must 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. **Markups are not allowed on any of the four methods of payment.**

The cost plus a percentage of cost and percentage of construction cost methods of payment must not be used. Both of these methods are explicitly prohibited by 23 CFR 172.9(b).

Cost-Plus-Fixed Fee

The consultant is reimbursed for 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 must 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. [See the DLA A&E website for a useful tool on Profit/Fee Determination.](#)

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 must 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 by the LPA before they incur work on the contract or the costs can be questioned or disallowed. LPAs are not required to update the Exhibit 10-C: A&E Consultant Contract Database [when new key employees and/or classification are added to a contract](#). For more details, reference [Section 10.1.8. Completing the Project](#).

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 a [specific](#) 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 must 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. Other direct costs regardless of amount are to be listed on the cost proposal.

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 must 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

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 must be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal must 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/subconsultant name change
- New participating subconsultant's ICR

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 must 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 172 and 48 CFR 31.

Generally, whenever LPAs, consultants and/or contractors are unable to provide requested documentation, it must 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.

Safe Harbor Rate

Developing ICRs annually can place a significant burden on some small or new and emerging A&E consulting firms that lack financial sophistication to develop an ICR, as well as on other established A&E consulting firms that may not have previous experience with federally funded contracts for which an ICR would have been developed in compliance with Federal cost principles 48 CFR 31. This may create a barrier for otherwise eligible and qualified firms to compete for federally funded contracts.

To help alleviate and remove potential barriers, the Division of Local Assistance (DLA) has adopted Caltrans Division of Procurement and Contract's (DPAC) Safe Harbor Rate (SHR) process and rates which took into account LPAs' data. The SHR information and rates can be found at the following DLA A&E website: <https://dot.ca.gov/programs/local-assistance/guidance-and-oversight/consultant-selection-procurement>. To request information regarding the SHR methodology, email the DLA A&E branch at aeoversight@dot.ca.gov. Eligible A&E consultant firms can choose to use the DLA SHR rate on new A&E contracts using federal-aid highway funds executed by LPAs in the State of California.

Use and application of the SHR by eligible firms provides reasonable assurance of consultant compliance with the Federal cost principles per 23 CFR 172.11(c)(2). A&E consulting firms approved to use the established SHR will have their accounting system evaluated for capabilities of accumulating and tracking direct labor for applying the SHR, as well as for billing other direct costs by contract, segregating indirect costs, etc.

Use of the SHR is voluntary on behalf of the A&E consulting firm and LPAs. LPAs have the discretion to determine certification of eligibility based on requirements shown on the following SHR certification form: [Consultant Firm Certification of Eligibility and Certification of Financial Management System](#).

A&E consultant firms (prime and/or sub consultants) that have not had an ICR previously accepted by a cognizant agency may elect and request to use the SHR in a contract by submitting the completed SHR certification form, [Consultant Firm Certification of Eligibility and Certification of Financial Management System](#), including the Questionnaire for Evaluating Consultant Firm's Financial Management System section, and any other documents as needed. This requirement is in addition to the A&E Consultant Audit and Review Process requirements described in this chapter.

It is the LPA's responsibility to:

- Collect and screen all requests to use the safe harbor indirect cost rate. See SHR certification form, [Consultant Firm Certification of Eligibility and Certification of Financial Management System](#), including the Questionnaire for Evaluating Consultant Firm's Financial Management System section.
- Submit all SHR documents to the Independent Office of Audits & Investigations (IOAI) as part of the A&E Consultant Financial Document Review Request (Exhibit 10-A) package. The IOAI email address is: Conformance.Review@dot.ca.gov.

Requests to use the safe harbor indirect cost rate must be accepted/approved by IOAI before contracts are executed.

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 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 must 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 Part 172, and 48 CFR, Chapter 1, Part 31;
- Perform an audit to determine if the ICR was prepared in accordance with 23 CFR Part 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. LPAs must 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. LPAs 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](#). 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 LPA contracts using pass-through Caltrans funding. LPAs 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 **equal to or** 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 an LPA 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 Public Agencies' Responsibilities

LPAs 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. LPAs are responsible for forwarding these documents to IOAI for review. LPAs 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, LPAs are responsible for ensuring the

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 10.1.3: 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 200.318(k) and 2 CFR 172.5(c)(18).
- [Title VI of the Civil Rights Act of 1964 – disadvantage business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.](#)

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 must 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-O1: Consultant Proposal DBE Commitment](#);
- References.

Financial Management and Accounting System Requirements

The LPA must ensure that consultant contract solicitation and advertising documents (RFPs) clearly specify that contracts must not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR 16.301-3, 2 CFR 200, and 48 CFR 31. The LPA 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 must 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, Public Purchase, or posting the RFP on the LPA's or other widely used websites are all acceptable methods of solicitation.

To document website postings, the LPA should retain copies of screen shots displaying the posted begin/end dates.

Issue/Publish RFP

~~The LPA must publish the RFP online and also issue the RFP to all consultants responding to newspaper advertisement.~~ The LPA must keep a record of all consultants that have downloaded RFP online 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.

- 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 LPA. The LPA 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 LPA must review contract to ensure that all federal and state requirements have been met (see A&E Consultant Procurement Checklist: <https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/consultant-selection-procurement> for sample template) 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, or after contract award but no later than the first invoice, the LPA must submit a completed Exhibit 10-C for all new federal funded A&E consultant contracts using the database at <https://dla.dot.ca.gov/fmi/webd/Exhibit%2010-C> (please use Firefox or Chrome if not supported by your browser). **Submission of Exhibit 10-C to the Exhibit 10-C database is not required for non-A&E consultant contracts.**

If there are any changes requiring an amendment to the contract after submittal of Exhibit 10-C, refer to Section 10.1.8: Contract Amendments. ~~the LPA must submit an updated Exhibit 10-C to https://dla.dot.ca.gov/fmi/webd. Submission of Exhibit 10-C to Caltrans HQ 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 LPA standards that will be used in the contract.

Participation by a Caltrans district representative is at the option of the LPA and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the LPA of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

LPA 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

- 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 LPA. 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 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 LPA must review contract to ensure that all federal and state requirements have been met (see A&E Consultant Procurement Checklist at <https://dot.ca.gov/programs/local-assistance/guidance-and-oversight/consultant-selection-procurement>), and receive Caltrans IOAI's Financial Review acceptance letter, if applicable.

Prior to contract award, or after contract award but no later than the first invoice, the LPA must submit a completed Exhibit 10-C for all new federal funded A&E consultant contracts using the database at <https://dla.dot.ca.gov/fmi/webd/Exhibit%2010-C> (please use Firefox or Chrome if not supported by your browser).

If there are any changes to the contract after submittal of Exhibit 10-C, refer to Section 10.1.8: Contract Amendments. ~~the LPA must submit an updated Exhibit 10-C to https://dla.dot.ca.gov/fmi/webd. Submission of Exhibit 10-C to Caltrans HQ 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 two-step 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. The two-step method leads to an executed project specific contract.

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 (see [Section 10.1.2 Determine Type of Contract](#)). 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 through 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.~~

LPA may also use the Two-Step RFQ/RFP method to:

1. Develop and maintain a pre-qualified file/list of consultant firms by specific work categories or areas of expertise. This list includes all consultants that meet the minimum published pass/fail requirements. The pre-qualified list can be updated annually or at least every two years and must be maintained by the agency. This list has not gone through the evaluation process.
2. Create a short list of evaluated and ranked consultants that leads to executed contracts

~~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 LPA 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

- 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 1200 and 2 CFR 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 must provide for LPA reviews at appropriate stages during performance of the work, to determine if any changes or other actions are warranted.

The contract must provide that the consultant and subconsultants must 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 LPA authorized representatives; and copies thereof must 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 LPA and must 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 **on-call** contracts must have a begin and end date. **All executed project specific or multiphase contracts must have a begin date and should have an end date prior to the Project End Date. Work performed after the Project End Date is not eligible for reimbursement; see LAPM Chapter 3.** LPA 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 must 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 LPA 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.

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 Commitment](#)
- Copy of issued task order and Exhibit 10-O2 for the task order for on-call contracts.

DLAE must confirm that the LPA has submitted copies of [Exhibit 10-K: Consultant Annual Certification of Indirect Costs and Financial Management System](#) (for Prime and Subconsultants) to Caltrans IOAI and agency has submitted [Exhibit 10-C: Consultant Contract Database](#) to Caltrans.

The LPA 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 must 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](#)).

There is no prescribed format for contract amendments. They may take the form of letter-type agreements meeting the legal requirements of the LPA, 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 by formal amendment. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement. Task orders are not considered an amendment and therefore not appropriate to extend the terms of the contract.

All contract amendments must 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 LPA 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 must 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 must 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 LPA 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 LPA

funding. [Section 10.1.3: A&E Consultant Audit and Review Process](#) of this chapter must apply to the entire contract and must be completed prior to execution of the contract amendment. For contracts greater than or equal to \$150,000, submit an Exhibit 10-A to IOAI for all amendments on consultant/subconsultant's name change, amending an ICR, or adding new subconsultant's ICR. ICRs that have not been accepted by IOAI are not eligible for federal or state reimbursement. For contracts with original amounts under \$150,000 but subsequently became greater than or equal to \$150,000 after amendment, IOAI Financial Document Review is not required. If there are any changes to the contract after submittal of Exhibit 10-C, the LPA must submit an updated Exhibit 10-C to <https://dla.dot.ca.gov/fmi/webd/Exhibit%2010-C> prior to the first invoice after the contract has been amended. Submission of Exhibit 10-C to Caltrans HQ is not required for non-A&E consultant contracts. All amendments must incorporate any current requirements of the federal regulations including the federal fiscal provisions and submit Exhibit 10-C to the [Exhibit 10-C: A&E Consultant Contract Database](#) prior to the first invoice after the contract has been amended (please use Firefox or Chrome if not supported by your browser).

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 LPA.

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 200). These records must 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 200.333).

For audit purposes, project records and documentation must 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](#), [Exhibit 10-O2: Consultant Contract DBE Commitment](#)), [Exhibit 10-G: Individual A&E Task Order DBE Tracking Sheet](#), [Exhibit 17-F: Final Report – Utilization of DBE and First-Tier Subcontractors](#) or [Exhibit 17-F1: Final Report-Utilization of Disadvantaged Business Enterprise \(DBE\) for On-Call Contracts](#), and [Exhibit 17-O: DBE Certification Status Change](#).
- Solicitation and advertisement records;
- Identification of selection committee members;
- Record of receiving proposals, statement of qualifications;

and responsibilities of the full-time employee of the LPA in charge of the project and the consultant's construction engineering staff.

If a technical inspection consultant is to provide professional assistance to the LPA, a formal consultant contract must be executed which follows this chapter's requirements. The contract must 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 LPA.

10.1.10 Program Management

According to 23 CFR 172.5, LPAs are required to adopt written policies and procedures prescribed by Caltrans. [As such](#), the LPA must adopt Caltrans Local Assistance Chapter 10: Consultant Selection, [which contain the A&E policies and procedures](#).

