

# LOCAL PROGRAMS PROCEDURES LPP 24-01

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



# LOCAL PROGRAMS PROCEDURES 24-01

The scope of LPP 24-01 includes the formal incorporation of the following Office Bulletins (OB) into the noted chapters of the Local Assistance Procedures Manual (LAPM) and/or Local Assistance Program Guidelines (LAPG).

OB Number	OB Title	Affected Chapters
24-01	Revision of Exhibits 13-A & 13-E	LAPM 13
24-02	Physical Incorporation of Form FHWA-1273	LAPM 12
24-03	Davis Bacon Regulations Update	LAPM 12 & 15
24-05	Real Property – Waiver Valuation	LAPM 13
24-06	Title VI Program Updates	LAPM 9
24-07	ADA / Section 504 Program Updates	LAPM 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 Chapter 9	Civil Rights & DBE	
LAPM Chapter 10	Consultant Selection	Exhibit 10-I
LAPM Chapter 12	PS&E	Exhibits 12-D & 12-H
LAPM Chapter 13	Right of Way	Exhibit 13-A
LPAM Chapter 14	Utility Relocation	Exhibit 14-G
LAPM Chapter 15	Advertise & Award Project	
LAPM Chapter 16	Administer Construction Contracts	
LAPG Chapter 6	Highway Bridge Program	

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 or grammatical changes were made throughout and are not documented in the summary table. The attached Chapters/Exhibits consist only of the pages with impacted sections/paragraphs unless otherwise noted.

Effective Date: January 2025

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# LAPM C.2 ROLES & RESPONSIBILITIES

## LAPM C.2 Roles & Responsibilities

<b>Section / Exhibit</b>	<b>Description of Changes</b>
<b>2.12</b> LPA Records and Documentation	<ul style="list-style-type: none"><li>• Clarified language that the start of document retention period begins once Caltrans transmits the final voucher to FHWA.</li></ul>

- 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.
- Evaluating and participating in decisions for contract modifications.
- Documenting contract monitoring activities and maintaining supporting contract records, as specified in 2 CFR 200.334.

The responsible charge must be employed directly by the LPA directly receiving federal funds. A consultant cannot be designated as the responsible charge of a project. The responsibilities of the responsible charge may be shared among a number of public employees. A public employee may be the responsible charge of several projects.

Note: This regulation is silent about engineering credentials, thus the LPA's employee in responsible charge need not to be an engineer.

### Unique Entity ID

As of April 4, 2022 the Data Universal Numbering System (DUNS) Number is no longer valid for federal award identification. The Unique Entity ID is now the identifier of record and can be generated at [SAM.gov](https://sam.gov).

### 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.~~ Project records are to be retained by LPAs for a period of three years once Caltrans transmits the final voucher to FHWA.

## 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: <https://catc.ca.gov/>.

### 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.

# LAPM C.3 PROJECT AUTHORIZATION

## LAPM C.3 Project Authorization

<b>Section / Exhibit</b>	<b>Description of Changes</b>
<b>3.3.3</b> Right of Way	<ul style="list-style-type: none"><li>Added NEPA/CEQA Re-Validation Form as part of required documents for Right of Way authorizations when required.</li></ul>
<b>3.3.5</b> Construction and Construction Engineering	<ul style="list-style-type: none"><li>Added NEPA/CEQA Re-Validation Form as part of required documents for CON/CE authorizations.</li></ul>
<b>3.3.7</b> Project End Date	<ul style="list-style-type: none"><li>Section revised for better organization; added link to PED Extension Tool.</li></ul>
<i>Note: subsection numbering implemented in LAPM Chapter 3 for ease of reference.</i>	

[13: Right of Way](#). The request for R/W authorization must include an approved NEPA document and when required, the [NEPA/CEQA Re-Validation Form](#).

### 3.3.4 Right of Way Utility Relocations

If federal reimbursement is sought for utility relocations (adjustments), all work must be performed in accordance with the FHWA's Alternate Procedure 23 CFR 645.119(e)(2). Refer to [LAPM Chapter 14: Utility Relocations](#), for detailed information and procedures related to eligible costs, required federal actions (Authorization to Proceed (E-76), FHWA Specific Authorization to Relocate Utilities, and FHWA Approval of Utility Agreement(s)), sequence of activities, notifications, support documentation, and federal reimbursement.

Note: Investigative and preliminary utility engineering work associated with utility relocation necessary to complete NEPA and PS&E may be authorized under Preliminary Engineering.

### 3.3.5 Construction and Construction Engineering

Eligible construction costs include the actual cost to construct the highway itself, including its appurtenant facilities and any removal, adjustment or demolition of buildings or major obstruction, utility or railroad work that is a part of the physical construction of the project construction engineering, and administrative settlement of cost for contract claims. Construction costs exclude costs of PE, R/W, and construction engineering. If work to be done by a Utility or Railroad entity is to be federally participating under the Construction phase of work, the LPA must coordinate to ensure that work does not begin until after execution of the E-76 for construction authorization, otherwise the utility or railroad work will be ineligible for reimbursement with federal funds.

Federal Authorization to Proceed with construction must be received prior to advertising. Projects advertised for a construction contract prior to federal authorization are not eligible for federal reimbursement.

The request package for Authorization to Proceed with construction must include LAPM 3-A, a copy of the approved NEPA document (either a signed Categorical Exclusion, Finding of No Significant Impact (FONSI), or Record of Decision (ROD)), if not previously submitted, [NEPA/CEQA Re-Validation Form](#), approved Right of Way Certification, engineer's estimate (the engineer's estimate may be included on the LAPM 3-A), [Exhibit 12-D: PS&E Checklist](#) and PS&E package.

For projects of \$100 million or more, but less than \$500 million, a Financial Plan must be prepared and submitted to the DLAE with the request for construction authorization. For Major Projects of \$500 million or more, a Financial Plan must be submitted prior to the request for construction authorization. A Project Management Plan (including the Project Management Plan Checklist) must be submitted prior to the finalization of the Initial Financial Plan. A Cost and Schedule Risk Assessment (CSRA) is required before the Initial Financial Plan. Both the Financial Plan and Project Management Plan are to be submitted to the DLAE for FHWA approval for Major Projects. The requirements for both plans are discussed in [LAPM Chapter 2: Roles and Responsibilities](#).

Construction Engineering (CE) includes the supervision and inspection of construction activities, additional staking functions considered necessary for effective control of the construction operations, testing materials incorporated into the construction, checking shop drawings, and measurements needed for establishing pay quantities. CE costs must be specifically included in

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](#).

## 3.3.7 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 DLAE. Any costs incurred after this date will not be eligible for federal reimbursement.~~

The period of performance is the period when allowable costs may be incurred by the LPA. The start date of the period of performance is the date FHWA authorizes the project with the Authorization to Proceed (E-76) for the identified phase and scope of work, and the end date of the period of performance is the Project End Date (PED). The PED is the final date when the LPA may perform federally reimbursable work. Invoicing must be submitted within 120 calendar days of the PED for FHWA to consider it eligible 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).~~

LPAs are required to include the PED at the time of the authorization request on [LAPM 3-A: Project Authorization / Adjustment Request](#). The PED is automatically calculated on the [LAPM 3-A](#). ~~The PED is established~~ by adding 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.



After Caltrans concurrence and FHWA approval, ~~Caltrans will notify the LPA of the established PED along with the project authorization~~ the accepted PED is shown on the E-76.

### Revising the PED

~~The LPA is expected to monitor the progress of its project. If the need arises, the LPA may need to revise the PED to accurately reflect the amount of time needed to complete the project or phase of the project. This is readily done and documented~~ Typically, the PED is revised as part of the LPA's authorization request when the project progresses from one phase of work to the next, as the project's delivery schedule will be more refined.

In some cases, however, the PED may need to be revised while working within a particular phase of work, ~~however, to request a revision to the PED, the LPA must submit an updated LAPM 3-A and adequate justification to the DLAE.~~ Examples of situations which may justify a revision to the PED include, but are not limited to: litigation, major changes in design, environmental or permit issues, construction claims, differing site conditions, significant additional work, area-wide material shortages, labor strikes, unusually severe weather, or other events which are outside the control of the LPA. ~~This documentation must be submitted as a separate request to the DLAE. Revisions to the PED without Caltrans concurrence and FHWA approval may result in costs not being eligible for reimbursement.~~

~~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. In cases where only the PED needs to be extended, the LPA must use the [PED Extension Tool](#) and a justification is required. If the PED is being revised along with project costs, the LPA must submit LAPM-3A and include justification for the revised PED in the Remarks section.

## 3.4 Administrative Procedures

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

Upon receipt of a complete and acceptable LPA Request for Authorization to Proceed package, Caltrans District Local Assistance Office creates an electronic project file (E-76) and inputs the required project information into FADS. The Caltrans District Local Assistance Office then transmits the E-76 project file and required backup information to Caltrans Headquarters (HQ) Division of Local Assistance (DLA). The DLA Area Engineer reviews the submittal package for completeness and accuracy, focusing on project eligibility, federal and state requirements, availability of federal funds and obligation authority, and required support documentation before transmitting the E-76 to FHWA California Division Office (CADO). FHWA approves/authorizes all projects and transmits all federally-funded project records to FMIS.

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

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

# LAPM C.9 CIVIL RIGHTS & DBE

## LAPM C.9 Civil Rights & DBE

<b>Section / Exhibit</b>	<b>Description of Changes</b>
<b>9.1</b> Introduction	<ul style="list-style-type: none"><li>• OB #24-06: text changes incorporated.</li></ul>
<b>9.2</b> Title VI of the Civil Rights Act of 1964 and Additional Nondiscrimination Requirements	<ul style="list-style-type: none"><li>• OB #24-06: text changes incorporated.</li></ul>
<b>9.3</b> Americans with Disabilities Act and Section 504 of the Rehabilitation Act	<ul style="list-style-type: none"><li>• OB #24-07: text changes incorporated.</li></ul>
<b>9.4.2</b> EEO Monitoring	<ul style="list-style-type: none"><li>• Three checklists previously listed in Section 9.2 moved to this subsection.</li></ul>
<i>Note: subsection numbering implemented in LAPM Chapter 9 for ease of reference.</i>	

## Chapter 9 Civil Rights & Disadvantaged Business Enterprise

### 9.1 Introduction

As subrecipients of United States Department of Transportation (USDOT) funding, Local Public Agencies (LPAs) are required to comply with and enforce certain nondiscrimination requirements in the award and administration of USDOT assisted contracts and procurements. The information contained in this chapter has been extracted from other documents and should not be considered as a replacement or substitute for the laws, rules and regulations, agreements, circulars, or other guidance available. Extensive reference is made to the United States Code (U.S.C.) and Code of Federal Regulations (CFR).

Caltrans Division of Local Assistance (DLA) is responsible for developing policies and procedures to help LPAs implement a Title VI, ADA, and DBE Program. DLA has included checks and balances throughout its processes including legal review of major agreements and documents. Some of the following implemented processes are taken from various federal regulations for compliance with Title VI, ADA, and DBE.

Failure to comply with various federal regulations or requirements may lead to the following:

- Deemed noncompliant and be placed on a corrective action plan
- Imposed sanctions, including suspension or termination of or refusal to grant or to continue federal financial assistance
- Declined approval of projects, grants, or contracts
- Withheld reimbursements to LPAs or payments to contractors
- Referred to Federal Highway Administration (FHWA), USDOT, or the United States Department of Justice (USDOJ) for appropriate legal action
- Other actions deemed appropriate under the circumstances, until compliance or remedial action has been accomplished by the LPA or contractor

### 9.2 Title VI of the Civil Rights Act of 1964 and ~~Related Statutes~~ Additional Nondiscrimination Requirements (FHWA)

Before the passage of the [Civil Rights Act of 1964](#), there was no law preventing discrimination and segregation in the United States among people of different colors, races, ethnicities, national origins, and people who speak different languages. [Title VI of the Civil Rights Act of 1964](#) (Title VI) ~~prohibits discrimination based upon race, color, and national origin. Specifically, 42 U.S.C. 2000d~~ states that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” [per 42 USC 2000d](#). Simply put, members of the public must not be discriminated against when trying to access LPA programs, services, or activities based on their race, color, or national origin (including Limited English Proficiency (LEP)).

In addition to Title VI ~~of the Civil Rights Act of 1964~~, other nondiscrimination statutes afford legal protection ~~under the Federal Highway Administration’s (FHWA) Title VI Program~~. These statutes include the following:

- Section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C.324) (sex)
- Age Discrimination Act of 1975 (age)
- Section 504 of the Rehabilitation Act of 1973 (disability); see Section 9.3
- Americans with Disabilities Act of 1990 (disability); see Section 9.3

~~Two Presidential Executive Orders place further emphasis on the Title VI protections of race and national origin and are included in the scope of the FHWA's Title VI Program:~~

- ~~1. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," directs federal agencies to develop strategies to address disproportionately high and adverse human health or environmental effects of their programs on minority and low-income populations. The order is also intended to promote nondiscrimination in federal programs substantially affecting human health and the environment, and to provide minority and low-income communities access to public information and an opportunity for public participation in matters relating to human health or the environment.~~
- ~~2. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," directs federal agencies to evaluate services provided and implement a system that ensures that Limited English Proficiency (LEP) persons are able to meaningfully access the services provided, consistent with, and without unduly burdening, the fundamental mission of the LPA. Additionally, each federal agency shall ensure that recipients of federal financial assistance provide meaningful access to programs, services, and information to their LEP applicants and beneficiaries free of charge.~~

~~Taken together, these requirements define an overarching Title VI nondiscrimination program. Title VI and the additional nondiscrimination requirements are applicable to all programs and activities administered by a recipient and subrecipient, in addition to programs receiving federal financial assistance, due to the Civil Rights Restoration Act of 1987.~~

As a condition of receiving federal funds from FHWA through Caltrans, LPAs are required to sign the Master Agreement – Administering Agency-State Agreement for Federal-Aid Projects (see Exhibit 4-C) with Caltrans, agreeing to comply with Title VI and other regulations imposed by the USDOT or the FHWA, as it relates to Title VI and additional nondiscrimination requirements.

~~Nondiscrimination provisions apply to all programs and activities of federal-aid recipients, subrecipients, and contractors, regardless of tier (49 CFR 21).~~

~~Agencies that receive federal funds from Caltrans are referred to as subrecipients. Subrecipients that receive FHWA funds through Caltrans are required to establish a Title VI program that is subject to review by Caltrans pursuant to 23 CFR 200.9(b)(7). The purpose of the program is to prohibit discrimination and ensure non-discrimination through establishing policies and procedures and conducting regular subrecipient program reviews.~~

~~Caltrans Division of Local Assistance, Office of Guidance and Oversight (OGO) monitors Caltrans subrecipients for Title VI compliance. The following is a listing of items that are required as part of a subrecipient's Title VI program.~~

## 9.2.1 Legal Authorities

LPAs must comply with the following list of authorities for Title VI and additional nondiscrimination compliance.

- [Title VI of the Civil Rights Act of 1964 \(42 U.S.C. § 2000d et seq.\)](#) (Title VI) – Prohibits discrimination on the basis of race, color, or national origin (including LEP) in programs and activities receiving federal financial assistance.
- [Civil Rights Restoration Act of 1987](#) (amended Title VI) – Expanded the coverage of Title VI to apply to all operations of LPAs receiving federal financial assistance, not just programs or activities that are federally funded.
- [Section 162 \(a\) of the Federal-Aid Highway Act of 1973 \(23 U.S.C. Section 324\)](#) (sex) – Prohibits discrimination on the basis of sex.
- [Age Discrimination Act of 1975 \(42 U.S.C. Sections 6101-6107\)](#) (age) – Prohibits discrimination on the basis of age.
- [Executive Order 12898 - "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"](#) – Directs agencies to develop strategies to address disproportionately high and adverse human health or environmental effects of their programs on minority and low-income populations.
- [Executive Order 13166 "Improving Access to Services for Persons with Limited English Proficiency \(LEP\)"](#) – Ensure that recipients of federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.
  - [USDOJ LEP Guidance](#) – A general guidance document with compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and that they do not discriminate on the basis of national origin in violation of Title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations.
  - [USDOT LEP Guidance](#) – USDOT recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.
- [USDOJ Title VI Requirements – 28 CFR 42 Subpart F: Coordination of Enforcement of Non-discrimination in Federally Assisted Programs](#) – USDOJ's regulations for enforcing Title VI and mandating each state agency administering a continuing program that receives federal financial assistance to establish a Title VI compliance program for itself and other recipients which obtain federal assistance through it.
- [USDOT Title VI Requirements; 49 CFR Part 21](#) – USDOT's regulations for enforcing Title VI, including procedures for effecting compliance.
- [USDOT Order Title VI Order 1000.12C](#) – USDOT's order provides policy direction, practices, and standards to Operating Administrations (OAs) for establishing and maintaining an enforcement program that ensures Title VI compliance.
- [FHWA Title VI Requirements, 23 CFR Part 200](#) – FHWA's regulations for implementing the FHWA Title VI compliance program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations.

Taken together, these requirements define an overarching Title VI nondiscrimination program. Title VI and the additional nondiscrimination requirements are applicable to all programs and activities administered by a recipient and subrecipient, in addition to programs receiving federal financial assistance, due to the Civil Rights Restoration Act of 1987. Nondiscrimination provisions apply to all programs and activities of federal-aid recipients, subrecipients, and contractors, regardless of tier (49 CFR 21).

## 9.2.2 Title VI Program Roles and Responsibilities

### FHWA Roles and Responsibilities

The FHWA CA Division Office (CADO) ensures that Caltrans has an approved Title VI Plan and submits the annual Title VI Accomplishments and Goals Report. Additionally, CADO ensures that Caltrans implements an effective monitoring program of their subrecipients' (LPAs') efforts to implement Title VI effectively.

CADO processes Title VI complaints (complaints received from members of the public against Caltrans or LPAs) received from Caltrans. CADO Civil Rights Manager and Civil Rights Specialist guide Caltrans as needed.

### Caltrans Roles and Responsibilities

#### Office of Civil Rights (OCR)

- Administer the Caltrans Title VI Program.
- Oversee DLA's efforts in monitoring LPAs' Title VI programs and provide technical assistance to DLA.
- Process and forward Title VI complaints received from LPAs to FHWA for investigation.

#### Division of Local Assistance (DLA)

- Provide technical assistance to the districts and LPAs.
- Monitor LPA compliance with Title VI program requirements by conducting mandated program assessments. The district is invited to participate in LPA program assessment onsite visits.
- Provide training for district and LPA staff.
- Process and forward Title VI complaints received from LPAs to OCR.

#### District Local Assistance Engineer (DLAE)

- Appoint a DLA Title VI Coordinator for the district to be the point of contact for LPAs. The DLA Title VI Coordinator assists DLA in its oversight responsibilities.
- Monitor LPA compliance with Title VI program requirements by participating in Title VI program assessments and meetings with LPAs.
- Ensure that LPAs with federal-aid contracts sign the most current Master Agreement Administering (see [Exhibit 4-C](#)) with the most current Title VI assurances (Exhibit B) that include an Appendix E to Exhibit B.

- Ensure that LPAs with federal-aid contracts submit their Title VI Implementation Plans to DLA biennially (by June 30 every odd year or when requested) for review through the [Title VI Program Assessment Online Form](#).
- Serve as the focal point for advice and assistance to the LPAs on Title VI matters.
- Provide Title VI oversight of LPAs pursuant to the LAPM.
- Report all Title VI accomplishments for the current Federal Fiscal Year (FFY) and goals for the upcoming FFY to the District Title VI Liaison to be included in the Caltrans Title VI Accomplishments and Goals Report reported to the FHWA annually.

### Local Public Agency Roles and Responsibilities

- Develop the LPA's Title VI program as specified in Section 9.2.3: FHWA Title VI Program Requirements.
- Participate in Title VI program assessments conducted by DLA.
- Submit technical assistance requests to the DLAE.
- Designate a Title VI Coordinator, accountable to the Chief Executive Officer of the LPA, to administer the LPA's Title VI Program in accordance with federal laws and regulations relating to Title VI.
- Develop a Title VI Implementation Plan (Title VI Plan), a written plan for enforcement that sets out its priorities and procedures for Title VI. The plan must address all the items listed under the Title VI Requirements section below, be approved by the LPA's approving body or official, and be submitted to DLA through the [Title VI Program Assessment Online Form](#).
- Develop a Title VI complaint form and a log for Title VI complaints received. In addition, LPAs must develop procedures for prompt processing (including logging Title VI complaints, determining jurisdiction, and determining if the complaint is a Title VI complaint) and disposition of Title VI complaints received directly by the LPA. Visit [DLA's Filing a Title VI Complaint](#) website for more information.

Note: Per the FHWA Guidance Memorandum, Processing of Title VI Complaints, dated June 13, 2018, all Title VI complaints received by LPAs are to be forwarded to Caltrans to be submitted to the FHWA Division Office. Title VI complaints must be sent within one business day of receipt via email to [Title.VI@dot.ca.gov](mailto:Title.VI@dot.ca.gov).

- Implement and monitor the LPA's Title VI program following the LPA's Title VI Plan and FHWA's Title VI program requirements.
- Complete the Title VI Program Assessment Online Form biennially by June 30 every odd year or when requested.

### 9.2.3 FHWA Title VI Program Requirements

#### ~~1. Title VI Implementation Plan~~

~~The LPA must develop a written plan that sets priorities and procedures for Title VI compliance. This plan must be updated every 3-5 years or as needed, and made available to the public and address matters such as the procedures for handling complaints, the provision of civil rights training for its staff, the allocation of staff to~~



~~different compliance functions, department area reviews, data collection methods, dissemination of Title VI information, Limited English Proficiency analysis, and Title VI accomplishments and goals (23 CFR 200.9(b)(11)).~~

~~The plan must contain the following:~~

~~**a. Designation of a Title VI Coordinator**~~

~~The LPA must designate a Title VI Coordinator who has a responsible position in the organization and easy access to the head of the agency. Identification of the Title VI Coordinator must be disseminated to the public via such methods as posting in public areas or on the LPA's website (23 CFR 200.9(b)(1)).~~

~~**b. Title VI Assurances in Contract Documents and Agreements**~~

~~LPA's sign assurances as part of Exhibit 4-C: Master Agreement—Administering Agency State Agreement for Federal Aid Projects with Caltrans. The Program Supplement Agreement (PSA) (see Exhibit 4-D: Sample—Program Supplement Agreement) for each project includes the LPA's reaffirmation of the nondiscrimination assurances contained in the Master Agreement.~~

~~The LPA must include the provisions indicated in Appendices A—E to Exhibit B of the Title VI Assurances, included as part of Exhibit 4-C in contracts and agreements, between the LPA and the contractor, where applicable.~~

~~**c. Title VI Nondiscrimination Statement**~~

~~The LPA must develop a Title VI policy statement for signature by the head of the agency. The statement must give reasonable guarantee that the programs administered by the agency are conducted in compliance with all Title VI nondiscrimination requirements. The signed statement must be disseminated to the public via such methods as posting in public areas and/or on the agency's website (49 CFR 21.7(b)).~~

~~**d. Dissemination of Title VI Information**~~

~~The LPA must develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English. The purpose of the information must be to communicate information about the public's rights under Title VI. Sample information includes, but is not limited to, posters, brochures, flyers, "frequently asked questions" documents, web pages, etc. Alternative formats must be offered and made available at no cost to the requester, where applicable (23 CFR 200.9(b)(12)).~~

~~**e. Title VI Training**~~

~~The LPA must provide Title VI training for its managers, supervisors, and staff with frequent public contact every two years (23 CFR 200.9(b)(9)).~~

~~Sample of Title VI training, please refer to Federal aid Essentials for Local Public Agencies.~~

~~**f. Title VI Complaint Process**~~

~~An LPA that receives federal financial assistance is required to adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging discrimination on basis of race,~~