To meet this requirement, LPAs are required to email and provide one of the following documents to the DLA Office of Guidance and Oversight (OGO) at aeoversight@dot.ca.gov:

1. A Board Resolution showing that the LPA is adopting Caltrans LAPM Chapter 10; OR
2. An official letter signed by the LPA's Public Works Director or equivalent manager addressed to the DLA OGO Office Chief, stating that the agency is adopting Caltrans LAPM Chapter 10

The DLA A&E [website](#) includes an example of the adoption [resolution](#) and [letter](#). These examples are for reference only; the appropriate language to be used is determined by the individual agency.

LPAs 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.

10.2.1 General

LPAs 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 LPA must use good engineering judgment and best practices to document their processes and procedures when procuring A&E contracts utilizing qualifications based selections.

LPAs using local funds to procure an A&E Consultant on a state-only funded project and will not seek state reimbursement for consultant cost may choose not to follow the selection and contracting procedures detailed in Section 10.2 of this chapter.

All consultants must comply with 48 CFR 31: Contract Cost Principles and Procedures. Also, consultants and LPAs must comply with 2 CFR 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).

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 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 [Section 10.1.9 Miscellaneous Considerations: Retaining a Consultant as an Agency Engineer or in a Management Support Role](#).

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 [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.

K. Exhibit 10-C: A&E Consultant Contract Database

Exhibit 10-C: A&E Consultant Contract Database must be completed at <https://dla.dot.ca.gov/fmi/webd> (please use Firefox or Chrome if not supported by your browser) ~~prior to contract award, or after contract award but no later than the first invoice~~ prior to contract award, or after contract award but no later than the first invoice for all new state-only funded A&E consultant contracts.

If there are any changes requiring an amendment to the contract after submittal of Exhibit 10-C, the LPA must submit an updated Exhibit 10-C to <https://dla.dot.ca.gov/fmi/webd/Exhibit%2010-C> prior to the first invoice after the contract has been amended. Submission of Exhibit 10-C to Caltrans HQ is not required for non-A&E consultant contracts

10.3 NON-A&E CONTRACTS

Scope

This section covers the procurement requirements for the services that are not included in [Section 10.1 Federally Funded A&E Contracts](#) and [Section 10.2 State-Only Funded A&E Contracts](#). 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 LPAs 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.

LPA must designate one person within the LPA as a contract manager.
(PCC 10348.5)

LPAs using local funds to procure non-A&E Consultants on a federal-aid funded or state-only funded project and will not seek federal or state reimbursement for consultant cost may choose not to follow the selection and contracting procedures detailed in Section 10.3 of this chapter.

Determining Non-A&E

After identifying that there is a need for consulting services, the LPA must 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 LPA 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

- Local Roadway Safety Plan (LRSP) associated with Highway Safety Improvement Program (HSIP)-funded projects

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: 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](#).

10.4 A&E OVERSIGHT PROGRAM AND PROCESS REVIEW

General

The A&E Oversight Branch is responsible for the oversight of consultant contracts procured by LPAs complying with federal regulations 23 CFR 172 and 23 USC 112, and state regulations California Government Code 4525.

For locally administered federal-aid highway projects, A&E consultant contract oversight reviews will be performed by Caltrans' Local Assistance A&E Oversight Engineers (A&EOEs). DLAE staff should participate in the reviews.

Type of Reviews

The purpose of A&E consultant contract oversight reviews is to verify LPA compliance with federal and state consultant contract administration requirements. A risk-based approach has been identified by the A&E branch to aid LPAs with compliance that includes requiring agencies to complete and submit [Exhibit 10-C](#) prior to contract award, or after contract award but no later than the first invoice. The objective is to create a database documenting all consultant contracts and to perform process reviews on a sample of contracts for the annual performance measures report.

Although the risk-based approach is the submittal of Exhibit 10-C via the database, a process review may be conducted on projects for reporting purposes and to determine accuracy of Exhibit 10-C information.

Exhibit 10-C Review

The purpose of the Exhibit 10-C database is to provide oversight and guidance to an LPA regarding consultant contract administration on a federal or state funded project prior to the award of the contract. The database includes items considered critical for compliance with federal and state regulations.

Subsequent process reviews may be performed on selected state and/or federal projects requiring a greater degree of oversight if deemed necessary for agencies with a noncompliance history.

The following factors may be used when selecting projects for subsequent review:

- LPAs with identified deficiencies during an Incurred Cost Audit
- Projects administered by agencies with previous sanctions/findings
- Lack of experienced/trained LPA personnel
- Request by LPA or DLAE for additional assistance

During subsequent process reviews, the A&EOE will meet with the LPA's consultant contract administration team and discuss project record documentation requirements using the Exhibit 10-C database. The timing of these types of reviews is targeted for pre-advertisement, pre-negotiations, and pre-award of the consultant contract. This will allow for any changes to take place prior to execution or termination of negotiations for re-advertising. The A&EOE will also explain new policies or procedures, discuss available training, and highlight common problem areas and the means to avoid them.

Review Findings and Deficiencies

Caltrans will not be involved in most project level reviews and approval activities. Instead, the Process Review as outlined in this section is Caltrans' primary method of ensuring that federal and state requirements are met. During a Process Review of an LPA's project files, errors and/or deficiencies that may violate federal or state law or regulation could be found. If that happens, federal and/or state funds may be withdrawn from a project depending on the severity and circumstance of the deficiency, as well as the possibility of jeopardizing future federal and/or state funding opportunities for the agency's other projects.

It is important to note that the formal process review is not the only method of discovering project deficiencies. Errors or deficiencies are discovered occasionally as part of the normal routine of processing project submittals by DLAEs or DLA Area Engineers.

Review findings from any subsequent reviews will be forwarded to the LPA and the DLAE within five business days. Deficiencies identified during a review may require development of a corrective action plan by the LPA in consultation with the District within 30 calendar days of receipt of the deficiency notification, unless the agency disagrees with the deficiencies identified and appeals the decision as discussed below.

A list of common A&E consultant procurement-related deficiencies is found at the [A&E website](#). These examples, not all-inclusive, should assist LPAs with knowing common deficiencies found in the past and the possible ramifications for those errors and deficiencies. The key to avoiding possible sanctions is to follow the procedures outlined in this chapter and other appropriate policies and guidelines, and if you have any questions, to consult your DLAE.

Corrective action plans, if required, will identify actions the LPA will take to address each deficiency noted. Corrective actions may include the following: Re-advertising, modifications of LPA policies and procedures, and participation in training to address systemic related deficiencies. Project specific issues may require additional measures to remedy deficiencies to ensure compliance with federal and state requirements and ensure reimbursement eligibility. Corrective action plans must also include timelines for each action to be implemented. Failure to provide and implement corrective actions may result in sanctions or federal/state ineligibility notices against the project or LPA, and could prevent federal or state participation in all or a portion of the project.

In the event the LPA disagrees with the deficiencies identified, the LPA will have 30 calendar days from receipt of the deficiency notification to submit their written request for appeal in accordance with the DLA's [Local Agency Dispute Resolution Process](#). If the appeal is denied, the LPA will have 30 calendar days from receipt of the decision to submit their corrective action plan.

The Dispute Resolution Process provides a means for the LPA to appeal a sanction that they feel has been imposed upon them unfairly or they feel the penalty is too harsh for the error or deficiency. This appeal process is not limited to just the appeal of sanctions; it can be used by LPAs when they disagree with the decision, they receive from a district office.

10.5 SANCTIONS

Depending on the severity and circumstances of the deficiencies which may require sanctioning by Caltrans, the DLA or DLAE may impose one of the following sanctions:

- Freeze on all future programming of federal or state funds until corrective action is implemented
- Freeze progress payments for a federal-aid project until the project's deficiency is corrected
- Percentage of federal or state funds for a project withdrawn
- All federal or state funds withdrawn from a project

The DLAE will be responsible for notifying the LPA of sanctions imposed. Whether or not sanctions are imposed against an LPA, the LPA will be expected to develop a corrective action plan and implement it to correct the deficiencies. LPAs will be given adequate time to develop and implement their action plan. Failure to correct the deficiencies in a timely manner will be grounds for imposing additional sanctions

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, EXCEPT TITLE VI APPENDICES A-E MUST BE PHYSICALLY INCLUDED, UNMODIFIED, IN THE EXECUTED CONTRACT FOR ALL FEDERAL-AID PROJECTS, REFER TO ARTICLE XXXII. 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 is to be used for state-only funded contracts as well.

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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 and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. 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 the Independent Office of Audits and Investigations (IOAI). IOAI, 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

- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the LOCAL AGENCY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

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 (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by FHWA.

ARTICLE XVIII DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. CONSULTANT, subrecipient (LOCAL AGENCY), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, The LOCAL AGENCY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify **at date of proposal opening** that the DBE firm is certified as a DBE by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes or work code applicable to the type of work the firm will perform on the contract. Additionally, the CONSULTANT is responsible to document the **verification** record by printing out the CUCP data for each DBE firm. A

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 PROMPT PAYMENT FROM THE LOCAL AGENCY TO CONSULTANT

The LOCAL AGENCY shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the LOCAL AGENCY fails to pay promptly, the LOCAL AGENCY shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the LOCAL AGENCY shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by the LOCAL AGENCY as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

ARTICLE XXXII TITLE VI ASSURANCES**APPENDICES A - E of the TITLE VI ASSURANCES**

The [U.S. Department of Transportation Order No.1050.2A](#) requires all federal-aid Department of Transportation contracts between an agency and a consultant to contain Appendices A and E of the Title VI Assurances. Include Appendices B, C, and D if applicable as shown below. In addition, the consultant must include the Title VI Assurances Appendices A and E, and if applicable Appendices B, C, and D in all subcontracts to perform work under the contract.

The clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a LOCAL AGENCY.

The clauses set forth in Appendix C and Appendix D of this Assurance shall be included as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the LOCAL AGENCY with other parties:

- a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
- b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

APPENDIX A

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

- a. Compliance with Regulations: CONSULTANT 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.
- b. Nondiscrimination: CONSULTANT, 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. CONSULTANT 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.
- c. Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT 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 CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: CONSULTANT 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 recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - i. withholding of payments to CONSULTANT under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
 - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: CONSULTANT 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.

CONSULTANT shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction]. (*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does

hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations(as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and reposess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the recipient pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest ,and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and reposess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

APPENDIX E

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

LAPM C.12 PS&E

LAPM C.12 PS&E

Section / Exhibit	Description of Changes
12.5 Federal Requirements	Included VA Analysis for studies required under LAPG.
12.8 DBE	Clarification statement added if an agency chooses to use their own form in their solicitations to compile a bidders list.
12.8 Form FHWA 1273	Removed the term “unrecoverable project deficiency” as it is no longer utilized in LAPM Chapter 20.
12.9 Contract Provisions	FHWA wants five months before construction to review and approve Project Labor Agreements.
Exhibit 12-D XIII. Bonding & Prequalification	Added CFR reference which requires Caltrans pre-approval for prequalification.
Exhibit 12-G Disadvantaged Business Enterprise	DBE Program updates.
Exhibit 12-G Title VI Assurances	Added Title VI Assurances Appendices B-E as required by U.S. Department of Transportation Order No. 1050.2A on all federally funded contracts.
Exhibit 12-G Prohibition	New section to incorporate language related FY 2019 National Defense Authorization Act – Section 889(b) which prohibits Federal agencies, after August 13, 2020, from obligating or expending financial assistance to obtain certain telecommunications and video surveillance services and equipment from specific producers.

from FHWA oversight, the LPA can contact their DLAE to be granted a waiver (Authorization to Proceed), so as to begin negotiations with contractor(s) to replace the bridge using HBP funds and using the plans that have been completed to date.

It should be noted that this waiver to competitive bidding only applies to emergency repairs as defined above, reconstruction work and permanent repairs that can be separated from emergency repairs, are to be performed using the competitive bidding process.

12.5 Value Engineering Analysis

Federal Requirements

Federal requirements mandate that a Value Engineering Analysis (VA) be performed on (1) all federal-aid highway projects on the NHS with a total estimated project cost of \$50 million or more; and (2) all federal-aid bridge projects ~~on the NHS when either the R/W or construction phase exceeds \$40 million of federal funds with a total estimated project cost of \$40 million or more~~; (3) any major project (as defined in 23 U.S.C. 106(h)), located on or off of the NHS, that utilizes Federal-aid highway funding in any contract or phase comprising the major project; (4) any project where a VA has not been conducted and a change is made to the project's scope or design between the final design and the construction letting which results in an increase in the project's total cost exceeding the thresholds identified in (1), (2) or (3) of this section; and (5) Any other project FHWA determines to be appropriate that utilizes federal-aid highway program funding. Design/Build projects are excluded. The VA consists of a systematic process of review and analysis of the project during the concept and design phases, by a multi-disciplined team of persons not involved in the project. The LPA administering the project has been delegated the responsibility to ensure that VA is performed under Caltrans delegation authority. For each project, the LPA must indicate in the appropriate checkbox on Exhibit 12-D: PS&E Checklist whether VA was performed.

Procedures

The multi-disciplined team can be qualified LPA staff, qualified personnel from the current design consultant contract, or qualified personnel from a certified VA consultant contractor. The most important factor is that the multi-disciplined team be qualified and not involved in the project in which they are performing the VA.

The multi-disciplined team performing VA must provide recommendations:

- To improve the value and quality of the project
- To provide the needed functions safely, reliably, and at the lowest overall cost
- To reduce the time to complete the project
- 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 must also include bridge substructure requirements based on construction material and be evaluated as follows:

12.8 Federal Contract Requirements

Required Federal Contract Language

[Exhibit 12-G](#) is available to assist LPAs in complying with federal regulations on transportation construction projects. It specifies to the contractor the terms of the contract including, but not limited to, when the contractor is to start, number of working days, liquidated damages, payment, work operations and items of work.

Disadvantaged Business Enterprise (DBE)

Individual DBE contract goals will be established. Complete evaluation documentation is required and must be retained for each contract (see DBE references in [LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises](#)). For contracts that contain a specific DBE goal, Caltrans' Standard Specifications are required to describe the DBE policy, the DBE contract goal, eligibility criteria, good faith effort requirements, sanctions on failure to comply, procedures for counting DBE participation, award documentation procedures, post-award compliance procedures, and required records and reporting. [Exhibit 12-G](#) includes requirements for DBE subcontractor listing, Federal Lobbying Restrictions, DBE, and other requirements. All federal-aid projects are subject to the legislative and regulatory DBE requirements. The main objective is to ensure that DBE firms have an opportunity to participate in federally funded projects. If there is a DBE goal placed on the contract, the contractor must meet the goal or document a good faith effort to meet the contract goal by using DBEs (see [LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises](#)). Good faith efforts must be documented and verified (see [Exhibit 15-H: DBE Information-Good Faith Effort](#)). If a DBE subcontractor is unable to perform, the contractor must make a good faith effort to replace him or her with another DBE subcontractor if the goal is not otherwise met. Contracts must contain special provisions stating that it is the LPA's policy to comply with Part 26 of Title 49, Code of Federal Regulations (CFR) and specify the contractor's obligation under these regulations. In accordance with [LAPM Chapter 9](#), Section 9.6: Local Public Agency Responsibilities under Caltrans DBE Program Plan, each LPA is required to create and maintain a bidders list containing information about all DBE and non-DBE firms that bid or quote on the LPA's federal-aid construction contracts. The required bidders list is to include the name, address, DBE/non-DBE status, date established and annual gross receipts of the firms. [Exhibit 12-B: Bidder's List of Subcontractors \(DBE and Non-DBE\)](#) provides a sample form that LPAs may choose to use in their solicitations to compile a bidders list. [If an agency makes their own form, required information must be included to satisfy Title 49, Section 26.11 of the Code of Federal Regulations and Section 4104 of the Public Contract Code of the State of California.](#)

Contract Time

Contract time is defined as the maximum time allowed in the contract for completion of all work contained in the contract documents. This time can be established in the specifications by either a specific completion date or a fixed number of working days. Contract time often becomes an issue when the traveling public is inconvenienced without any apparent reason.

While there may be several reasons for a project to appear dormant, frequently the cause can be traced to excessive contract time or poor contractor scheduling.

The contract time must be specified in the bidding documents and must be monitored by the administering agency. Insufficient contract time can result in higher bid prices, increased time overruns and claims, inefficiencies, and safety problems. On the other hand, excess contract

The LPA must not list an ineligible iron or steel product as nonparticipating in order to circumvent the Buy America requirements.

A waiver of the Buy America requirement by FHWA may be granted for specific projects, specific products, specific geographical areas, or combinations if:

- Buy America is inconsistent with the public interest, or
- There is not a sufficient supply of domestic materials of satisfactory quality.

Approval authority for waiver of Buy America requirements has not been delegated from the FHWA to Caltrans and therefore is not delegated to the LPAs. The LPA should plan for a Buy America waiver request to take at least six months. Additionally, LPAs should be particularly careful not to specify, in the design process, items that are not Buy America compliant.

Information on the Buy America waiver process can be found at:

<http://www.fhwa.dot.gov/construction/contracts/waivers.cfm>.

Form FHWA-1273

The May 1, 2012 revision of Form FHWA-1273 (included in [Exhibit 12-G: Required Federal-Aid Contract Language](#)) is a package of federally required contract provisions that must be physically included, unmodified, in the executed contract for all federal-aid projects. The provisions apply to all work performed on the contract including work performed by subcontract. The unmodified Form FHWA-1273 is required to be physically incorporated into each executed contract, subcontract and subsequent lower-tier subcontracts. To be directly incorporated into the contract would include:

- Referencing the 1273 and wage rates in the main body of the contract and label, such as "FHWA Form-1273 – Required Contract Provisions Federal-Aid Construction Contracts, Appendix B"
- Placing headings on the FHWA Form-1273 and wage rates as referenced in the main body of the contract, such as "Appendix B"
- Continuous page numbering on all pages including Form-1273 and wage rates
- Contract number on all pages including Form-1273 and wage rates

FHWA does not consider placing the FHWA Form-1273 and wage rates in the special provisions or standards specifications to be directly incorporated into the contract. Additionally, while a link to the wage rate determination can be used in the original advertisement, it cannot be used in the final contract."

Failure of the LPA to incorporate the Form FHWA-1273 in the executed contract ~~is considered an unrecoverable project deficiency and shall~~ makes the construction phase of the project ineligible for federal reimbursement (~~see LAPM Chapter 20: Deficiencies and Sanctions~~). The prime contractor is responsible for compliance with the requirements by all subcontractors and lower tier subcontractors. Failure of the prime contractor to comply with this requirement is grounds for LPA termination of the contract with the contractor and debarment of the contractor by the FHWA.

Modifications of Form FHWA-1273 by Special Provision

Sections IV (Davis-Bacon and Related Act Provisions) and Section VI (Subletting or Assigning the Contract) of Form FHWA-1273 may not be applicable to some projects. If the project is

- Contractor should not have an option to accept or reject price adjustment compensation and the compensation should be automatically incorporated in the progress and partial payment computations.
- Compensation should not be based on actual invoiced receipts.
- Upward price adjustments should not be allowed after the contract time has expired.

When local conditions warrant the use of price adjustment clauses, the following should be considered:

- Use for projects which will exceed nine months duration from bid opening to completion.
- On single season contracts, provide price adjustment clauses for all price volatile materials which affect the unit costs of the major items of work.
- On multiple season contracts, provide price adjustment clauses for all price volatile materials and supplies.

When fuel prices are volatile, a price adjustment clause may be needed. This may occur on projects that are fuel intensive such as excavation, embankment, aggregate hauling and paving.

Project Labor Agreements

On February 6, 2009, President Obama issued Executive Order 13502 (the Order) on the use of a Project Labor Agreement (PLA) for federal-aid construction contracts. The Order revoked two Executive Orders issued under President Bush, which required any executive agency issuing grants, providing financial assistance, or entering into cooperative agreements for construction projects to ensure that no project specifications were used that either required or prohibited bidders from utilizing PLAs. The Federal government now believes that PLAs could be beneficial for large-scale construction projects, generally those with a total cost of \$25 million or more, due to the benefits that PLAs can offer by promoting the efficient and expeditious completion of such projects. LPAs may request the use of PLAs on projects totaling less than \$25 million if the project would otherwise comply with this guidance. The FHWA has issued this interim guidance for use until final implementing guidance is released by the Office of Management and Budget. Pursuant to the Executive Order, PLAs may be used on federal-aid construction project contracts by local public agencies provided that the agency presents evidence that the use of such an agreement on the relevant project will:

1. Advance the government's interest in reducing construction costs and achieving economy and efficiency, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters as appropriate; and
2. Be consistent with law.

If an agency would like to use a PLA on a federal-aid construction contract, the agency should submit a request for approval to their DLAE that includes the draft PLA and written justification describing why the project advances the interest of the government. The draft PLA must be submitted and approval received **at least five months before construction begins prior to construction authorization**. The use of a PLA may be approved if the LPA has made a reasonable showing that the use of a PLA on the project will advance the interests of the

D. Other Required Forms (the following forms are applicable with the above required federal requirements; see Exhibit 12-H: Sample Bid)

- 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: Bidders 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 a 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.**

F. Relations with Railroad

- The required provisions are included _____
- The 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 (Pursuant to 23 CFR 635.110, prequalification requires Caltrans pre-approval.)

- 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 non-resident 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.

1. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The contractor, subrecipient or subcontractor shall take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the Agency shows a contract goal for DBEs. The prime contractor shall make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

The prime contractor shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal.

It is the prime contractor's responsibility to verify that **at date of bid opening** the DBE firm is certified as a DBE **at date of bid opening and by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and work code applicable to the type of work the firm will perform on the contract.** **and Additionally, the prime contractor is responsible to document the verification record by printing out the CUCP data for each DBE firm.** A list of DBEs certified by the CUCP can be found at: <https://dot.ca.gov/programs/civil-rights/dbe-search>.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal.

Credit for materials or supplies the prime contractor purchases 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. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

The prime contractor receives credit towards the goal if they employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(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. Nondiscrimination Statement

The contractor, subrecipient or subcontractor will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the Local Agency components of the DBE Program Plan, the contractor, subrecipient or subcontractor will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

Method 3: 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 all subcontractors 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. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Any violation of these provisions **of Prompt Progress Payment and Prompt Payment of Withheld Funds to Subcontractors** shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified therein. 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.

E. Termination and Substitution of DBE Subcontractors

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the Agency's written consent. The prime contractor shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without prior written authorization from the Agency. Unless the Agency's prior written 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 form, included in the Bid.

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. The Local Agency stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the Local Agency's 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 (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
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. The Agency determines other documented good cause.