~~color, national origin, age, sex, or disability (23 CFR 200.9(b)(3)).~~

~~Any person who believes they have been discriminated against based on race, color, or national origin by Caltrans or a subrecipient may file a Title VI complaint by completing and submitting the agency's Title VI Complaint Form. The Office of Civil Rights (OCR) processes complaints received no more than 180 days after the alleged incident. OCR will only process complaints that are complete, which include the complainant's contact information, details of the alleged discrimination, and the complainant's signature.~~

~~The subrecipient must forward the completed complaint form to OCR upon receipt. Once the Title VI complaint is received, OCR will determine the federal administering agency that has jurisdiction to investigate/process the complaint.~~

**Title VI Complaints Processed Under the Federal Highway Administration (FHWA):**

~~Title VI complaints filed with Caltrans in which Caltrans is named as the Respondent will be forwarded to the FHWA Division Office. The Complainant will receive an acknowledgement letter informing them that the complaint has been received and forwarded to the FHWA.~~

~~NOTE: Per the FHWA Guidance Memorandum, Processing of Title VI Complaints, dated June 13, 2018, all Title VI complaints received by a subrecipient are to be forwarded to Caltrans to be submitted to FHWA Division Office. Complaints should be sent within one business day of receipt via email to [Title.VI@dot.ca.gov](mailto:Title.VI@dot.ca.gov). If FHWA Headquarters Office of Civil Rights (HCR) determines a Title VI complaint against a subrecipient can be investigated by Caltrans, HCR may delegate the task of investigating the complaint to Caltrans.~~

**Title VI Complaints Processed Under the Federal Transit Administration (FTA):**

~~Title VI complaints filed with Caltrans in which Caltrans is named as the Respondent will be investigated by Caltrans. Per FTA, Title VI complaints are to be handled at the local level or elevated to FTA under egregious Title VI discriminatory circumstances. The Complainant will receive an acknowledgement letter informing them that the complaint has been received and whether the complaint will be investigated by Caltrans or forwarded to FTA.~~

~~Title VI complaints filed with Caltrans against a subrecipient will be investigated by Caltrans. If the complaint is filed with the subrecipient, the subrecipient is responsible for investigating the complaint in accordance with FTA Circular 4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration Recipients.~~

**FTA – Filing a Local Complaint**

~~FTA recommends, but does not require, that individuals first file a complaint directly with their transit provider to give the provider an opportunity to resolve the situation. FTA grantees are required under the ADA, Title VI, and EEO to have local complaint procedures.~~

**Caltrans Office of Civil Rights Investigation Process**

~~If OCR is delegated the responsibility of performing an investigation, OCR has 90 days to investigate the complaint. If additional time is needed, OCR will call the~~

**Complainant and inform them.**

If more information is needed to resolve the case, the OCR investigator may contact the Complainant. The Complainant has 10 business days from the date of the letter to send the requested information to the investigator assigned to the case.

If the investigator is not contacted by the Complainant or does not receive the additional information within 10 business days, OCR can administratively close the case. A case can be administratively closed also if the complainant no longer wishes to pursue their case.

OCR will consult with HCR regarding the disposition of the complaint. Disposition of Title VI complaints will be undertaken by HCR, through either (1) informal resolution or (2) issuance of a Letter of Finding of compliance or noncompliance with Title VI. A copy of the Letter of Finding will be sent to all parties via the FHWA Division Office.

A person may also file a complaint directly with:

Federal Transit Administration	or	Federal Highway Administration
Civil Rights Division		U.S. Department of Transportation
Attention: Complaint Team		Office of Civil Rights
East Building, 5th Floor TCR		8th Floor E81-105
1200 New Jersey Avenue, SE		1200 New Jersey Avenue, SE
Washington, DC 20590		Washington, DC 20590

**g. Data Collection and Analysis**

The subrecipient must develop procedures for the collection of statistical data (race, color, national origin, age, sex, and disability) of participants in, and beneficiaries of, federally funded roadway projects, i.e., citizens impacted by relocation and participants attend the public hearing during an environmental review. In addition, the LPA must analyze the data collected to determine the effectiveness of outreach methods to ensure that all groups are included during the decision-making process and are given an opportunity to voice their opinions or concerns (23 CFR 200.9(b)(4)).

**2. Limited English Proficiency**

Executive Order 13166, "Improving Access to Services For Persons with Limited English Proficiency," directs federal agencies to evaluate services provided and implement a system that ensures that Limited English Proficiency (LEP) persons are able to meaningfully access the services provided, consistent with, and without unduly burdening, the fundamental mission of the LPA.

The LPA is required to ensure programs and activities normally provided in English are accessible to LEP persons. Each LPA must perform an annual assessment to determine if modifications are needed to their programs and activities to ensure meaningful access by LEP persons, culminating in the development of a language access plan.

The LPA's assessment, sometimes referred to as a "four factor" analysis, must be based on the following factors:

1. The number or proportion of LEP persons eligible to be served or likely to be

~~encountered.~~

- ~~2. The frequency of LEP contacts.~~
- ~~3. The nature and importance of the programs, services, or activities provided.~~
- ~~4. The resources available for LEP persons.~~

~~For example, publications or public notices must be made available in languages understood by the affected population and in other languages by request. Interpreters must be made available for LEP persons and for the hearing impaired (see LAPM Chapter 8: Public Hearings).~~

~~Language barriers may prohibit LEP persons from:~~

- ~~• Obtaining services and information related to transportation services, programs, and projects.~~
- ~~• Taking advantage of the transit system, which could affect their jobs and social opportunities.~~
- ~~• Understanding the benefits to which they are entitled when their home or business property is acquired through eminent domain.~~

~~More information on LEP can be found at: [www.lep.gov](http://www.lep.gov).~~

### **3. Environmental Analysis**

~~Presidential Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations," is considered during the preliminary environmental investigation process and completion of the Preliminary Environmental Study (PES) Form. See Exhibit 6-A: Preliminary Environmental Study (PES), Exhibit 6-B: Instructions for Completing the Preliminary Environmental Study (PES), LAPM Chapter 6: Environmental Procedures, or refer to the Local Assistance Environmental website.~~

~~Upon completion of the Exhibit 6-A PES Form, if questions 23-32 are marked yes, or if the PES results in an Environmental Assessment or Environmental Impact Statement:~~

- ~~a. Title VI implementation and outreach may be triggered. Any vital public communication must be translated and accessible when a significant number or percentage of the population is eligible to be served (5% or 1,000 individuals, whichever is less of the population to be served), likely to be directly affected by the program/activity, or needs services or information in a language other than English to communicate effectively.~~
- ~~b. The LPA must contact the District Senior Environmental Planner and the District Senior Right of Way Agent to inform them the agency may implement Title VI and outreach for this project.~~

~~If a project requires that a Relocation Impact Study and/or Community Impact Assessment be conducted, the LPA must follow the guidance set forth in the Standard Environmental Reference (SER). The SER is an online electronic reference that sets forth document content and format, as required by law or regulation, and recommended format, if not specified by law or regulation. Chapter 25 of the SER addresses Environmental Justice and LEP requirements.~~

~~Each agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations.~~

#### ~~4. Accomplishments and Goal Report~~

~~Develop a Title VI Annual Accomplishments and Goals Report. List the goals accomplished in the past year, and goals for the next year. For instance, a goal may state where Title VI issues were identified and discrimination prevented, activities and efforts of the Title VI specialist and program area personnel in monitoring Title VI, etc. (23 CFR 200.9(b)(10)).~~

LPA's that receive FHWA funds through Caltrans are required to establish a Title VI program that is subject to assessment by Caltrans pursuant to 23 CFR 200.9(b)(7). The purpose of the program is to prohibit discrimination and ensure non-discrimination by establishing policies and procedures.

Caltrans Division of Local Assistance, Office of Local Civil Compliance (LCC) monitors LPA's for Title VI compliance. The following is a list of items that are required as part of an LPA's Title VI program. For examples of documents and resources, visit DLA's [FHWA Title VI Local Agency Requirements](#) website.

1. Title VI Implementation Plan (28 CFR 42.415 and 23 CFR 200.9(b)(11))  
The LPA must develop a written plan that sets priorities and procedures for Title VI compliance which covers race, color, and national origin (including LEP). This plan must be available to the public (for example, posted on the website) and address all the items listed in this section. The LPA must implement and enforce the Title VI Plan to ensure compliance with FHWA's Title VI requirements. This plan must be updated annually or as needed when changes occur.
2. Designation of a Title VI Coordinator (23 CFR 200.9(b)(1))  
The LPA must designate a Title VI Coordinator who has a responsible position in the organization and easy access to the head of the agency. Identification of the Title VI Coordinator must be disseminated to the public via such methods as posting in public areas or on the LPA's website.
3. Title VI/Nondiscrimination Policy Statement (49 CFR 21.7(b))  
The LPA must develop a Title VI policy statement for signature by the head of the agency and be made available to the public. The statement must give a reasonable guarantee that the programs administered by the LPA are conducted in compliance with all Title VI nondiscrimination requirements which covers race, color, and national origin (including LEP). The policy statement must be updated annually.
4. Limited English Proficiency (LEP) Assessment (Four Factor Analysis)/ Language Access Plan (LAP) (Executive Order 13166; USDOJ LEP Guidance; USDOT LEP Guidance)  
Publications or public notices must be made available in languages understood by the affected population and in other languages determined by the LEP Assessment or by request. Interpreters must be made available for LEP persons at public meetings (see [LAPM Chapter 8: Public Hearings](#)).

Language barriers may prohibit LEP persons from:

- Obtaining services and information related to transportation services, programs, and projects.
- Taking advantage of the transit system, which could affect their jobs and social opportunities.
- Understanding the benefits to which they are entitled when their home or business property is acquired through eminent domain.

More information on LEP can be found at: [www.lep.gov](http://www.lep.gov).

### LEP Assessment

The LPA is required to ensure programs and activities normally provided in English are accessible to LEP persons. Each LPA must perform an annual assessment (also referred to as a Four Factor Analysis) to determine if modifications are needed to their programs and activities to ensure meaningful access by LEP persons by providing language interpretation (verbal) or translation (written) services. If there are no changes to the factors from the previous LEP Assessment, the LPA can use the prior year's LEP Assessment. The LPA must document that the LPA reviewed the previous LEP Assessment and found no changes.

The LPA's assessment must be based on the following factors:

- The number or proportion of LEP persons eligible to be served or likely to be encountered.
- The frequency of LEP contacts.
- The nature and importance of the programs, services, or activities provided.
- The resources available for LEP persons.

Visit [FHWA's U.S. – Limited English Proficiency Data Collection Walkthrough](#) website for more information.

### Language Access Plan (LAP)

The LAP must comprise the following six elements that are vital to developing and taking reasonable steps to provide meaningful access to LPA-conducted programs, services, and activities:

- Understanding how persons with LEP interact with the LPA
- Identifying and assessing communities with LEP
- Providing notice of language assistance services
- Providing language assistance services
- Training staff on policies and procedures
- Monitoring, evaluating, and updating the language access policy directives, plans, and procedures.

The LAP must be updated with the results of the LEP Assessment or as needed when changes occur. Visit the [USDOJ's Language Access Planning](#) or the [USDOT's Language Access Plan](#) websites for more guidance.

5. Dissemination of Title VI Information (23 CFR 200.9(b)(12))

The LPA must develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English (determined by the LEP Assessment). The purpose of the information is to communicate information about the public's rights under Title VI

6. Title VI Training for LPA Staff (23 CFR 200.9(b)(9))

The LPA must provide Title VI training for all LPA employees every two years. Title VI training must cover what is Title VI, how the LPA implements its Title VI program to meet federal requirements, and what steps to take for handling Title VI complaints, as well as language interpretation (verbal) or translation (written) requests.

7. Title VI Assurances in Contract Documents and Agreements (23 CFR 200.9(a)(1) and 49 CFR 21.7)

The LPA must include required Title VI Assurances (specifically, Appendices A and E of the Title VI Assurances) in all sub-contracts and sub-agreements with federal funds, where applicable. The LPA signed the Title VI Assurances as part of Exhibit 4-C: "MASTER AGREEMENT - ADMINISTERING AGENCY-STATE AGREEMENT FOR FEDERAL-AID PROJECTS".