The prime contractor shall notify the original DBE of the intent to use other forces or material sources and provide the reasons, allowing the DBE 5 days to respond to the notice and advise the prime contractor and the Agency of the reasons why the use of other forces or sources of materials should not occur.

The prime contractor's 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 the prime contractor to the DBE regarding the request.
3. Notices from the DBEs to the prime contractor regarding the request.

If ~~a listed DBE is terminated or substituted~~, the Agency authorizes the termination or substitution of a listed DBE, the prime contractor must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must (1) 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, and (2) be certified as a DBE with the most specific available NAICS codes and work codes applicable to the type of work the DBE will perform on the contract at the time of the prime contractor's request for substitution. The prime contractor shall submit their documentation of good faith efforts within 7 days of their request for authorization of the substitution. The Agency may authorize a 7-day extension of this submittal period at the prime contractor's request. More guidance can be found at 49 CFR 26 app A regarding evaluation of good faith efforts to meet the DBE goal.

F. Commitment and Utilization

Note: In the Agency's reports of DBE participation to Caltrans, the Agency must display both commitments and attainments.

The Agency's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The bidder shall submit the Exhibit 15-G Construction Contract DBE Commitment, included in the Bid book. This exhibit is the bidder's DBE commitment form. If the form is not submitted with the bid, the bidder must remove the form from the Bid book before submitting their bid.

The bidder shall complete and sign Exhibit 15-G Construction Contract DBE Commitment included in the contract documents regardless of whether DBE participation is reported. The bidder shall 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, the bidder shall submit a copy of the joint venture agreement.

If the DBE Commitment form, Exhibit 15-G, is not submitted with the bid, it must be completed and submitted by all bidders to the Agency within five (5) days of bid opening. If the bidder does not submit the DBE Commitment form within the specified time, the Agency will find the bidder's bid nonresponsive.

The prime contractor shall 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 they receive authorization for a substitution.

The Agency shall request the prime 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 the prime contractor is a DBE contractor, they shall include the date of work performed by their own forces and the corresponding value of the work.

Before the 15th of each month, the prime contractor shall submit a Monthly DBE Trucking Verification (LAPM Exhibit 16-Z1) form.

If a DBE is decertified before completing its work, the DBE must notify the prime contractor in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify the prime contractor in writing of the certification date. The prime contractor shall submit the

	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 of July during which work is performed under the contract, the prime contractor 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

The U.S. Department of Transportation Order No.1050.2A requires all federal-aid Department of Transportation contracts between an agency and a contractor to contain Appendix A and E. Appendix B only requires inclusion if the contract impacts deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein. Appendices C and D only require inclusion if the contract impacts deeds, licenses, leases, permits, or similar instruments entered into by the recipient.

APPENDIX A

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:

- a. 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.
- b. 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.
- c. 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.

- d. 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 recipient 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 recipient or FHWA as appropriate, and shall set forth what efforts CONTRACTOR has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - i. withholding of payments to CONTRACTOR under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
 - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. 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 recipient 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 recipient 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.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person

will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the recipient pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest ,and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

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 carriers, 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 States 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 the prime contractor's equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

The prime contractor has primary responsibility for meeting this training requirement.

If the prime contractor subcontracts a contract part, they shall determine how many trainees or apprentices are to be trained by the subcontractor. Include these training requirements in each 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 the prime contractor's needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, the prime contractor shall submit to the City/County of _____ :

1. Number of apprentices or trainees to be trained for each classification

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

The prime contractor shall furnish the apprentice or trainee with a copy of the program that the prime contractor will comply with in providing the training.

16. PROHIBITION OF CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE EQUIPMENT AND SERVICES

In response to significant national security concerns, the agency shall check the prohibited vendor list before making any telecommunications and video surveillance purchase because recipients and subrecipients of federal funds are prohibited from obligating or expending loan or grant funds to:

- Procure or obtain;
- Extend or renew a contract to procure or obtain; or
- Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

The prohibited vendors (and their subsidiaries or affiliates) are:

- Huawei Technologies Company;
- ZTE Corporation;
- Hytera Communications Corporation;
- Hangzhou Hikvision Digital Technology Company;
- Dahua Technology Company; and
- Subsidiaries or affiliates of the above-mentioned companies.

In implementing the prohibition, the agency administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

LAPM C.16 ADMINISTER CONSTRUCTION CONTRACTS

LAPM C.16 Administer Construction Contracts

Section / Exhibit	Description of Changes
16.4 Pre-Construction Conference	Additional bullet added under Recommended Topics.
16.10 Change Order	New subsection “Contract Change Order Prior Authorizations” added.
16.13 Progress Payments, Accounting Procedures and Payment Records	Recent audit findings determined progress payments were made without an executed or approved contract change order; minor edits to clarify language that specifically requires any progress payment for contract change order extra work must be approved prior to payment. A new subsection “Contract Change Order Extra Work Billings” added.
16.13 Progress Payments, Accounting Procedures and Payment Records	New subsections “Material on Hand” added.
16.18 Construction Oversight Program	Applicable content from Chapter 19, Section 19.6 moved to Section 16.18.
Pre-Construction Review Checklist	Question #3 in Section C: replaced “the prime-contractor signed construction contract” with “the executed contract”.

Recommended Topics:

- Progress Schedule
- Work Plans
- Quality Control/Quality Assurance
- Materials Requiring Certificates of Compliance
- [Materials to be Used Identified \(Exhibit 16-I\)](#)
- Materials Requiring Buy America Certificates
- Contract Training (Apprentice) Goals
- Change Order Process
- Dispute Process
- Potential Utility Conflicts

Additional meetings may be advisable where considerable effort and time is required to cover specific areas. A written record of attendance and items discussed should be made by the administering LPA and should be kept in the project files.

16.5 Partnering

Partnering is a relationship between the LPA and the contractor, formed in order to effectively complete the contract to the benefit of both parties. Through trust, cooperation and teamwork, the goal is to resolve conflicts at the lowest possible level. More information about the partnering process can be found at the [Partnering with Caltrans](#) website.

Partnering is not a requirement of the federal-aid program, but it is eligible for participation as part of the construction engineering cost. Generally, the costs are shared between the contractor and the LPA. When formal partnering is desired, the [Partnering with Caltrans](#) website is available to assist in providing specifications for the process. Informal partnering may also be beneficial and does not require contract provisions to be implemented. Keep in mind, partnering is not a substitute for a contract dispute resolution process.

16.6 Tracking Contract Time

Introduction

Contract time is the maximum time allowed in the contract for completion of all work contained in the contract documents. The LPA must maintain a written record of contract time, often called the Weekly Statement of Working Days (WSWD) or Weekly Project Progress Record. The LPA is responsible for reviewing the contract time requirements, determining the controlling operation, determining if each day is a working day or non-working day, and supporting time extensions.

Documentation similar to [Exhibit 16-A: Weekly Statement of Working Days](#), is an acceptable record of project progress. However, the LPA may use their own form, as long as the required information is recorded. Whichever form is used, as soon as possible and no later than the end of the following week, forward the original statement to the contractor and retain a copy in the project file. Most contracts give the contractor 15 days in which to protest the determinations shown on the form.

Contract Change Order Prior Authorizations

The LPA may make changes to a project and add extra work under Section 4-1.05, "Changes and Extra Work," of the Caltrans Standard Specifications and Section 2-7 "Changes Initiated By the Agency" of the Standard Specifications for Public Works Construction (Greenbook). The resident engineer describes the change and extra work, the payment basis, and any time adjustment in a change order. The standard specifications further allow the resident engineer to order the contractor to start work before a change order is approved. This is done using a written authorization to proceed.

LPAs should have procedures for prior authorizations to proceed for those instances when change order work must begin before a change order is executed.

In order to ensure prompt payment for ordered extra work, the resident engineer must reserve and advise the contractor of the change order number upon issuing an authorization to proceed for extra work. This will allow the contractor to submit change order bills while the change order is being processed. When prior authorizations are granted, the full change order must be immediately written and submitted to the contractor within 7 working days of the date of authorization to proceed.

The change order (extra work) bills must not be paid until the change order is fully executed and funded.

Change Order Documents

For each change order, the following documents must be prepared:

- The change order
- A memorandum explaining and justifying the change order

For many change orders, the following documents must also be prepared:

- PE stamped, signed and dated revised plan sheets and Specifications
- Cost estimate calculations performed by the LPA, not the Contractor, supporting any agreed prices
- A time impact analysis justifying any time extensions

Writing the Change Order

The change order must be clear, concise, and explicit. If you have properly written the change order, an auditor should be able to understand what work was performed without further explanation from the LPA's staff. When appropriate, it must include the following:

a. Description of the Work to be Done

The change order must clearly describe added work or other changes to the contract. Include appropriate references to special provisions, contract plans, standard plans, or standard specifications. Decide whether a written statement clearly defines the proposed change or if plans or drawings need to be included.

On plans attached to a change order, show pertinent dimensions and the scale, or label the plans not to scale. When using existing plan sheets, clearly show the difference between the proposed (change order) work and the planned (original work). A simple sketch on a letter-sized sheet is adequate for some change orders.

The ECR usually comes in a spreadsheet format and includes the following:

- A brief description of the commitment
- The name and page number of the document requiring the commitment (for example, Fish and Wildlife Permit, page 24)
- The phase in which the commitment will be executed (R/W, PS&E or Construction)
- The name of the LPA person certifying that the commitment was completed and the date

If the project has no mitigation commitments, it is helpful if the project development team note this on a blank ECR in the project file.

3. All environmental permits, approvals and agreements from resource and regulatory agencies. Not all projects will have these documents.

Before construction begins, check if any mitigation commitments were inadvertently omitted from the PS&E. If yes, write a change order to include them. Check the permit dates and obtain extensions if necessary. Consult the agency person in responsible charge, the agency environmental liaison, and the design team, as needed. Bring the environmental commitments to the attention of the contractor and agency staff at the pre-construction meeting.

Environmental commitments might include using biological or archeological monitors, temporary fencing, relocating plants or animals, or enforcing dust and noise control, among other things. Be sure the contractor includes mitigation commitments in the project schedule, if appropriate.

During construction, ensure the contractor is complying with all requirements and document compliance using the assistant RE daily reports and photographs. Other documentation might include letters approving the monitors, sign-in sheets from required crew trainings, and copies of required reports or surveys. Sign and fill in the dates on the ECR (or equivalent) as mitigation commitments are completed. If the contractor is not complying with the mitigation commitments, document and take action. Actions might range from letter writing to payment withholdings to project suspension. Consult your contract and permits.

After project acceptance, confirm all monitoring reports and post-construction mitigation reports were submitted to permitting agencies, if applicable. Certify on the ECR (or equivalent) that all mitigation commitments have been completed and documented.

16.13 Progress Payments, Accounting Procedures and Payment Records

Introduction

Progress payments are compensation to the prime contractor for the value of work completed during a covered period. Contract language generally calls for progress payments to be made at least once each month as the work progresses.

The LPA may request reimbursement for project costs incurred from Caltrans, who in turn requests reimbursement from FHWA. The reimbursement request is typically based on the progress payment made to the contractor. The progress payment is based on an estimate prepared by the engineer. Each estimate reflects the total contract item work completed during the pay period, ~~change-order bills submitted extra work bills submitted for approved change order work~~, materials on hand, deductions, and withhold.

Additional Q sheet requirements and considerations:

- Q sheets must be produced by the LPA not by the contractor.
- Quantities should be measured in accordance with the method directed in the measurement or measurement and payment clauses in the contract specifications for each bid item. For more information about measuring quantities for specific bid items, refer to Chapter 4, Construction Details of the [Caltrans Construction Manual](#).
- Calculation sheets should be checked as soon as practicable, but in any event, prior to payment of a final estimate.
- The quantity paid-to-date shown on the estimate for a bid item must agree with the sum of the quantities on all the source documents for that item.

[Exhibit 16-Y: Monthly Progress Payment Item Quantity Calculations](#) is an example of a quantity calculation sheet.

Weight Tickets

Weight tickets, sometimes referred to as load slips are used to support both item quantity payments made by weight and extra work paid at force account. Weight tickets must be collected at the point of delivery and validated by a representative of the administering LPA. This is accomplished by the LPA employee signing or initialing the load slip upon delivery to indicate the represented material was used in the work (this is also the time to check the proper mix design or specified material has been delivered). If applicable, on the load slip, indicate any quantity of material not included for payment, such as unused or wasted material. When a determination is made to reduce the quantity, advise the contractor's foreman or superintendent of the amount and reason for the reduction. In the daily report, document the reduction and the name of the contractor's employee who you advised of the reduction.

Consider organizing Q sheets and weight tickets by bid item so an easily followed audit trail exists. Total and bundle the tickets by each day worked, and place in the project files.

Daily Reports

Daily reports are required to support quantity calculation sheets and force account payments. See [Section 16.8: Engineer's Daily Report](#) of this manual for information on producing adequate daily reports.

Material Invoices

Payment for material purchased for extra work paid at force account must be supported by a copy of the vendor's invoice whenever possible. If no individual invoice is available, as in the case of materials taken from contractor's stock, a copy of the mass purchase invoice may be used as support. If no invoice is available to support unit purchase prices, submit a statement with the change order bill. In the statement, explain how the unit prices were verified.

Any invoices the contractor submits must represent the material actually used. ~~Invoices must also be supplied to support Material on Hand payments.~~

Material on Hand

A material on hand but not incorporated into the work is eligible for a progress payment if:

1. Compliant with other Contract parts
2. Material cost exceeds either of the following:

- 2.1. \$50,000
- 2.2. \$25,000 if the requestor is certified as one or more of the following:
 - 2.2.1. DBE
 - 2.2.2. Small business as certified by Department of General Services, Office of Small Business
3. Purchased
4. Invoice is submitted
5. Stored within the LPA and you submit evidence that the stored material is subject to the LPA's control
6. Protected from weather and contamination
7. Water pollution control measures are established and maintained
8. Requested on the Caltrans form ([CEM-5101](#)) or LPA equivalent

Section 3-906E, "Materials on Hand," of the Caltrans [Construction Manual](#) contains related guidance on materials on hand.

Contract Change Order Extra Work Billings

Payments for change order work must not be made until the change order is approved/executed.

Force Account Cost Calculations

These calculations consist of adding specified markups to the actual cost of labor, equipment, and material used to perform the extra work. The contractor must submit bills covering each change order for each day that force account extra work is performed. Compare the force account bills submitted to:

- Labor and equipment hours shown on the daily reports (Tentative Agreements from the Contractor, i.e. with Contractor's letterhead, are not valid for approving payment for Extra Work Bills)
- Material quantities shown on the daily reports
- Prevailing wage rates and payrolls
- Equipment rental rates in the official rental rate book
- Material invoices supplied

Keep a copy of the approved force account bill and the supporting documents in the project files.

Contingency Balance Tracking

The contingency balance must be updated each month to reflect item overruns and approved change order work.

Estimate of the Final Cost of the Work

An anticipated changes sheet must be kept in the project files where the current estimated probable final cost of the work is recorded.

- Cost data supporting any payment made
- Other facts supporting the award or settlement

Federal-aid participation should be supported by an audit of the contractor's actual costs unless costs can be substantiated with project records or an audit would not be cost-effective.

Where difficult, complex, or novel legal issues appear in the claim, such that evaluation of legal controversies is critical to the consideration of the award or settlement. The LPA must include in its documentation a legal opinion from its counsel providing the basis for determining the extent of the liability under local law, with a level of detail commensurate with the magnitude and complexity of the issues involved. All contract records must be retained by the LPA for a minimum period of three years from the date of the final voucher.

Recovery of Compensatory Damages

The federal share pertaining to the recovery of compensatory damages should be equivalent to the federal share of the project or projects involved. In cases where LPAs affirmatively recover compensatory damages through contract claims, cross-claims, or counter claims from contractors, subcontractors, or their agents should be credited to the projector projects from which the claim or claims arose.

16.18 Construction Oversight Program

For locally administered federal-aid highway projects off the State Highway System, construction oversight reviews will be performed by Caltrans Local Assistance Construction Oversight Engineers (COEs). DLAE staff may participate in the reviews, if available.

Types of Reviews

The purpose of construction oversight reviews is to verify LPA compliance with federal-aid construction contract administration requirements. These reviews may be conducted prior to the start of the construction contract, during construction, and/or after the completion of the construction contract as described below. The objective is to perform at least one review on all projects.

Preliminary Construction Review

The purpose of the preliminary construction review is to provide supplementary oversight and guidance regarding construction contract administration to the LPA on a federal-aid construction project prior to the start of contract work. Preliminary reviews will be performed on selected federal-aid projects requiring a greater degree of oversight. The following factors may be used when selecting projects for preliminary review:

- High cost and/or complex projects
- Projects administered by agencies with previous sanctions/findings
- Lack of experienced/trained LPA personnel
- Per request by the LPA or DLAE for additional assistance

During preliminary construction reviews, the COE will meet with the LPA's construction contract administration team and discuss project record documentation requirements using the Pre-Construction Review Checklist. The COE will also explain new policies or procedures, discuss

available training, and highlight common problem areas and the means to avoid them. The timing of this type of review is targeted for after bid opening, but prior to beginning construction.

Mid-Construction Review

Mid-construction reviews will be performed on selected federal-aid construction projects. Factors to be considered in determining which projects to review include:

- High cost and/or complex projects
- Projects administered by agencies with previous sanctions/findings
- Projects that did not have a preliminary construction review
- Duration of the project
- Project location

During these reviews, the COE will meet with the LPA's resident engineer and review the project records. The Mid-Construction Review Checklist will serve as the basis for this review. Any major deficiencies will be identified, and the LPA will be notified of the deficiencies (see Review Findings below). The timing of this type of review is targeted for 40% to 60% of construction completion, but should not take place until the LPA has processed at least one progress payment to the contractor.

Post Construction Review

Post construction reviews will be performed on a case-by-case basis. Projects that did not receive a preliminary or mid-construction review, or had major deficiencies identified during a mid-construction review, are candidates for a post construction review. The purpose of the post construction review is to verify that federal and state requirements for construction contract administration have been met, and to ensure that major deficiencies noted during mid-construction reviews have been fully resolved in conformance with an accepted corrective action plan. The Post-Construction Review Checklist will serve as the basis for this review. Accepted corrective action plans will also be utilized in the review. Any further major deficiencies will be identified, and the LPA will be notified of the deficiencies (see Review Findings below).

Review Findings

Results of the construction oversight reviews will be forwarded to the LPA and the DLAE within two weeks. Any major deficiency identified during a review will require development of a corrective action plan by the LPA in consultation with the District within 30 days of receipt of the major deficiency notification. Major deficiencies are those errors of commission or omission, which violate federal or state law or regulation, and if uncorrected, would prevent federal or state participation in all or a portion of the project.

Corrective action plans will identify actions the LPA will take to address each major deficiency noted. Corrective actions may include modifications of LPA policies and procedures, and participation in training to address systemic related deficiencies, while project specific issues may require additional measures to remedy deficiencies to ensure compliance with federal and state requirements and ensure reimbursement eligibility. Corrective action plans must also include timelines for each action to be implemented. Failure to provide and implement corrective actions may result in sanctions or federal ineligibility notices against the project or LPA.

09. Comments:

C. CONTRACT INFORMATION:

01. FHWA Construction Authorization (E-76) Date:

Engineer's Estimate Amount (Bid Items Only):

Alternative Contracting Method?

If yes, what method? (design-build, cost-plus-time (A+B), etc.)

Advertising Date: Bid Opening Date: Award Date: Low Bid Amount: High Bid Amount: Contract Award Amount: Percent Award over/under Engineer's Estimate: No. of Bids:

Number

No. of competitive bids (bids w/in 20% of low bid including the low bid): Contract Time:

Number

Working Days Calendar Days Notice to Proceed Date: Estimated Date of First Working Day: Estimated Completion Date: Estimated Mid-Construction Review Date :

02. Are the Required Contract Provisions, Form FHWA-1273, physically attached to prime-contractor signed construction contract?

03. Have the applicable federal minimum wage rates been physically attached to the prime contractor signed construction contract? **executed contract**

04. Did the LPA perform, document, and file a bid analysis prior to project award?

(Bid Analysis is required for projects on the NHS and functionally classified as principal arterials and above)

05. Is the Construction Contract DBE Commitment, Exhibit15-G, on file?

A. If yes, has the LPA executed the the Exhibit?

06. If bidder did not meet the project DBE goal, is LPA's Evaluation of Good Faith Effort, Exhibit 9-E, on file?

07. Do the contract provisions regarding prompt payment of withheld funds to subcontractors match the option selected (Options 1-3) on Local Agency DBE Annual Submittal Form, Exhibit 9-B?

08. Are liquidated damage provisions included in the contract?

A. If yes, what is the dollar amount of liquidated damages per day?

09. Does the project contain incentive/disincentive provisions?

10. Does the LPA furnish any materials for this contract?

A. If yes, is Cost Effective/Public Interest Finding (PIF), Exhibit 12-F, for each LPA's furnished material on file?

B. If yes, has LPA provided documentation showing a competitive process was used for procuring those materials?

11. Will the LPA be using consultant contracts for contract administration, materials testing, surveying, environmental monitoring or other facets in support of the contract?

A.If yes, has LPA completed "Exhibit 10-C" in the A&E Consultant Contract Database

"Exhibit 10-C" at <http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C> ?

This requirement applies for federal reimbursement of procurement of consultant contracts.

LAPM C.19 OVERSIGHT & PROCESS REVIEWS

LAPM C.19 Oversight & Process Reviews

LAPM Chapter 19 will be retired and reserved for future use; applicable content has been moved to respective chapters outlined below.

Section / Exhibit	Description of Changes
19.1 Introduction	Text moved to LAPM 2 (Section 2.11: Oversight).
19.2 Local Agency Records and Documentation	Text moved to LAPM 2 (Section 2.12: City, County and Other Local Public Agency Responsibilities).
19.3 Oversight and Process Review Methods	Applicable text moved to LAPM 2 (Section 2.10: FHWA Responsibilities).
19.4 Oversight/Process Review Committee	Section deleted; the Process Review Committee was retired in 2019.
19.5 Findings / Recommendations	Section deleted.
19.6 Construction Oversight Program	Applicable text moved to LAPM 16, Section 16.18.
19.7 A&E Oversight Program	Applicable text moved to LAPM 10, Section 10.4.
19.8 References	Section deleted.
Exhibit 19-A Pre-Construction Review Checklist	Pre-Construction Review Checklist now available from LAPM 16.
Exhibit 19-B Mid-Construction Review Checklist	Mid-Construction Review Checklist now available from LAPM 16.
Exhibit 19-C Post-Construction Review Checklist	Post-Construction Review Checklist now available from LAPM 16.