For construction contracts, specific Title VI contract provision language is included in Form FHWA-1273 that is physically inserted in the federal-aid construction contract (see LAPM Chapter 12: Plans, Specifications, and Estimate).

For consultant contracts, Appendices A and E of the Title VI Assurances must be included in each consultant contract (see LAPM Chapter 10: Consultant Selection). 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. Refer to Exhibit 10-R: A&E Boilerplate Agreement Language, Article XXXII Title VI Assurances.

8. Title VI Complaint Procedures (23 CFR 200.9(b)(3))

The LPA must develop a Title VI complaint form and a log for Title VI complaints received. In addition, the LPA must develop procedures for prompt processing (including logging Title VI complaints, determining jurisdiction, and determining if the complaint is a Title VI complaint) and disposition of Title VI complaints received directly by the LPA.

Note: Per the FHWA Guidance Memorandum, Processing of Title VI Complaints, dated June 13, 2018, all Title VI complaints received by LPAs are to be forwarded to Caltrans to be submitted to the FHWA Division Office. Title VI complaints must be sent within one business day of receipt via email to Title.VI@dot.ca.gov.

9. Title VI Data Collection (23 CFR 200.9(b)(4))

The LPA must develop procedures for the collection of statistical data (race, color, and national origin) of participants in, and beneficiaries of, federally funded roadway projects, e.g., citizens impacted by relocation and participants that attended the public hearing during an environmental review. For example, the LPA can collect Title VI data of participants at public meetings.

In addition, the LPA must analyze the data collected to determine the effectiveness of outreach methods to ensure that no group is excluded during the decision-making process or is not given an opportunity to voice their opinions or concerns. For example, in analyzing the data collected in the example above, the LPA would determine if the

LPA needed to conduct additional outreach to the group(s) who did not attend the public meeting, as these groups make up a good portion of the population.

10. Internal/External Title VI Reviews (23 CFR 200.9(a)(4), 23 CFR 200.9(b)(5), 23 CFR 200.9(b)(6), and 23 CFR 200.9(b)(7))

The LPA must develop a program to conduct internal Title VI reviews of program areas and to conduct external Title VI reviews of sub-awardees. This effort ensures both the LPA and its sub-awardees comply with FHWA's Title VI requirements.

11. Title VI Accomplishments and Goals Report (Title VI Annual Work Plan) (23 CFR 200.9(b)(10))

The LPA must develop an annual Title VI Accomplishments and Goals Report which consists of accomplishments for the past year, and goals for the next year. This report must be made available to the public and when requested by Caltrans.

### 9.2.4 LPA Title VI Implementation

#### Environmental Analysis (Exhibit 6-A Preliminary Environmental Study (PES))

Presidential Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," is considered during the preliminary environmental investigation process and completion of the Preliminary Environmental Study (PES). See [Exhibit 6-A: Preliminary Environmental Study \(PES\)](#), [Exhibit 6-B: Instructions for Completing the Preliminary Environmental Study \(PES\)](#), [LAPM Chapter 6: Environmental Procedures](#), or refer to the Local Assistance Environmental [website](#).

Upon completion of the Exhibit 6-A PES Form, if questions 23-32 are marked yes, or if the PES results in an Environmental Assessment or Environmental Impact Statement:

- a. Title VI implementation and outreach may be triggered. Any vital public communication must be translated and accessible when a significant number or percentage of the population is eligible to be served (5% or 1,000 individuals, whichever is less of the population to be served), likely to be directly affected by the program/activity, or needs services or information in a language other than English to communicate effectively.
- b. The LPA must contact the District Senior Environmental Planner and the District Senior Right of Way Agent to inform them the agency may implement Title VI and outreach for this project.

If a project requires that a Relocation Impact Study and/or Community Impact Assessment be conducted, the LPA must follow the guidance set forth in the Standard Environmental Reference (SER). The SER is an online electronic reference that sets forth document content and format, as required by law or regulation, and recommended format, if not specified by law or regulation. [Chapter 25 of the SER](#) addresses Environmental Justice and LEP requirements.

Each agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations.

#### Public Hearings, Public Involvement Meetings, and Community Meetings



The attendance and concerns of LEP persons, persons with disabilities, minority populations, and low-income populations at public involvement meetings and hearings must be carefully documented to comply with Title VI, including statistics of participants by race and gender. Public hearing announcements must be made available in languages understood by the affected population. Public hearings must be held at locations that are both geographically and structurally accessible.

### Right of Way

On federal-aid projects, all Right of Way (R/W) activities are conducted in accordance with [LAPM Chapter 13: Right of Way](#) ~~and the Caltrans Right of Way Manual, unless the LPA has adopted its own Caltrans-approved procedures. These manuals~~ The LAPM requires that the public be provided with Title VI information and complaint procedures within each of the following R/W functions: appraisals, acquisitions, relocation assistance program, and property management. Both the DLAE and Caltrans District R/W staff monitor R/W activities on local projects to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

### Construction

Federal-aid construction contracts must include provisions, which require compliance with Title VI. The specific contract provision language is included in Form FHWA-1273 that is physically inserted in the federal-aid construction contract (see [LAPM Chapter 12: Plans, Specifications, and Estimate](#)). To further comply with Title VI, LPAs must notify residents [\(in English and in other languages as needed\)](#) prior to construction that they may be impacted by construction zones (e.g. detours, noise, parking, pollution, etc.).

### Title VI Monitoring

The LPA must actively monitor its programs, services, and activities to ensure compliance with Title VI requirements. For example, efforts should be made to communicate regularly with management and employees ~~with frequent public contact~~ to address Title VI questions and provide technical assistance and training. Policies and procedures ~~should~~ **must** be evaluated periodically for Title VI compliance and incorporate Title VI requirements, where applicable.

Demographic data ~~should~~ **must** be collected and analyzed on an ongoing basis to better understand the populations being served by the LPA, as well as inform the delivery of services. Public meeting notices and other communications ~~should~~ **must** be reviewed for LEP purposes ~~as a matter of practice~~.

~~LPA preliminary environmental studies, technical reports, environmental assessments, and Environmental Impact Statements provide for data collection and analysis on the demographics of neighborhoods and communities. Caltrans DLAEs and Environmental Specialists review the environmental documents to ensure that no disproportionate adverse impacts occur on minority and low-income neighborhoods or communities.~~

### Title VI ~~Compliance Reviews~~ Program Assessments

Caltrans DLA conducts program ~~reviews~~ **assessments** of ~~subrecipients~~ **LPAs receiving federal funds of federal financial assistance** to ensure compliance with Title VI requirements pursuant to 23 CFR 200.9(b)(7). ~~Reviews~~ **Assessments** can occur at any time, and at Caltrans' discretion. ~~Reviews~~ **Assessments** consist of a desk **audit assessment** and/or on-site visit. ~~Reviewers~~ **The assessors** summarize observations and findings in a formal ~~compliance review program~~ **assessment** report that is provided to the LPA, **the DLAE**, and FHWA. Corrective action may be required, where applicable.



**Plans, Specifications & Estimate Checklist**

~~Exhibit 12-D: PS&E Checklist confirms the implementation of the mandatory requirements of FHWA Form 1273 such as Equal Employment Opportunity (EEO) certification, Disadvantaged Business Enterprise (DBE) provisions, and applicable wage rates. The LPA submits Exhibit 12-D to the DLAE along with the request for authorization to proceed with construction for federal-aid construction contracts.~~

**Local Public Agency Construction Contract Administration Checklist**

~~Exhibit 15-A: Local Agency Construction Contract Administration Checklist confirms that DBE and labor/EEO compliance requirements are performed and documented in the project files. Exhibit 15-A documents that the LPA will meet all of the requirements prior to the award of the construction contract (see LAPM Chapter 15: Advertise and Award Project).~~

**Resident Engineer's Construction Contract Administration Checklist**

~~Exhibit 15-B: Resident Engineer's Construction Contract Administration Checklist is completed by the LPA Resident Engineer. The purpose of this checklist is to assist the LPAs in administering federal-aid highway construction projects. It also provides a record that the EEO/Wage Rate/False Statements posters are being posted at specific locations, that employee interviews will be conducted in accordance with the Labor Compliance/EEO interview form, and that DBE requirements are met. The LPA submits Exhibit 15-B along with the Award Package shortly after award of the construction contract (see LAPM Chapter 15).~~

**9.2.5 Additional Resources for Title VI Implementation**

Additional information on implementing Title VI (including potential ~~Title VI~~ issues, self-monitoring, good practices, and mitigation measures) ~~in Caltrans' Title VI Program Plan and Title VI Guidelines~~ is available at: <https://dot.ca.gov/programs/civil-rights/title-vi>

- Office of Civil Rights: [Title VI Branch](#)
- FHWA: [Title VI of the Civil Rights Act of 1964 and Additional Nondiscrimination Requirements](#)
  - [Title VI Toolkit](#)
- DLA: [DLA's FHWA Title VI Local Agency Requirements](#)
  - [Title VI Compliance Guide for LPAs](#)
  - [DLA FHWA Title VI Program Checklist](#)
  - [Filing a Title VI Complaint](#)
  - [Local Agency FHWA Title VI Training](#)

~~In addition, Caltrans has produced a Title VI brochure that is available in ten different languages at the same [website](#).~~

**9.2.6 Required Documents and Reports**

Document / Report	Summary	Due Date
Title VI Assurances (USDOT Order 1050.2A)	LPA's assurances for complying with Title VI and non-discrimination provisions. This is part	Signed when applying for federal financial

	<a href="#">of Exhibit 4-C Master Agreement Administering Agency-State Agreement for Federal-Aid Projects.</a>	assistance and updated as needed
Title VI Implementation Plan (28 CFR 42.415 and 23 CFR 200.9(b)(11))	A written plan that sets priorities and procedures for Title VI compliance and lays out how the LPA implements its Title VI program.	Updated annually by October 1 or as needed when changes occur
Title VI/Non-Discrimination Policy Statement (49 CFR 21.7(b))	A reasonable guarantee that the programs administered by the LPA are conducted in compliance with all Title VI nondiscrimination requirements.	Updated annually
Limited English Proficiency (LEP) Assessment (Four Factor Analysis) (Executive Order 13166)	An annual assessment (also referred to as a Four Factor Analysis) to determine if modifications are needed to their programs and activities to ensure meaningful access by LEP persons.	Updated annually or as needed when changes occur
Language Access Plan (LAP) (Executive Order 13166)	A written plan that includes the LEP Assessment results and procedures and resources available to provide language assistance to LEP individuals.	Updated as needed when changes occur
Title VI Accomplishments and Goals Report (Title VI Annual Work Plan) (23 CFR 200.9(b)(11))	An annual Title VI Accomplishments and Goals Report which consists of accomplishments for the past year, and goals for the next year.	Updated annually
<a href="#">Title VI Program Assessment Online Form</a>	A biennial assessment used to conduct LPA Title VI Program Assessments to ensure LPAs comply with FHWA Title VI requirements.	Reported biennially by June 30 every odd year or when requested

### 9.3 ~~Accessibility: Rehabilitation Act of 1973~~/Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act

As part of FHWA's regulatory requirements under Title II of the [Americans with Disabilities Act \(ADA\)](#) and Section 504 of the Rehabilitation Act of 1973 ([Section 504](#)), Caltrans ensures that ~~subrecipients of LPAs receiving~~ federal ~~and state~~ funds do not discriminate on the basis of disability in any highway transportation program, activity, service, or benefit they provide to the general public. ~~The subrecipients~~ LPAs must ensure that people with disabilities have equitable opportunities to use the public rights-of-way system.

Per Section 504 ~~of the Rehabilitation Act of 1973~~ (codified as 29 U.S.C.791 et seq.), ~~requires that any entity receiving federal financial assistance~~ LPAs must ensure that persons with disabilities are not discriminated against in any and all aspects of employment or ~~be~~ denied access to the goods or services that ~~these federal fund recipients~~ LPAs provide.