~~Chapter 19 Oversight and Process Reviews~~

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Exhibits

Exhibits applicable to this chapter can be found [here](#):

[Exhibit 19-A: Pre-Construction Review Checklist](#)

[Exhibit 19-B: Mid-Construction Review Checklist](#)

[Exhibit 19-C: Post-Construction Review Checklist](#)

~~Chapter 19 Oversight and Process Reviews~~

RETIRED: RESERVED FOR FUTURE USE

19.1 Introduction

APPLICABLE CONTENT MOVED TO LAPM 2 (Section 2.11: Oversight)

For purposes of this chapter, Oversight is defined as the act of ensuring that the federal highway program is delivered in accordance with applicable laws, regulations and policies. Oversight is the compliance or verification component of the joint Federal Highway Administration (FHWA)/Caltrans stewardship activities. Narrowly focused, oversight activities ensure that the implementation of the Federal Aid Highway Program (FAHP) is done in accordance with the applicable laws, regulations, and policies. Broadly focused, oversight activities enable both agencies (the FHWA and Caltrans) to ensure the effective delivery and operation of the transportation system envisioned in governing laws and regulations. Oversight activities include process reviews, program evaluation, program management activities, and project involvement activities. Oversight procedures apply to both National Highway System (NHS) and non-NHS federal-aid projects.

Project oversight is used to evaluate all aspects (which primarily emanate from the LAPM) of the Caltrans oversight and management of local agency federal-aid and state funded projects, and to identify areas and procedures needing improvement. One major goal of Caltrans oversight is to demonstrate that requirements imposed by the federal and state governments are being met and that correct procedures are being followed and performed by local agencies administering federal-aid projects. A second major goal of Caltrans oversight is to maintain a continual process of updating and improving local assistance procedures which will lead to a more efficient and effective federal-aid as well as state funded local assistance program.

19.2 Local Agency Records and Documentation

APPLICABLE CONTENT MOVED TO LAPM 2 (Section 2.12: City, County and Other Local Public Agency Responsibilities)

Upon request, local agencies need to make all project documentation and backup records available for inspection by Caltrans and FHWA reviewing personnel. Use of a uniform project record-keeping system, together with diligent maintenance of the system, greatly facilitates a process review and positive findings. Good records of all project related activities clearly demonstrate to all concerned that project supervision and control were maintained on the project. As stated in the Master Agreement, project records are to be retained by local agencies for a period of three years from state payment of the final voucher, or a four-year period from the date of the final payment under the contract, whichever is longer.

19.3 Oversight and Process Review Methods

APPLICABLE CONTENT MOVED TO LAPM 2 (Section 2.10: FHWA Responsibilities)

Caltrans Oversight and Process Reviews

As outlined in LAPM Chapter 1: Introduction and Overview and LAPM Chapter 2: Roles and Responsibilities, Caltrans provided local agencies with broad delegation, latitude and

responsibility for developing their federal-aid projects. Caltrans will provide the necessary review and approval for local agency administered federal-aid projects, of which Caltrans has assumed responsibility, to ensure compliance with all federal requirements. Reviews generally include observations and findings, which typically result in corrective actions that need to be implemented by the Division of Local Assistance. As resources permit, Caltrans achieves oversight by:

- Preparing, prioritizing, updating and implementing an Annual Process Review Work Plan with the assistance, direction, and oversight of the Division of Local Assistance Oversight/Process Review Committee.
- Providing technical assistance and oversight, as needed or requested, of bridges, overcrossings, and other local agency structures.
- Performing reviews of Contract Award Packages, submitted by local agencies after preliminary engineering and construction contract award, verifying contractor local agency and contractor compliance with Disadvantaged Business Enterprise (DBE) requirements.
- Performing qualitative and quantitative reviews of all local agency project invoices requesting reimbursement to ensure the claimed costs are allocable, allowable, and reasonable prior to reimbursement by Caltrans and FHWA.
- Conducting prioritized and focused Process Reviews, Plans, Specifications and Estimate (PS&E) Reviews; and Maintenance Reviews; observations and findings typically result in corrective actions that need to be implemented by the Division of Local Assistance.
- Performing Project Verification on all projects at or after final inspection by local agencies.
- Performing consultant contract audits, local agency indirect cost allocation plan audits; and external special audits as needed.
- Participating in formal program audits.
- Performing Civil Rights (Americans with Disabilities Act, Equal Employment Opportunity, Disadvantaged Business Enterprise and Title VI) compliance reviews of local agencies in conjunction with Caltrans Office of Business and Economic Opportunity per the Joint Stewardship Agreement.
- Performing construction oversight of unusual and/or special local agency projects as resources permit.
- Maintaining a database to identify, assimilate, and manage observations and findings from process reviews and other reviews performed by Caltrans, FHWA, and other governmental agencies.
- Analyzing observations and findings to determine needed corrective actions. Observations and findings typically result in corrective actions that need to be implemented by the Division of Local Assistance.

The goal of all the foregoing oversight and reviews, including prioritized process reviews, is for Caltrans to ensure and demonstrate that requirements imposed by the Federal and State governments are being met and that proper procedures are being performed by the local agencies administering federal-aid projects.

Other Caltrans Guidance and Assistance

Caltrans assists and provides guidance to local agencies with federal-aid projects by:

- Providing local agencies with accurate federal-aid project development procedures and program guidelines.
- Providing local agencies with a sample Quality Assurance Program for the sampling and testing of materials and the procedures used in the construction of the local agency project.
- Providing quality assurance guidance and measures to local agencies such as the Quality Assurance Program (QAP) Manual for use by local agencies which was developed to help local agencies with their Quality Assurance Programs.
- Using Independent Assurance Caltrans personnel to certify local agency material samplers, testers, and laboratories when Caltrans test methods are used.
- Establishing the Local Oversight Action Plan (LOAP) team consisting of federal, state and local agency members to jointly prepare and implement changes and improvements to the Local Assistance Procedures Manual, and other local agency guidance, as well as identifying local agency, Caltrans, and FHWA oversight roles and responsibilities.
- Producing Office Bulletins to quickly implement regulatory and other changes to the Local Assistance Procedures Manual and Local Assistance Program Guidelines.
- Preparing the Caltrans Oversight Information Notice (COIN); alerting local agencies to new and innovative practices and/or procedures; and best practices; along with findings, areas or items of concern or non-compliance.
- Providing continuous federal-aid project training in consultant selection, contract procurement, administration, and closeout.
- Providing training such as the Resident Engineer's Academy and the Federal-aid Series for local agency staff, consultants, and related professionals.
- Hosting statewide meetings and conferences, such as the City-County-State-Federal Cooperative Committee meeting, to receive local agency and Caltrans district feedback.

The purpose of the foregoing efforts is to maintain a continual process of updating and improving local assistance procedures which will, again, lead to a more efficient and effective federal-aid and state funded local assistance program.

FHWA Oversight and Process Reviews

FHWA (California Division) verifies Caltrans and local agency compliance with federal regulations via annual program and process reviews for Delegated as well as Projects of Division Interest projects of which Caltrans retains certain responsibilities and approval authorities as jointly determined by Caltrans and FHWA. The California Division uses the following reviews in their verification which typically result in observations, findings, and corrective actions that need to be implemented by the Division of Local Assistance:

- **Construction Contractor Payment Reviews**

The purpose of these reviews is to evaluate and test the controls that are related to the financial aspects of construction contractor payments for local agency federal-aid projects. The review may include preparation of the project cost estimate, approval of

and payment of monthly cost estimates, the preparation and processing of change orders and the completion, and final acceptance of the work.

- **Financial Integrity Review and Evaluation (FIRE)**

Construction Contractor Payment Reviews, Improper Payment Reviews, Inactive Obligation Reviews, and other reviews may be performed to fulfill, in part, the requirements of the FIRE Program established via FHWA Order 45601 b. Performance of these reviews and other oversight activities are necessary to support FHWA's annual certification of the adequacy of the internal and financial controls in place to support the agency's financial statements. Construction Contractor Payment Reviews are one of the tools that can be used by FHWA in support of the FIRE.

- **Process Reviews of Selected Local Agency Federal-aid Projects**

Based upon random selection of local agencies or local agency federal-aid projects, FHWA performs process reviews of the federal-aid program, and local agency federal-aid projects to establish a confidence level that verifies local agencies and their federal-aid projects fully comply with federal and state laws and regulations.

- **Process Reviews of Specially Funded Federal-aid Projects**

Local agency specially funded projects frequently have unique requirements which may require special implementation. Such projects can be evaluated by FHWA to both measure compliance and the results. One example is the American Recovery and Reinvestment Act (ARRA) in 2009 which was of limited duration and had as one of its primary purposes for FHWA to expeditiously assist in the creation of jobs in the construction industry by rebuilding the transportation infrastructure.

- **Program and/or Process Reviews of Caltrans/Local Agency High-Risk Areas Based Upon Risk Analysis**

FHWA identifies high risk areas in the federal-aid process and program. Using the results of the risk analysis, FHWA may choose to perform program and/or process reviews of these high-risk areas within Caltrans, local agencies, or local agency projects.

- **FHWA's Verification Process**

Used for project authorizations/final vouchers; retained project-level approvals; Projects of Division Interest project approvals; and inactive obligations.

In addition to the foregoing reviews conducted by the California Division, process reviews of local agency federal-aid projects and the Caltrans Division of Local Assistance are occasionally conducted by the FHWA Headquarters National Review Team, such as occurred in 2009/10. FHWA reserves the right to perform reviews of all federal-aid programs and projects at any time, while maintaining a focus on efficient project delivery. As previously mentioned, to ensure compliance the reviews may include projects or programs with unique features and high-risk elements as well as those with unusual circumstances.

Oversight and Reviews by Other Federal Agencies

The Department of Transportation Office of Inspector General (OIG) and the federal General Accounting Office (GAO) may perform reviews of local agency federal-aid projects as well as reviews of the Caltrans Division of Local Assistance, such as occurred in 2009/10. Much of their impetus and concerns were focused primarily on ARRA funded local agency projects but other local agency federal-aid projects were also reviewed. These actions/reviews also result in

observations and findings which typically result in corrective actions that need to be implemented by the Division of Local Assistance.

Oversight Using Mini Process Reviews

In addition to the methods outlined above, projects may be evaluated by mini process reviews on a less formal basis such as random sampling or spot checking of project scope documentation, PS&E packages and so forth. The difference between a mini process review and regular process reviews is that the mini process reviews are usually conducted over one or several projects and can be conducted by either Division of Local Assistance headquarters staff, DLAE staff, or other Caltrans/FHWA personnel concerned with local assistance projects.

Another form of a mini process review is through the distribution of questionnaires to evaluate specific procedures used for federal-aid project activities. Responses from the questionnaire can be used as one criterion for determining if agencies will need to be reviewed through the more formal process review method approved by the Process Review Committee.

Results from the mini process reviews will be reported to the Process Review Committee and FHWA in the same manner as regular process reviews.