The intent of ~~the Americans with Disabilities Act of 1990~~ ADA (Public Law 101-336, codified as 42 U.S.C.12101 et seq.) is to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities. This law extended the protections offered for persons with disabilities.

### 9.3.1 Legal Authorities

28 CFR 35 requires that facilities constructed on behalf of, or for the use of, a public entity shall be designed and constructed so that the facility is accessible to and usable by persons with disabilities.

49 CFR 27 requires nondiscrimination on the basis of disability in programs and activities receiving or benefiting from federal financial assistance. The State of California has also adopted regulations in Section 54 of the California Civil Code that specifies all buildings, structures, sidewalks, curbs, and related facilities constructed in California by the use of state, county or municipal funds, or the funds of any political subdivision of the state, shall be accessible to and usable by persons with disabilities.

#### ~~American with Disabilities Act (ADA) Assurances~~

~~Administering agencies~~ LPAs sign ADA assurances as part of their Master Agreement with Caltrans (see [Exhibit 4-C: Master Agreement](#)). The Program Supplement Agreement (PSA) for each project includes the ~~administering agency's~~ LPA's reaffirmation of the nondiscrimination assurances contained in the Master Agreement.

### 9.3.2 ADA / Section 504 Program Roles and Responsibilities

#### FHWA

- Ensure public entities, recipients, and LPAs are informed of their responsibilities to provide accessibility in their transportation programs, activities, and facilities.
- Ensure public entities, recipients, and LPAs are applying accessibility standards to all transportation facilities.

#### Caltrans

##### Office of Civil Rights (OCR)

- Process and forward local grievance complaints to the LPA's ADA Coordinator and DLA.

##### Division of Local Assistance (DLA)

- Provide technical assistance and training to LPAs.
- Monitor LPA compliance with ADA/Section 504 program requirements by mandated program assessments.
- Monitor and track grievance complaints received from OCR, and ensure LPAs are following up with the complaints/complainants.

##### District Local Assistance Engineer (DLAE)

- Ensure LPAs who are currently receiving and requesting federal funds must provide 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.

- Monitor LPA compliance with ADA program requirements by participating in ADA program assessments and meeting with LPAs.

### 9.3.3 ADA / Section 504 Program Requirements

#### 1. Designation of an ADA Coordinator

LPAs that employ 50 or more persons are required to designate an ADA Coordinator who is responsible for coordinating the efforts of the LPA to comply with ADA requirements, including investigation of complaints. The LPA must make available to the public the name and contact information (mailing address, telephone number, e-mail address, etc.) of its designated ADA Coordinator 28 CFR 35.107(a).

#### 2. Adoption of Grievance Procedures

LPAs that employ 50 or more persons are required to adopt and publish procedures for resolving grievances arising under Title II of the ADA (28 CFR 35.107). Pursuant to 28 CFR 35.170, any individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may file a complaint within 180 days of the date of the alleged discrimination, unless the time for filing is extended by an LPA for good cause. The LPA must designate at least one person to coordinate its efforts to comply with the adoption of complaint procedures per 49 CFR 27.13.

The LPA must adopt complaint procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part and 49 CFR parts 37, 38, and 39. The procedures must meet the following requirements:

- The process for filing a complaint, including the name, address, telephone number, and email address of the employee designated under paragraph (a) of this section, must be sufficiently advertised to the public, such as on the LPA's website;
- The procedures must be accessible to and usable by individuals with disabilities;
- The LPA must promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant by a means that will result in documentation of the response.

~~Grievance procedures set out a system for resolving complaints of disability discrimination in a prompt and fair manner. The grievance procedure must include:~~

- ~~• A description of how and where a complaint under Title II of the ADA may be filed with the LPA.~~
- ~~• A statement notifying potential complainants that alternative means of filing a complaint, other than in writing, will be made available to individuals with disabilities.~~
- ~~• A description of the time frames and processes to be followed by the complainant and the LPA.~~
- ~~• Information on how to appeal an adverse decision.~~
- ~~• A statement of how long complaint files will be retained.~~

### 3. Notice of ADA Nondiscrimination Policy

~~All public entities must provide information to the public, program participants, program beneficiaries, applicants, and employees about the ADA and how it applies to the public entity.~~

LPA's must make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the LPA, and make such information available to them in such manner as the head of the LPA finds necessary to apprise such persons of the protections against discrimination assured them by ADA and 28 CFR 35.106.

Here are some methods that LPA's can use ~~public entities have used~~:

- Put the notice on the ~~public entity's~~ LPA's website
- ~~• Include the notice in social media such as Twitter and Facebook.~~
- Post the notice at facilities
- Publish the notice in local newspapers
- ~~• Broadcast the notice in public service announcements on local radio and television stations~~
- ~~• Include the notice in program announcements and applications~~

The information must be provided in "alternative" formats so that it is accessible to people with hearing and vision disabilities. Examples of alternative formats:

- Captioned public service announcements on television
- ~~• Large print (recommend sans-serif typeface such as Helvetica or Arial, 18 point size; if an individual requests a specific point size, provide notice in that size)~~
- Braille
- ~~• Text file on a thumb disk or emailed to the person~~
- HTML format on an accessible website
- Audio recording
- ~~• Radio announcement~~

~~Public entities must provide the information not just once, but on an ongoing basis. For example when there's a new ADA Coordinator the ADA Nondiscrimination Policy should be updated.~~

### 4. Self-Evaluation

LPA's are required to ~~complete a self-evaluation of its current programs, policies, and practices to identify barriers for people with disabilities~~ ensure accessibility for individuals with disabilities through the self-evaluation pursuant to 28 CFR 35.105, 49 CFR 27.11(c)(2), and Section 504. ~~of the Rehabilitation Act of 1973. The scope of the self-evaluation includes both architectural and administrative barriers. The LPA must provide an opportunity for interested persons, including individuals with disabilities or organizations representing~~

~~individuals with disabilities, to participate in the self-evaluation process by submitting comments.~~ In the interest of transparency, keep a copy of the self-evaluation available in the files for public review. As a public entity, it is the LPA's responsibility to ensure that individuals with disabilities can participate in all aspects of their civic, social, and personal life within the community. Consider the completed self-evaluation a "living" document, to be revisited and updated regularly. This will ensure the LPA's communities, programs, services, and activities remain accessible.

Critical areas to evaluate as part of a self-evaluation must accomplish the following, but are not limited to:

- Identify all programs (including public right-of-way facilities), activities, and services and their locations.
- Determine whether employees and officials are familiar with the public entity's ADA obligations, including the requirement to make reasonable modifications to policies, practices, and procedures.
- Determine whether employees and officials know how to arrange for auxiliary aids and services, such as sign language interpreters, material in Braille, and assistive listening systems; to ensure that communication with people with disabilities is as effective as others.
- Review service, activity and program's policies and procedures to determine whether they ensure an equal opportunity for people with disabilities to participate and benefit.
- Survey facilities and determine whether there are physical barriers to access programs. If non-structural changes, such as moving programs, should be made, include them in the self-evaluation. If structural changes are needed, include them in the transition plan.

~~All public entities are required to complete a self-evaluation. However, only those that employ 50 or more persons are required to maintain the self-evaluation on file and make it available for public inspection for at least three years pursuant to 28 CFR 35.105(c). Other public entities are not required to retain their self-evaluations but are encouraged to do so because these documents provide evidence of a public entity's good faith efforts to comply with ADA requirements.~~

~~NOTE: LPAs must implement a system for periodically reviewing and updating self-evaluations and, if applicable, transition plans per 49 CFR 27.11(c)(2)(v). As a best practice, an updated self-evaluation is recommended every three (3) years prior to updating the agency's Transportation Improvement Program.~~

## 5. Transition Plan

Following completion of a self-evaluation, LPAs with 50 or more employees are required to develop a transition plan to prioritize removal of structural barriers for accessibility purposes pursuant to 28 CFR 35.150(d). Although LPAs with fewer than 50 employees are not required to develop a transition plan, it may be useful in setting priorities when structural changes are required to bring the organization into compliance.

The transition plan must accomplish the following, but is not limited to:

- Identify physical obstacles in the LPA's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
- Describe in detail the methods that will be used to make the facilities accessible;
- Specify the schedule for taking steps necessary to upgrade pedestrian access to meet Section 504 and/or ADA requirements in each year following the transition plan; and
- Indicate the official responsible for implementation of the plan (28 CFR 35.150(d)(3)).

Note: LPAs must implement a system for periodically reviewing and updating self-evaluations and, if applicable, transition plans per 49 CFR 27.11(c)(2)(v). ~~As a best practice an updated transition plan is recommended every three (3) to five (5) years following adoption of the updated self-evaluation.~~

#### 6. Caltrans DLA ADA Section 504 Program Assessment

The LPA ADA Section 504 Program Assessment is to be submitted electronically.

Caltrans monitors LPA compliance with ADA program requirements by conducting mandated program assessments. The district is invited to participate in LPA program assessment onsite visits. A biennial assessment is used to conduct LPA ADA Program Assessments to ensure LPAs comply with FHWA ADA requirements.

LPAs must be prepared to submit all information in one sitting, which covers this sample assessment: [Sample Questions of the ADA Section 504 Program Assessment \(PDF\)](#).

Use this [form link](#) to submit an ADA Section 504 Program Assessment. LPAs are required to complete the DLA ADA Section 504 Program Assessment Online Form biennially (by June 30 every odd year when requested). Updates can be made after submittal by requesting an update link to [dla.ada@dot.ca.gov](mailto:dla.ada@dot.ca.gov).

Note: The Caltrans DLA ADA Section 504 Program Assessment does not replace the Exhibit 9-C: Local Agency ADA Annual Certification Form.

#### 7. Design

State and local governments, regardless of whether they receive federal financial assistance, are required to comply with federal [2010 ADA Standards](#), Title 24 of the California Code of Regulations (which contains California building regulations), or local code, whichever provides the greatest access. Private-funded improvements within the public Right of Way are also required to comply with the federal [2010 ADA Standards](#) or with Title 24, whichever code offers the greatest access or protection to individuals with disabilities. All new and altered pedestrian facilities such as, but not limited to, highway rest area facilities, sidewalks, crosswalks, pedestrian overpasses, underpasses, and ramps must be made accessible to persons with disabilities in accordance with federal and state accessibility standards on all LPA federal-aid projects. Facility maintenance does not constitute an alteration (see [LAPM Chapter 11: Design Guidance](#) for what constitutes an alteration triggering accessibility requirements).



## Certification

LPAs certify compliance with federal, state, and local ADA regulations, laws, and codes in the [Exhibit 12-D: PS&E Checklist](#).

### 8. ADA ~~Monitoring~~ Certification

#### Local Public Agency ADA Annual Certification Form

LPAs [currently receiving and requesting federal funds](#) 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.

Exhibit 9-C includes:

- a. Designated ADA Coordinator information (name, address, phone number, and e-mail address).
- b. Certification that the LPA has an updated self-evaluation and transition plan, if applicable. If the LPA does not have an updated self-evaluation and transition plan, then the LPA provides an estimated date that they will have one, and may be subject to a desk or on-site program review.
- c. Certification of the adoption of a grievance procedure. If the LPA does not have a grievance procedure, then the LPA provides an estimated date that they will have one.

### 9. ADA Monitoring

#### Field Reviews

During the field review, an agreement is reached among all interested parties (LPA, DLAE, FHWA) on the general design features and exceptions for the project. ADA deficiencies are discussed and agreed upon at this time (see [LAPM Chapter 7: Field Review](#)).

### 10. Plans, Specifications & Estimate

LPAs certify that their project's Plans, Specifications & Estimate (PS&E) complies with all applicable federal and state regulations and codes (see [LAPM 3-A: Project Authorization/Adjustment Request](#) and [Exhibit 12-D: PS&E Checklist](#), and [LAPM Chapter 12: Plans, Specifications & Estimate](#)).