Other Oversight Methods

As previously mentioned, other oversight methods, in addition to process reviews, consist of technical, quality assurance, quantitative, cost, verification, audit, civil rights, and special funded project reviews. However most of these reviews incorporate various aspects and procedures of the process review.

19.4 Oversight/Process Review Committee

~~An Oversight/Process Review Committee has been established to guide and approve the yearly Oversight/Process Review Monitoring Plan. The committee must:~~

- ~~• Review for consistency and approve recommendations from the oversight reports developed by the review teams.~~
- ~~• Resolve any problems which occur with the oversight procedures.~~

~~The Oversight/Process Review Committee must consist of appropriate headquarters Division of Local Assistance senior level management and Process Review Engineers. Others may be invited to participate depending on the items or areas to be covered.~~

~~This could include but not limited to:~~

- ~~• Structures local assistance representative~~
- ~~• Right of Way local assistance representative~~
- ~~• District Local Assistance Engineer (DLAE) representative(s)~~
- ~~• FHWA representative(s)~~
- ~~• Local agency city/county representative(s)~~
- ~~• Metropolitan Planning Organization/Regional Transportation Planning Agency representative(s)~~

A yearly monitoring plan, using a risk based approach, must be developed by the Process Review Engineer (PRE) with adjustments made to it each July by the Oversight/Process Review Committee. The plan must outline the topics, schedule, method and goals desired for the next years' oversight. A copy of the draft monitoring plan must be sent to FHWA for review and comments prior to submittal to the Review Committee. The Review Committee must approve the schedule for the next year based on their evaluation of all process reviews completed within the last year.

The PRE must select team members for each topic based on recommendations from the Review Committee and who would be appropriate to review the topic selected. Agencies to be reviewed will be based on recommendations from DLAEs and headquarters Area Engineers.

The PRE is accountable for developing the format for the review plan (i.e., objectives, scope, and approach), incorporating other team members' recommendations into the plan and preparing the final plan.

Reviews of a local agency's files and processes can take one hour or all day. It can involve the review of one project, several projects or a general review of the local agency's files. Each approved review will be different based on the topic to be reviewed. Local agencies will be notified in advance of the topic of the review and the estimated time required for the review.

The DLAEs will schedule review team meetings with the selected local agencies in their district.

19.5 Findings/Recommendations

The main objective of oversight and process review reports is to provide Caltrans and FHWA management documented information and recommendations regarding the local assistance federal aid and State funded programs.

Other objectives include:

- Assurance that resultant products are of an acceptable quality
- Identify weakness, deficient processes or procedure requiring improvement
- Provide specific recommendations to correct deficiencies or improve processes
- Documentation of existing deficiencies for future comparison
- Evaluation of benefits derived from previous recommendations
- Identify innovative method adopted as a result of new delegation for possible publication and distribution
- Follow through to implementation

Final Report

Upon completion of the local agencies reviews, a review report must be prepared by the PRE or team leader (with input from the team members) and submitted to the Review Committee for approval. Findings and recommendations made by the Caltrans' review team must be included in the report. The Review Committee must review the report and either reject it with comments for corrections, or approve the report and recommendations. If sanctions are recommended they must be applied immediately (see LAPM Chapter 20: Deficiencies and Sanctions). Once the committee has approved the report it is considered final. Copies of all final reports must be forwarded to FHWA for information. The final report must include as a minimum:

- Objectives, scope, and approach used
- Findings – noting significant differences between intended and actual processes, and citing both strong and weak points in process and procedures
- Recommendations for each and every finding, and identify specific items or actions to correct or minimize deficiencies
- Action taken/follow-up

~~Based on the reviews, assurances can be established that engineered processes and procedures are being implemented as intended, and local agencies are producing the desired product. Synopsis of each report, approved by the Review Committee, will also be posted on the Division of Local Assistance website.~~

~~The synopsis of the report will contain the minimum information, from above, but will not contain the names of the individual local agencies.~~

Corrective Actions

~~Based on the findings and recommendations of the review, Local Assistance procedures may need to be improved, modified and/or updated. Changes to the procedures will be made with Local Program Procedures (LPPs) which are changes to the Local Assistance Procedures Manual or Local Assistance Program Guidelines. Office Bulletins are also issued as temporary, expedient changes to these two manuals. Major improvements or changes may need involvement or review by a quality improvement team depending upon complexity and needed technical knowledge. All project deficiencies must be brought to the attention of the local agency during the oversight/process review. The local agency will be expected to take appropriate action immediately to correct the deficiencies. For unrecoverable project deficiencies which make portions or all of the project ineligible, the corrective action will include the recovery of the appropriate federal or State funds through the issuance of a revised E-76.~~

19.6 Construction Oversight Program

APPLICABLE CONTENT MOVED TO LAPM 16 (Section 16.18)

For locally administered federal-aid highway projects off the State Highway System, construction oversight reviews will be performed by Caltrans Local Assistance Construction Oversight Engineers (COEs). District Local Assistance Engineer (DLAE) staff may participate in the reviews, if available.

Types of Reviews

The purpose of construction oversight reviews is to verify local agency compliance with federal-aid construction contract administration requirements. These reviews may be conducted prior to the start of the construction contract, during construction, and/or after the completion of the construction contract as described below. The objective is to perform at least one review on all projects.

Preliminary Construction Review

The purpose of the preliminary construction review is to provide supplementary oversight and guidance regarding construction contract administration to a local agency on a federal-aid construction project prior to the start of contract work. Preliminary reviews will be performed on

selected federal-aid projects requiring a greater degree of oversight. The following factors may be used when selecting projects for preliminary review:

- High cost and/or complex projects
- Projects administered by agencies with previous sanctions/findings
- Lack of experienced/trained local agency personnel
- Per request by the local agency or DLAE for additional assistance

During preliminary construction reviews, the COE will meet with the local agency's construction contract administration team and discuss project record documentation requirements using Exhibit 19-A: Pre-Construction Review Checklist. The COE will also explain new policies or procedures, discuss available training, and highlight common problem areas and the means to avoid them. The timing of this type of review is targeted for after bid opening, but prior to beginning construction.

Mid-Construction Review

Mid-construction reviews will be performed on selected federal-aid construction projects. Factors to be considered in determining which projects to review include:

- High cost and/or complex projects
- Projects administered by agencies with previous sanctions/findings
- Projects that did not have a preliminary construction review
- Duration of the project
- Project location

During these reviews, the COE will meet with the local agency's resident engineer and review the project records. Exhibit 19-B: Mid-Construction Review Checklist will serve as the basis for this review. Any major deficiencies will be identified and the local agency will be notified of the deficiencies (see Review Findings below). The timing of this type of review is targeted for 40% to 60% of construction completion, but should not take place until the local agency has processed at least one progress payment to the contractor.

Post Construction Review

Post construction reviews will be performed on a case-by-case basis. Projects that did not receive a preliminary or mid-construction review, or had major deficiencies identified during a mid-construction review, are candidates for a post construction review. The purpose of the post construction review is to verify that federal and state requirements for construction contract administration have been met, and to ensure that major deficiencies noted during mid-construction reviews have been fully resolved in conformance with an accepted corrective action plan. Exhibit 19-C Post-Construction Review Checklist will serve as the basis for this review. Accepted corrective action plans will also be utilized in the review. Any further major deficiencies will be identified and the local agency will be notified of the deficiencies (see Review Findings below).

Review Findings

Results of the construction oversight reviews will be forwarded to the local agency and the DLAE within two weeks. Any major deficiency identified during a review will require

development of a corrective action plan by the local agency in consultation with the District within 30 days of receipt of the major deficiency notification, unless the agency disagrees with the major deficiencies identified and appeals the decision as discussed below. As defined in LAPM Chapter 20: Deficiencies and Sanctions major deficiencies are those errors of commission or omission, which violate federal or state law or regulation, and if uncorrected, would prevent federal or state participation in all or a portion of the project.

Corrective action plans will identify actions the local agency will take to address each major deficiency noted. Corrective actions may include modifications of local agency policies and procedures, and participation in training to address systemic related deficiencies, while project specific issues may require additional measures to remedy deficiencies to ensure compliance with federal and state requirements and ensure reimbursement eligibility. Corrective action plans must also include timelines for each action to be implemented. Failure to provide and implement corrective actions may result in sanctions or federal ineligibility notices against the project or local agency.

Certain deficiencies may be unrecoverable as described in LAPM Chapter 20.

In the event the local agency disagrees with the major deficiencies identified, the local agency will have 30 days from receipt of the major deficiency notification to submit their written request for appeal in accordance with LAPM Chapter 20, Section 20.4: Local Assistance Dispute Resolution Process. If the appeal is denied, the local agency will have 15 days from receipt of the decision to submit their corrective action plan.

Roles and Responsibilities

The following procedures, including roles and responsibilities, will be used to perform construction oversight on federal-aid projects being administered by local agencies off the SHS.

Construction Oversight Engineers

- Coordinate construction oversight reviews with local agencies.
- Provide construction oversight review forms to the local agency prior to reviews to expedite the review process.
- Identify projects subject to preliminary, mid-construction and/or post construction reviews utilizing the above guidelines.
- Consult with the construction oversight program coordinator on selecting projects for preliminary and mid-construction reviews.
- Perform construction oversight reviews through review of project records and discussions with local agency's contract administration staff.
- Keep DLAE apprised of oversight reviews so they may participate, if available.
- Provide review findings to the local agency, construction oversight coordinator, and DLAE. Review findings are to be sent to the local agency within two weeks.
- Identify any major deficiencies that will require a local agency corrective action plan. Issue a letter to the local agency notifying them of the major deficiencies requiring corrective action with copies sent to the construction oversight coordinator and DLAE.
- Consult with the DLAE regarding major deficiencies and corrective action plans.

- Monitor local agency corrective action plan development and implementation. Ensure the Construction Oversight Database is populated and kept up-to-date with major deficiency information and related corrective action plan information.
- Assist the DLAE with quantification of any sanctions related to unresolved major deficiencies.
- Participate in construction phase reviews and audits by others (e.g., Office of Inspector General, FHWA, State Controller's Office, Independent Office of Audits and Investigations, etc.). Assist in formal response to project specific findings from these reviews and audits on Caltrans behalf.
- Assist local agencies and DLAE staff with questions that may arise concerning construction related issues.
- Provide guidance and training to local agencies and DLAE staff concerning construction contract administration, including federal and state requirements.
- Assist DLAE and DLAE staff with review and approval of complex change orders and review of complex dispute issues.
- Provide weekly update to the construction oversight program coordinator that identifies the major work performed (e.g., local agency project reviewed, type of review, other project reviews, major deficiency notification letters, training delivered, analysis of complex change orders or dispute issues etc.).
- Attend monthly construction oversight meetings to discuss programmatic issues concerning construction oversight, sharing experiences, and concerns.