### 11. Final Inspection

The LPA conducts the final inspection and certifies on the [Exhibit 17-C: Final Inspection Form](#) that the project was constructed in accordance with the scope and description of the project authorization document and that all federal and state requirements have been met. If the DLAE reviews the job site and cannot verify completion of required ADA accessible components (as certified in Exhibit 17-C), the agency may be subject to sanctions as identified in [LAPM Chapter 20: Audits & Corrective Actions](#).

## 9.4 Equal Employment Opportunity (EEO) Contractor Compliance

The current Federal Transportation Act, 23 U.S.C.140(a), and implementing regulations of 23 CFR 230 require that LPAs receiving federal financial assistance assure that employment in



connection with federal highway construction projects is provided without regard to race, color, religion, sex, national origin, age, or disability.

The LPA is also required to include notification of a federal-aid contractor's EEO responsibilities in the advertised contract specifications. The LPA must maintain and make available apprenticeship, skill improvement or other upgrading programs, which provide equal opportunity for training and employment without regard to race, color, religion, sex, national origin, age, or disability.

23 CFR 635.107 sets forth FHWA policy relating to federal-aid highway contract-letting, and requires equal opportunity for DBE participation. Other sections of the CFR include nondiscriminatory bidding procedures, subcontractor and contractor responsibilities, labor, employment and Native American Indian preference provisions, payroll and statements of wages paid, and contract termination procedures.

Form FHWA-1273, Required Contract Provisions for Federal-Aid Construction Contracts is a standard federal form containing required contract provisions and proposal notices and is required to be physically inserted into each federal-aid highway construction contract and subcontracts (at any tier). When a contractor signs a federal-aid contract of \$10,000 or more, the nondiscrimination provisions in the Form FHWA-1273 constitutes the contractor's Equal Employment Opportunity/Affirmative Action Program standards for that contract.

#### 9.4.1 EEO Implementation

##### Assurances

LPAs sign assurances as part of their Master Agreement with Caltrans. Appendix A to Exhibit B of the Master Agreement includes nondiscrimination in the selection and retention of sub-applicants and the prohibition of discrimination in employment practices.

##### Required Federal Contract Provisions

LPAs must physically insert the Form FHWA-1273 into the contract document. LPAs are aware that contractor's noncompliance with the EEO specifications in the Form FHWA-1273 may be considered a breach of contract for which payment may be withheld, or the contract terminated (see [LAPM Chapter 12: Plans, Specifications & Estimate](#)).

##### Construction

Federal-aid prime contractors and subcontractor's employment practices in the areas of recruitment and selection decisions (hiring, promotions, terminations, training) are to be conducted without regard to race, color, religion, sex, national origin, age, or disability.

The LPA's resident engineer should be cognizant of the contractual requirement and monitor the contractor for compliance. Specifically, the resident engineer should be concerned whether discriminatory practices take place, particularly in the hiring, firing, training, promotion, and utilization of employees (see [LAPM Chapter 16: Administer Construction Contracts](#), Section 16.9: Equal Employment Opportunity).

#### 9.4.2 EEO Monitoring

The following three checklists ~~listed in Section 9.2: Nondiscrimination Title VI of the Civil Rights Act of 1964 and Related Statutes~~ serve to assist LPAs in implementing EEO and are monitoring tools for DLAEs to ensure that EEO requirements are met.

- **Plans, Specifications & Estimate Checklist**  
[Exhibit 12-D: PS&E Checklist](#) confirms the implementation of the mandatory requirements of FHWA Form-1273 such as Equal Employment Opportunity (EEO) certification, Disadvantaged Business Enterprise (DBE) provisions, and applicable wage rates. The LPA submits Exhibit 12-D to the DLAE along with the request for authorization to proceed with construction for federal-aid construction contracts.
- **Construction Contract Administration Checklist**  
[Exhibit 15-A: Local Agency Construction Contract Administration Checklist](#) confirms that DBE and labor/EEO compliance requirements are performed and documented in the project files. Exhibit 15-A documents that the LPA will meet all of the requirements prior to the award of the construction contract (see [LAPM Chapter 15: Advertise and Award Project](#)).
- **Resident Engineer's Construction Contract Administration Checklist**  
[Exhibit 15-B: Resident Engineer's Construction Contract Administration Checklist](#) is completed by the LPA Resident Engineer. The purpose of this checklist is to assist the LPAs in administering federal-aid highway construction projects. It also provides a record that the EEO/Wage Rate/False Statements posters are being posted at specific locations, that employee interviews will be conducted in accordance with the Labor Compliance/EEO interview form, and that DBE requirements are met; see [LAPM Chapter 15](#) for specific submittal requirements.

In addition, DLA performs periodic EEO process reviews that include reviews of the DLAE, LPA, and contractor. Caltrans OCR includes LPA contracts in their compliance reviews of federal-aid contractors.

### 9.4.3 EEO Reporting

During the last full pay period in July, the prime contractor must complete [Form FHWA-1391](#) for all federal-aid construction contracts that are active.

**Note:** The person who should be signing Form FHWA-1391 would either be the LPA Resident Engineer or the Project Manager. The person signing the forms is responsible for verifying all the information provided is correct and will be the contact person if there are any discrepancies.

## 9.5. Disadvantaged Business Enterprise (DBE)

### 9.5.1 Background

Caltrans is required under 49 CFR 26 to administer a Disadvantaged Business Enterprise (DBE) Program. The DBE Program is intended to ensure a level playing field and foster equal opportunity in federal-aid contracts. As a result, Caltrans periodically conducts studies that examine the availability, disparity, and discrimination of disadvantaged businesses in the transportation construction and engineering industry in California. Past studies have determined that discrimination continues to exist in the transportation contracting industry. When establishing the overall DBE goal, Caltrans must include the level of DBE participation that LPAs could contribute. This will include an assessment of the subcontracting opportunities for specific items of work and the DBE availability for specific items of work. In other words, that level of subcontracting opportunities that DBEs could reasonably be expected to compete for on a contract.

# LAPM C.10 CONSULTANT SELECTION

## LAPM C.10 Consultant Selection

Section / Exhibit	Description of Changes
<p><b>10.1.1</b> Introduction</p>	<ul style="list-style-type: none"> <li>Deleted last sentence in 1<sup>st</sup> paragraph; CMSR contracts funded with local/state funding only do not require FHWA approval.</li> </ul>
<p><b>10.1.1</b> Definition of an A&amp;E Consultant</p>	<ul style="list-style-type: none"> <li>Definition updated to align with 23 CFR 172.3.</li> </ul>
<p><b>10.1.3</b> Allowable Costs</p>	<ul style="list-style-type: none"> <li>Clarifying information added regarding consultant's ICR for all federal-aid A&amp;E consultant contracts.</li> <li>Noted paragraphs moved to Financial Review Performed Prior to Contract Execution sub-section.</li> </ul>
<p><b>10.1.3</b> Caltrans Acceptance of Indirect Cost Rate</p>	<ul style="list-style-type: none"> <li>Clarifying information added.</li> <li>3<sup>rd</sup> and 4<sup>th</sup> paragraphs moved to Financial Review Performed Prior to Contract Execution and Local Public Agency Responsibilities sub-sections.</li> </ul>
<p><b>10.1.3</b> Financial Review Performed Prior to Contract Execution</p>	<ul style="list-style-type: none"> <li>Last bullet in 1<sup>st</sup> paragraph removed as it no longer applies.</li> <li>Text placed from other sub-sections as noted.</li> </ul>
<p><b>10.1.3</b> Local Public Agency Responsibilities</p>	<ul style="list-style-type: none"> <li>4<sup>th</sup> paragraph moved to Financial Review Performed Prior to Contract Execution sub-section.</li> <li>Text placed from other sub-sections as noted.</li> </ul>
<p><b>10.1.6</b> Negotiate Contract with Top-Ranked Consultant</p>	<ul style="list-style-type: none"> <li>Independent cost estimate language moved and expanded to be consistent with Section 10.1.5.</li> </ul>
<p><b>10.1.7</b> Request Cost Proposal and Negotiate Contract with Top-Ranked Consultant</p>	<ul style="list-style-type: none"> <li>Independent cost estimate language moved and expanded to be consistent with Section 10.1.5.</li> </ul>
<p><b>10.1.9</b> Retaining a Consultant in a Management Support (CMSR) Role</p>	<ul style="list-style-type: none"> <li>Clarifying information added.</li> </ul>
<p><b>10.2.1</b> General</p>	<ul style="list-style-type: none"> <li>Deleted paragraph regarding CMSR contracts funded with local/state funding only as they do not require FHWA approval; replaced with clarifying information.</li> </ul>

## LAPM C.10 CONSULTANT SELECTION

**Exhibit 10-I**  
Notice to Proposers DBE  
Information

- Out-of-date contact information and links updated in the Resources section and moved to end of the Exhibit.

## 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 Architectural and Engineering (A&E) Consultants must follow the selection and contracting procedures detailed in [Section 10.1: Federally-Funded A&E Contracts](#) 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 (CMSR) are required to obtain FHWA approval (see [Section 10.1.9: Retaining a CMSR](#) of this chapter).~~

### Definition of an Architectural and Engineering Consultant

23 CFR 172 and California Government Code 4525 defines A&E services as ~~those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or program management~~ program management, construction management, feasibility studies (includes environmental studies and analysis), preliminary engineering, design, engineering, surveying, mapping or architectural related services.

### Architectural and Engineering Consultants

The Brooks Act (40 U.S.C.1101-1104) 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 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 (DIR) websites below:

## Audit Guidance Available

The American Association of State Highway and Transportation Officials (AASHTO), Uniform Audit & Accounting Guide ([AASHTO Audit Guide](#)), which is referred to frequently in this section, is a valuable tool to guide LPAs, consultants, and Certified Public Accountants (CPA) through the requirements for establishing, and audits of FAR-compliant ICR. The [AASHTO Audit Guide](#) is used extensively as an industry guide in the audit and review process.

LPAs may seek accounting assistance from internal audit staff and an independent CPA for compliance. The consultant may seek professional guidance in selecting its independent CPA. See also the [AASHTO Audit Guide](#), Chapter 2. Selection of CPA Firm as Overhead Auditor for guidance in the selection process. Training is also offered by FHWA's National Highway Institute (see <https://www.nhi.fhwa.dot.gov/home.aspx>). Courses offered include:

- Using the AASHTO Audit Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Audit Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA- NHI-231029)
- Using the AASHTO Audit Guide for the Auditing and Oversight of A&E Consultant Indirect Cost Rates (FHWA-NHI-231030)

For training and additional information provided by Caltrans Local Assistance, visit the [Caltrans Local Assistance Blog](#). For FHWA's Q&A for ICRs and audits, and A&E related services, visit FHWA Consultant Services [website](#).

## Allowable Costs

23 U.S.C.112(b)(2)(B) states that any A&E contract or subcontract awarded, whether funded in whole or in part with federal-aid highway funds in furtherance of highway construction projects, must be performed and audited in compliance with the federal cost principles.

LPAs are required to perform a cost analysis to ensure all costs are allowable and in compliance with federal and state requirements and retain documentation of negotiation activities and resources. Hourly rate(s) for each key personnel and/or classification of employee(s) proposed in cost proposals must be reasonable for the work performed and actual, allowable, and allocable in accordance with the federal cost principles.

All consultant ICRs must be supported with the required financial documents as outlined in the checklist on IOAI's [Financial Document Review \(FDR\) Request Form](#); however, Category 4 applies to all consultants regardless of the participation amount.

Costs must be allowable only if the cost is incurred and cost estimates included in negotiated prices are allowable in accordance with the federal and state regulations and procedures, and contract provisions.

~~LPAs are required to apply Caltrans-accepted consultant or subconsultant's ICRs, to contracts. An ICR is valid for the one-year applicable accounting period accepted or reviewed by Caltrans. Consultants must update, on an annual basis, ICRs in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles. For further guidance, refer to 23 CFR 172.11(b)(1). If the consultant is subject to Cost Accounting Standards (CAS), the consultant must use the applicable ICR for the contract.~~

~~A consultant's accepted ICR for its one-year applicable accounting period must be applied to contracts; however, once an ICR is established for a contract, it may be extended beyond the~~

~~one-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the one-year applicable period must 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**.