Construction Oversight Program Coordinator

- Maintain Construction Oversight Database, monitoring for consistency and accuracy utilizing weekly newsletters and major deficiency notification letters.
- Issue quarterly report for construction oversight (programmatic findings) to FHWA Division Administrator, DLA division chief, DLAEs and COEs. Report to include review metrics, common problem areas, recommendations for improvements, programmatic actions/improvements taken (e.g., policy, procedures and training), performance measure trend analysis to establish first year baseline and subsequent performance, and sanctions taken.
- Issue quarterly report for construction oversight (project specific findings) to FHWA Division Administrator, Division of Local Assistance (DLA) division chief, DLAEs, and COEs. Report to include district, project number, local agency, review type, review date, reviewer, major deficiencies identified, notification letter date, local assistance dispute resolution referral date, corrective action plan submittal date(s), approval date of corrective action plan, status of major deficiency resolution, sanction description, and sanction amount.
- Provide input to the construction oversight engineers on projects subject to preliminary and mid-construction reviews.
- Analyze project review findings to identify common problem areas where modifications to policies, procedures, or training related to construction oversight may be needed.
- Assist in development and delivery of new or revised policies, procedures, and training related to construction oversight.
- Participate in construction phase reviews and audits by others (e.g., Office of Inspector General, FHWA, State Controller's Office, Independent Office of Audits and

Investigations, etc.). Assist in formal response to project specific and programmatic findings from these reviews and audits on Caltrans behalf.

- Hold monthly meetings with construction oversight engineers to discuss programmatic issues with construction oversight as a means to maintain statewide consistency and identify common concerns.
- Perform construction oversight engineer duties as the need arises or in the absence of a COE.
- Assist DLA division chief with issues referred to the Local Assistance Dispute Resolution Process.

District Local Assistance Engineer

- Provide representation at construction oversight reviews, as available.
- Discuss major deficiency notification letter and corrective action plan requirements with the COE.
- Perform DLAE role in Local Assistance Dispute Resolution Process.
- Issue sanctions on projects resulting from unresolved major deficiencies.

19.7 A&E Oversight Program

APPLICABLE CONTENT MOVED TO LAPM 10 (Section 10.4)

The Architectural and Engineering (A&E) Oversight Branch is responsible for the oversight of consultant contracts procured by local agencies complying with federal regulations 23 Code of Federal Regulations (CFR) 172 and 23 United States Code (USC) 112, and state regulations California Government Code 4525.

For locally administered federal-aid highway projects, A&E consultant contract oversight reviews will be performed by Caltrans' Local Assistance A&E Oversight Engineers (A&EOEs). DLAE staff may participate in the reviews, if necessary.

Types of Reviews

The purpose of A&E consultant contract oversight reviews is to verify local agency compliance with federal and state consultant contract administration requirements. A risk-based approach has been identified by the A&E branch to aid the local agencies with compliance that includes requiring agencies complete and submit the 10-C [here](#) prior to contract award, or after contract award but no later than the first invoice. The objective is to create a database documenting all consultant contracts and perform process reviews on a sample of contracts for the annual performance measures report.

Although the risk-based approach is the submittal of Exhibit 10-C via the database, a process review may be conducted on projects for reporting purposes and to determine accuracy of Exhibit 10-C information.

Exhibit 10-C Review

The purpose of the Exhibit 10-C database is to provide oversight and guidance to a local agency regarding consultant contract administration on a federal or state funded project prior to

the award of the contract. Exhibit 10-C database includes items considered critical for compliance with federal and state regulations.

Subsequent process reviews may be performed on selected state and/or federal projects requiring a greater degree of oversight if deemed necessary for agencies with a noncompliance history.

The following factors may be used when selecting projects for subsequent review:

- Local agencies with identified deficiencies during an Incurred Cost Audit
- Projects administered by agencies with previous sanctions/findings
- Lack of experienced/trained local agency personnel
- Request by local agency for assistance
- Per request by the local agency or DLAE for additional assistance

During subsequent process reviews, the A&EOE will meet with the local agency's consultant contract administration team and discuss project record documentation requirements using Exhibit 10-C database. The timing of these types of reviews is targeted for pre-advertisement, pre-negotiations, and pre-award of the consultant contract. This will allow for any changes to take place prior to execution or termination of negotiations for re-advertising. The A&EOE will also explain new policies or procedures, discuss available training, and highlight common problem areas and the means to avoid them.

Review Findings

Review findings from any subsequent reviews will be forwarded to the local agency and the DLAE within five business days. Any major deficiency identified during a review will require development of a corrective action plan by the local agency in consultation with the District within 30 days of receipt of the major deficiency notification, unless the agency disagrees with the major deficiencies identified and appeals the decision as discussed below. As defined in LAPM Chapter 20: Deficiencies and Sanctions, major deficiencies are those errors of commission or omission, which violate federal or state law or regulation, and if uncorrected, would prevent federal or state participation in all or a portion of the project.

Corrective action plans will identify actions the local agency will take to address each major deficiency noted. Corrective actions may include re-advertising, modifications of local agency policies and procedures, and participation in training to address systemic related deficiencies, while project specific issues may require additional measures to remedy deficiencies to ensure compliance with federal and state requirements and ensure reimbursement eligibility. Corrective action plans must also include timelines for each action to be implemented. Failure to provide and implement corrective actions may result in sanctions or federal/state ineligibility notices against the project or local agency.

Certain deficiencies may be unrecoverable as described in LAPM Chapter 20.

In the event the local agency disagrees with the major deficiencies identified, the local agency will have 30 days from receipt of the major deficiency notification to submit their written request for appeal in accordance with LAPM Chapter 20 (Section 20.4: Local Assistance Dispute Resolution Process). If the appeal is denied, the local agency will have 15 days from receipt of the decision to submit their corrective action plan.

Roles and Responsibilities

The following procedures, including roles and responsibilities, will be used to perform consultant oversight on federal and state funded projects being administered by local agencies.

A&E Oversight Engineers

- Monitor Exhibit 10-C database.
- Coordinate consultant oversight process reviews with local agencies.
- Consult with the A&E Oversight Program Manager on randomly selecting projects for process reviews.
- Perform consultant oversight process reviews through review of project records and discussions with local agency's contract administration staff.
- Communicate with DLAE of oversight process reviews so they may participate, if available.
- Provide process review findings to the local agency, consultant oversight coordinator, and DLAE.
- Identify any major deficiencies that will require a local agency corrective action plan.
- Issue a letter to the local agency notifying them of the major deficiencies requiring corrective action with copies sent to the consultant oversight coordinator and DLAE.
- Consult with the DLAE regarding major deficiencies and corrective action plans.
- Monitor local agency corrective action plan development and implementation. Ensure the A&E Consultant Oversight Database is populated and kept up-to-date with major deficiency information and related corrective action plan information.
- Assist the DLAE with quantification of any sanctions related to unresolved major deficiencies.
- Participate in consultant phase reviews and audits by others (e.g., Office of Inspector General, FHWA, State Controller's Office, Independent Office of Audits and Investigations, etc.). Assist in formal response to project specific findings from these reviews and audits on Caltrans' behalf.
- Assist local agencies and DLAE staff with questions that may arise concerning consultant contract related issues.
- Provide guidance and training to local agencies and DLAE staff concerning consultant contract administration, including federal and state requirements.
- Assist DLAE and DLAE staff with review of solicitation documents.
- Attend monthly consultant oversight meetings to discuss programmatic issues concerning consultant contract oversight, and share experiences and concerns.

A&E Oversight Program Manager

- Maintain A&E Consultant Oversight Database, monitoring for consistency and accuracy utilizing major deficiency notification letters.
- Issue annual report for A&E oversight (programmatic findings) to FHWA Division Administrator, DLA Division Chief, DLAEs, and A&EOEs. Report should include reviewed metrics, common problem areas, recommendations for improvements, programmatic actions/improvements taken (e.g., policy, procedures, and training),

performance measure trend analysis to establish first year baseline and subsequent performance, and sanctions taken.

- Analyze process review findings to identify common problem areas where modifications to policies, procedures, or training related to consultant oversight may be needed.
- Assist in development and delivery of new or revised policies, procedures, and training related to consultant oversight.
- Participate in consultant contract reviews and audits by others (e.g., Office of Inspector General, FHWA, State Controller's Office, Independent Office of Audits and Investigations, etc.). Assist in formal response to project specific and programmatic findings from these reviews and audits on Caltrans' behalf.
- Hold monthly meetings with A&EOEs to discuss programmatic issues with consultant oversight as a means to maintain statewide consistency and identify common concerns.
- Perform consultant oversight engineer duties as the need arises or in the absence of an A&EOE.
- Assist DLA Division Chief with issues referred to the Local Assistance Dispute Resolution Process.

District Local Assistance Engineer (DLAE)

- Provide representation at consultant oversight reviews, as available.
- Discuss major deficiency notification letter and corrective action plan requirements with the A&EOE.
- Perform DLAE role in Local Assistance Dispute Resolution Process.
- Issue sanctions on projects resulting from unresolved major deficiencies.

19.8 References

Caltrans/FHWA Stewardship and Oversight Agreement

<https://www.fhwa.dot.gov/federalaid/stewardship/agreements/ca.pdf>

LAPG C.18 OPTIONAL FEDERAL EXCHANGE & STATE MATCH PROGRAMS

LAPG C.18 Optional Federal Exchange & State Match Programs

Section / Exhibit	Description of Changes
18.2 RTPA Exchange Funds	Sentence removed stating that funds are to be used on projects.

18.2 Eligible Uses for Exchange and Match Funds

RTPA Exchange Funds

Pursuant to Section 182.6 of the S&H Code, subdivision (g), RTPA exchange funds shall be apportioned in accordance with subdivision (d) of the same Section. Subdivision (d) requires these funds be apportioned to projects. S&H Code section 182.6 subdivision (d) is stated here:

- (d) The applicable metropolitan planning organization, county transportation commission, or transportation planning agency shall annually apportion the regional surface transportation program funds for projects in each county, as follows:
 - (1) An amount equal to the amount apportioned under the federal-aid urban program in federal fiscal year 1990-91 adjusted for population. The adjustment for population shall be based on the population determined in the 1990 federal census except that no county shall be apportioned less than 110 percent of the apportionment received in the 1990-91 fiscal year. These funds shall be apportioned for projects implemented by cities, counties, and other transportation agencies on a fair and equitable basis based upon an annually updated five-year average of allocations. Projects shall be nominated by cities, counties, transit operators, and other public transportation agencies through a process that directly involves local government representatives.
 - (2) An amount not less than 110 percent of the amount that the county was apportioned under the federal-aid secondary program in federal fiscal year 1990-91, for use by that county.

This subdivision is silent on the types of projects to be nominated. As such, and since these federal funds are exchanged for state funds coming from the State Highway Account (SHA), agencies can use these funds on a variety of projects pursuant to the eligibility stated in Article XIX of the State Constitution. *It is clear, however, that the funds are to be used on projects.*

Exchanged funds may be used for projects that are programmed in a region's Regional Transportation Improvement Program (RTIP), as nominated according to 182.6(d)(1) and implemented by cities, counties and other transportation agencies. These transportation agencies must be public and do not include, for example, private entities, non-profit agencies, and tribes.

Regarding project selection, 182.6(e) states:

- (e) The metropolitan planning organization and transportation planning agency, in cooperation with the department, congestion management agencies, cities, counties, and affected transit operators, shall select and program projects in conformance with federal law.

It is important to note here that subdivision (e) states that projects must be selected and programmed in conformance with federal law. This section most certainly applies to those projects that will be funded with federal RSTP/RSTBGP funds. However, if the project is being funded with exchanged funds from the SHA, then the federal requirements do not apply to how the projects are to be selected. RTPAs will select projects in accordance with their project selection process.