### 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 LPA data. The SHR information and rates can be found at the DLA Consultant Selection and Procurement website: <https://dot.ca.gov/programs/local-assistance/guidance-and-oversight/consultant-selection-procurement>. To request information regarding the SHR methodology, email the A&E Oversight Branch at [aeoversight@dot.ca.gov](mailto: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 consultants 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 Financial Document Review Request package. The IOAI email address is: [Conformance.Review@dot.ca.gov](mailto: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 [for consultant contracts with a dollar value equal to or greater than \\$1M](#).

An audit or review of the ICR may consist of one or more of the following:

- Perform a review to determine if the ICR was prepared in accordance with 23 CFR 172 and 48 CFR 31;
- Perform an audit to determine if the ICR was prepared in accordance with 23 CFR 172 and 48 CFR 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;
- [Perform other evaluations in accordance with a risk-based oversight process in accordance with 23 CFR 172 and 48 CFR 31.](#)

~~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 Organizations, Special Districts, and Regional Transportation Planning Agencies.~~

### Financial Review Performed Prior to Contract Execution

All consultants, including prime consultants and subconsultants, on a proposed contract with a dollar value equal to or greater than \$1M are subject to an ICR financial review by IOAI. The financial documents required are detailed in the [Financial Document Review Request form](#). 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.~~

The outcome of an audit or review for contracts with a dollar value equal to or greater than \$1M 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. Contracts below \$1 Million are not subject to the Caltrans Financial Document Review but LPAs are required to establish that all costs are in compliance with the federal cost principles, 48 CFR 31, and other applicable requirements are met. Cost analysis documents are required to be retained in the project files to demonstrate compliance.

For further guidance, refer to 23 CFR 172.11(b)(1). If the consultant is subject to Cost Accounting Standards (CAS), the consultant must use the applicable ICR for the contract.

LPAs are required to apply Caltrans-accepted consultant or subconsultant's ICRs, to contracts. An ICR is valid for the one-year applicable accounting period accepted or reviewed by Caltrans. Consultants must update, on an annual basis, ICRs in accordance with the consultant's annual accounting period and in compliance with the federal cost principles. 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. A consultant's accepted ICR for its one-year applicable accounting period must be applied to contracts; however, once an ICR is established for a contract, it may be extended beyond the one-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the one-year applicable period must 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.

ICRs that have not been accepted by Caltrans for contracts with a dollar value equal to or greater than \$1M 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 Organizations, Special Districts, and Regional Transportation Planning Agencies.

### Local Public Agency Responsibilities

LPAs are responsible for obtaining all required ICR supporting documentation from A&E prime consultants and subconsultants as outlined in the Financial Document Review Request form. LPAs are responsible for forwarding these documents to IOAI for review. LPAs are also required to ensure that IOAI has a copy of the [Certification of Indirect Costs and Financial Management System form](#). The ICR included in the LPA's cost proposal must match the ICR included in the Certification of Indirect Costs and Financial Management System form and the consultant's ICR schedule. The proposed ICR, however, can be lower than ICR in the Certification of Indirect Costs and Financial Management System form 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 Certification of Indirect Costs and Financial Management System form and cost proposals are updated annually unless all concerned parties agree to fix the ICR for the term of contract, and this is clearly specified in the contract. ICR updates are not required to IOAI if the ICR is fixed for the life of the contract. ICR's are only reviewed for consultants that are being awarded a contract, not consultants on a short list or pre-qualified list.

The cost proposal includes contract costs: direct salary or wage rates, fixed fees, other direct costs, indirect costs, total costs, and certification for the costs. LPAs must perform and retain documentation of activities and resources used to support that a cost analysis has been performed to establish that costs and elements were determined to be fair and reasonable in accordance with federal cost principles.

All contract supporting documentation must be retained by the LPA in project files for the required retention period. Unsupported costs may be disallowed and required to be returned to Caltrans. Having proper documentation policy and procedures, trained staff, and organized project files are essential for demonstrating that costs claimed and reimbursed have been incurred, are eligible, reasonable, allowable, and allocable to the contract and comply with federal cost principles.

~~Contracts below \$1 Million are not subject to the Caltrans Financial Document Review but LPAs are required to establish that all costs are in compliance with the Federal cost principles, 48 CFR 31, and other applicable requirements are met. All documents listed above, and cost analysis documents are required to be retained in the project files to demonstrate compliance.~~

Instructions are provided in the Financial Document Review Request form including requirements for submitting a complete Financial Review packet. Financial packets can be e-mailed to: [conformance.review@dot.ca.gov](mailto:conformance.review@dot.ca.gov).

Alternatively, Financial Review packets can be mailed to:

Department of Transportation  
Independent Office of Audits and Investigations  
MS 2 Attention: External Audit Manager  
P.O. Box 942874  
Sacramento, CA 94274-0001

LPAs may check IOAI's website to verify whether consultants have been reviewed by Caltrans for the valid ICR period. 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.

### **Consultant Responsibilities (Both prime consultants and subconsultants)**

A&E prime consultants and subconsultants in contract with LPAs using state or federal-aid highway funds should refer to the Financial Document Review Request form for the ICR financial documents required to be submitted to their LPA. Consultants must complete the Certification of Indirect Costs and Financial Management System form that attests that the ICR rate proposed is in compliance with federal cost principles (48 CFR 31) and that the consultant's financial management system is adequate to accumulate and segregate reasonable, allowable, and allocable direct and indirect project costs. The Financial Document Review Request and Certification of Indirect Costs and Financial Management System forms should be submitted to the LPA who will forward a copy to IOAI along with all other related and required financial documents. For all future contracts within a same fiscal year, the consultant needs to only provide a copy of the Certification of Indirect Costs and Financial Management System form to the LPA.

Consultants must follow all the federal, state, and contract requirements outlined in the above, Applicable Standards section. Each contracting consultant must ensure its ICR is not combined with any parent company's or subsidiary's ICR.

ICR schedules for both prime consultants and subconsultants should be prepared using the accrual basis of accounting and be presented in compliance with the federal cost principles. See a [Standard Indirect Cost Rate Schedule](#) example that consultants can use when preparing their own.

For public works Prevailing Wage contracts, all workers must be paid the prevailing wage rate determined by the Director of the Department of Industrial Relations according to the type of work and location of the project: <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>.

When determined necessary, IOAI may request additional information, such as a labor distribution summary and Executive Compensation Analysis (ECA). A consultant's labor

to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the short list.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

### Negotiate Contract with Top-Ranked Consultant

Cost proposals (for both prime consultant and all subconsultants), and contract audit and review documents such as Certification of Indirect Costs and Financial Management System and Financial Document Review Request forms, whichever applicable (see [Section 10.1.3: A&E Consultant Audit and Review Process](#)), will be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short-listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultants with their statements of qualification.

After the top-ranked consultant submits a sealed cost proposal, the LPA reviews the cost proposal and compares it with the LPA's confidential detailed independent cost estimate and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the LPA the services or products required at a fair and reasonable cost. ~~The independent cost estimate, developed by the LPA in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.~~

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant.

At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals must be returned to consultants.

Cost proposals in electronic form must be submitted separately from the RFQ and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and must not be opened by the LPA or any private entity that the LPA uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be returned unopened or properly disposed of by permanently deleting the cost proposals in accordance with LPA's written policies and procedures.

The independent cost estimate, developed by the LPA in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. Items necessary for the independent cost estimate include, hours/detailed work, direct labor costs, indirect labor costs, other direct costs, and profit/fee. Agencies must retain documentation of how the cost estimate

was developed. It can be revised, if needed, for use in negotiations with the next most qualified consultant.

A contract audit and review may be required (see [Section 10.1.3: A&E Consultant Audit and Review Process](#) earlier in this chapter). LPA Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a Financial Review until all required documentation is completed correctly and submitted. Negotiations may be completed after receipt of the Caltrans IOAI Financial Review Letter. An indirect cost audit may be performed within the record retention period of the contract.

The items typically negotiated include:

- Work plan;
- Staffing plan;
- Schedule (including contract begin and end dates);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fee. Fee is required to be negotiated as a separate element.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the 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 the contract to ensure that all federal and state requirements have been met, 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 A&E Consultant Contract form for all new federal-funded A&E consultant contracts using the A&E Consultant Contract database at <https://dla.dot.ca.gov/fmi/webd/AE%20Consultant%20Contract%20Form> (Firefox or Chrome browser).

If there are any changes to the contract after submittal of the A&E Consultant Contract form, refer to [Section 10.1.8: Contract Amendments](#) of this chapter.

## 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 a request for proposal (RFP)

When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

### **Request Cost Proposal and Negotiate Contract with Top-Ranked Consultant**

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all the consultants on the short list.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

Cost proposals (for both prime consultant and all subconsultants) and contract audit and review documents, such as Certification of Indirect Costs and Financial Management System and Financial Document Review Request forms, whichever applicable (see [Section 10.1.3: A&E Consultant Audit and Review Process](#)), will be submitted in a separate sealed envelope.

After the top-ranked consultant submits a sealed cost proposal, the LPA reviews the cost proposal and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the LPA the services or products required at a fair and reasonable cost. ~~The independent cost estimate, developed by the LPA in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.~~

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals must be returned to consultants.

~~The independent cost estimate, developed by the LPA in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. Items necessary for the independent cost estimate include, hours/detailed work, direct labor costs, indirect labor costs, other direct costs, and profit/fee. Agencies must retain documentation of how the cost estimate was developed. It can be revised, if needed, for use in negotiations with the next most qualified consultant.~~

A contract audit and review may be required (see [Section 10.1.3: A&E Consultant Audit and Review Process](#)). The LPA Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Conformance Review, if applicable. Negotiations may be completed after receipt of the Caltrans IOAI



- Competition is determined to be inadequate after solicitation of a number of sources.

The LPA must:

- Follow its defined process for noncompetitive negotiation;
- Develop an adequate scope of work, evaluation factors, and cost estimate before solicitation;
- Conduct negotiations to ensure a fair and reasonable cost.

The LPA must carefully document details of the special conditions, obtain Caltrans approval on the [Exhibit 12-F: Cost Effectiveness / Public Interest Finding / A&E Noncompetitive](#) and retain all documents in the project files for future Caltrans' or FHWA's review.

### **Retaining a Consultant in a Management Support (CMSR) Role**

Management support role means performing engineering management services or other services acting on the contracting agency's behalf, which are subject to review and oversight by agency officials, such as a program or project administration role typically performed by the contracting agency and necessary to fulfill the duties imposed by Title 23 of the United States Code, other federal and state laws, and applicable regulations. Other services can include supervising construction including serving as single point of contact, developing and maintaining project document tracking system, establishing project internal communication protocol, performing document control and implementing a quality assurance program.

Management support roles may include, but are not limited to, providing oversight of an element of a highway program, function, or service on behalf of the contracting agency or may involve managing or providing oversight of a project, series of projects, or the work of other consultants and contractors on behalf of the contracting agency. Contracting agency written policies and procedures as specified in 23 CFR 172.5(c) may further define allowable management roles and services a consultant may provide, specific approval responsibilities, and associated controls necessary to ensure compliance with federal requirements.

The LPA may retain a qualified CMSR on its staff in professional capacities for federal-aid projects such as:

- A City Engineer (or equivalent) who manages the engineering unit for the city, providing oversight of a project, series of projects, managing or directing work of other consultants or contractors on behalf of the city.
- A County Engineer (or equivalent) who manages the engineering unit for the county such as duties described above.
- A Project Manager (or equivalent) who manages and oversees a project, series of projects, or the work of other consultants and contractors on behalf of the public agency.
- A Program Manager (or equivalent) who manages and oversees an element of a highway program, function, or service on behalf of the public agency.

However, typically a CMSR is not:

- A consultant engineer performing project-specific design, and/or construction contract administration and construction engineering for the public agency.



- A consultant providing support to administrative duties such as federal authorization process, labor compliance activities, and other management and administrative tasks.

The use of a CMSR should be limited to unique or very unusual situations. These situations require a thorough justification as to why the LPA cannot perform the management. Consultants used in management support roles must be selected using the same procedures as those for other consultants specified in this chapter. ~~A CMSR funded by local or state funds must have approval from FHWA to be considered qualified to manage federal projects or consultants providing services on federal projects.~~ CMSR contracts with local/state funding only do not require FHWA approval. However, if the CMSR is not approved, they may not be used as a local/state match on another activity when the CMSR provides services on a federal-aid project (i.e., soft match).

Eligibility for federal ~~or state~~ reimbursement for a CMSR requires the following:

- Compliance with the selection procedures specified in this chapter;
- Existence of a contract between the LPA and the consultant specifying the LPA engineering services to be performed;
- Written designation by the LPA of the responsibilities and authority of the consultant as an agency engineer;
- For a federal-aid project, completion of [Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#) by all panel members (both consultants and employees) prior to participating in the A&E Selection Panel pertaining to the specific selection process and the firms being considered;
- Selection of consultants for A&E management positions must be by the use of qualification-based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates not to exceed five (5) years;
- For a federal-aid project, the LPA's CMSR must not:
  - Participate in, or exercise authority over the A&E selection process, if that consultant's firm is one of the proposing firms, or subconsultant to a proposing firm;
  - Participate in, or exercise authority over management of work performed by the consultant's firm, or to a consultant's firm of which the LPA consultant firm is a subconsultant. This would include, but not be limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables, and approving invoices.
  - Apply for or receive reimbursement of federal-aid funds for the LPA's federal-aid project if either of the foregoing has occurred. However, reimbursement for the construction contract portion of the project will still be allowed provided all other federal-aid requirements have been met.
  - Where benefiting more than a single federal-aid project, allocability of consultant contract costs for services related to a management support role must be distributed consistent with the cost principles applicable to the contracting agency in 23 CFR 172.7(b)(5).

If engineering services for a project are within the scope of the services described in the retained consultant's contract, these services may be performed by the person or firm

## 10.2 STATE-ONLY FUNDED A&E CONTRACTS

### 10.2.1 General

LPA's 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: State-Only Funded A&E Contracts 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.

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 [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 Retaining a Consultant in a Management Support Role \(CMSR\)](#).~~

~~CMSR contracts with local/state funding only do not require FHWA approval. However, if they are not approved, they may not be used as a local/state match on another activity when the CMSR provides services on a federal-aid project (i.e., soft match). Refer to [Section 10.1.9 Retaining a Consultant in a Management Support Role \(CMSR\)](#).~~

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.

### 10.2.2 Definition of A&E

Architectural, landscape architectural, engineering, environmental, and land surveying services includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
  3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
  - E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
  - F. The proposer must list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
  - G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

## 5. COUNTING DBE PARTICIPATION

Materials or supplies purchased from DBEs count towards the DBE goal under the following conditions:

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE 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 DBE regular dealer, the firm must be an established, regular business that 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 DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. 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 an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services

## 6. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please ~~contact the Caltrans Office of Certification toll free number 1-866-810-6346~~ email [DBE.Certification@dot.ca.gov](mailto:DBE.Certification@dot.ca.gov) for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Civil Rights [website](#).
  1. ~~Click on the link titled "Access the DBE Query Form"~~

~~2. Click on “Start DBE Firms Query” link~~

~~Searches can be performed by one or more criteria. Follow instructions on the screen.~~

For guidance on how to search for certified firms using the CUCP database, please visit: [DBE Goal Setting | Caltrans](#)

# LAPM C.12 PS&E

## LAPM C.12 PS&E

Section / Exhibit	Description of Changes
<p align="center"><b>12.4</b> Contracting Method</p>	<ul style="list-style-type: none"> <li>Clarification added that PIF is not required when utilizing Design-Build, CMGC, or ID/IQ contracting methods.</li> </ul>
<p align="center"><b>12.4</b> Force Account (Day Labor)</p>	<ul style="list-style-type: none"> <li>Noted paragraphs replaced with requirements for justification of force account work.</li> </ul>
<p align="center"><b>12.8</b> Form FHWA-1273</p>	<ul style="list-style-type: none"> <li>OB #24-02: text changes incorporated.</li> </ul>
<p align="center"><b>12.8</b> Modifications of Form FHWA-1273 by Special Provisions</p>	<ul style="list-style-type: none"> <li>Examples removed.</li> </ul>
<p align="center"><b>12.8</b> Cargo Preference Act Requirements</p>	<ul style="list-style-type: none"> <li>Section removed.</li> </ul>
<p align="center"><b>12.8</b> Federal Wage Rate Determinations</p>	<ul style="list-style-type: none"> <li>OB #24-03: text changes incorporated.</li> </ul>
<p align="center"><b>12.12</b> Estimates</p>	<ul style="list-style-type: none"> <li>Clarification for Highway Bridge Program projects added.</li> </ul>
<p align="center"><b>12.12</b> Nonparticipating Work</p>	<ul style="list-style-type: none"> <li>Clarification added for costs identified as nonparticipating.</li> </ul>
<p align="center"><b>12.12</b> Local Public Agency Furnished Materials</p>	<ul style="list-style-type: none"> <li>Text revised for clarification on 23 CFR 635.407 requirements.</li> </ul>
<p align="center"><b>Exhibit 12-D</b> PS&amp;E Checklist</p>	<ul style="list-style-type: none"> <li>Section XII, B. DBE Goal – clarified checkbox selection for Emergency Relief project is for Emergency Opening only.</li> <li>Section XII, D. Other Required Forms – added checkbox for LAPM 9-I: DBE Confirmation.</li> <li>Section XIII, B. Bonding and Prequalification – added sub check boxes for Bonding included option.</li> <li>Section XIV, D. LPA Furnished Materials – clarified second check box that a PIF is still required even if LPA furnished materials were acquired through competitive bidding.</li> </ul>

# LAPM C.12 PS&E

**Exhibit 12-H**  
Sample Bid

- Proposal (pg.2) – replaced “contractors” with “bidders”
- List of Subcontractors (pg. 5) – added column for Division of Industrial Relations Registration Number.
- Added insertion of LAPM 9-I: DBE Confirmation on page 16

Occasionally, situations arise which may support the use of a contracting method other than competitive bidding. Non-competitive construction contracting may be approved under the following conditions:

- When an emergency exists of such magnitude that work cannot be delayed
- There is only one organization qualified to do the work
- Competition is deemed inadequate after soliciting bids
- When it is more cost-effective to do the project by force account (defined below)
- When using some design/build or Construction Manager/General Contractor (CMGC) methods of procurement

The use of a non-competitive contracting method must be thoroughly justified in writing (generally using a Public Interest Finding (PIF)), submitted to the Caltrans DLAE for approval, documented in the project files, and retained for future reference. [When utilizing Design-Build, CMGC, or ID/IQ contracting methods, a PIF justification is not required \(23 CFR 635.104\(c\)\(d\)\).](#) When utilizing CMGC, the LPA must follow Caltrans Local Assistance Procedures for CMGC Projects.

### **Force Account (Day Labor)**

23 CFR 635.203 defines force account as the direct performance of construction work by the LPA, railroad, or public utility using labor, equipment, materials, and supplies furnished by them and under their direct control. Payment under force account is based on the actual cost of labor, equipment, and materials furnished, with consideration for overhead and profit.

Since work by force account is an exception to the normal contract method, which is based on competitive bidding, each LPA must also look to its own charter and applicable state code(s) when considering work by force account.

The performance of work by force account on a federal-aid project may be appropriate when:

- It is determined that the rights or responsibilities of the community are so affected as to require a special course of action, including a lack of competition or unreasonable bids (must be documented).
- By the inherent nature of the operation, it is deemed cost-effective to perform minor adjustments of railroad and utility facilities while the major work is still accomplished by competitive bidding (the use of force account work under this circumstance has been predetermined to always be cost-effective without further documentation or authorization).
- It is deemed cost-effective to perform some work (incidental to the main purpose of the project and other than minor adjustments of railroad and utility facilities), while the major work is still accomplished by competitive bidding.
- It is necessary for emergency relief.

A public interest finding (PIF) fully justifying the use of force account work on a local federal-aid project must be prepared by the LPA (see Exhibit 12-F: Cost-Effectiveness/Public Interest Finding/A&E Noncompetitive). The documentation should include:

- An identification and description of the project and the kinds of work to be performed.



- A comparison of the detailed cost estimates for work by force account versus a competitive bid contract.
- An estimate of federal funds to be provided based on the reimbursement ratio of the qualifying costs.
- The reason(s) the use of work by force account is considered to be cost-effective or an emergency.
- An authorization by the City or County Public Works Director authorizing LPA forces to perform the work and certifying that the documentation reflects the true and current estimates of costs to perform the work.

~~The cost estimates for competitive bidding may be based on unit prices, including any engineering and administrative costs necessary to prepare, monitor, and close-out the project. Unit prices must be based on the estimated actual cost of performing the work, but must not exceed unit prices currently being obtained by competitive bidding on comparable construction work in the same general locality.~~

~~Incidental force account work must be carefully incorporated into a project's PS&E package. The LPA must keep precise project records documenting: the date(s) of authorization, actual work performed, date of performance, and costs for personnel, materials, and equipment. Documentation of costs should include:~~

- ~~PERSONNEL~~
  - ~~Time sheets~~
  - ~~Salaries and payrolls~~
  - ~~Foreman's reports~~
- ~~MATERIALS~~
  - ~~Invoices for materials and supplies, and for any special services~~
  - ~~Cost of producing materials supplied by the LPA~~
- ~~EQUIPMENT~~
  - ~~Time and cost for using equipment owned by the LPA~~
  - ~~Time and rates for using rented equipment~~

~~Project records must be kept at least three years after the federal government completes a final voucher of the project.~~

With the submittal of the PIF to justify the use of force account work, the LPA must demonstrate the following abilities to perform the work (FHWA Order 5060.1, March 12, 2012):

1. Availability of equipment
  - a. The LPA must own (or currently lease) most of the equipment that is needed to perform the work. If the LPA must acquire or lease substantially more equipment than required for its normal operation, it would be difficult to justify an affirmative finding of cost-effectiveness. While no contractor, subcontractor or LPA owns all of the equipment that it may need, the costs associated with leasing equipment on a force account project should be a relatively minor portion of the overall cost.

FHWA and Caltrans may elect to limit the percentage of equipment leasing costs for differing types of work.

- b. In LPA force account work, the rates on publicly owned equipment eligible for federal participation may be the agreed unit price or actual cost. For agreed unit prices, the equipment need not be itemized on the estimate. If the project is to be performed on the basis of actual cost, the estimate should include a schedule of rates, exclusive of profit, to be charged for the use of publicly owned equipment.

## 2. Use of minor agreements

It is anticipated that the LPA will perform all work with its own forces. However, in some instances, it may be appropriate for the LPA to enter into agreements for specific minor services associated with the scope of work (e.g., guardrail installation). Such instances should be documented and pre-approved. Any work done by contract forces would be subject to prevailing wage rate requirements as appropriate.

## 3. Ability to comply with design, construction and material, quality standards

The LPA must have the ability to comply with the appropriate design, construction, and material quality standards.

## 4. Ability to document compliance with quality assurance requirements

The LPA must be able to obtain and document the same level of quality that is required for competitively let contracts under 23 CFR 637.

## 5. Schedule

The project/contract completion time is to be equal for both LPA and contract work estimates in order to provide a fair comparison of prices.

## 6. Cost comparison

The LPA must provide sufficient cost information so that a cost-effectiveness determination can be made by comparing the total cost for the LPA to perform the work versus the total cost using competitively bid prices.

### a. LPA's cost estimate

The LPA's cost estimate should be prepared on a force account basis including estimated quantities and prices for material, labor, and equipment. The estimate should be based on one of two methods:

- i. **Actual Cost:** Payment will be based on the actual cost of labor, materials, and equipment rates. Estimated hours and rates should be included and final reimbursement will be based on an audit of actual costs.
- ii. **Unit Price:** Payment will be based on agreed unit prices and the actual number of units constructed. Agreed unit prices must be developed using quantities, man-hours, pay rates, material costs, and equipment rental rates.

### b. Materials

When the LPA proposes to use previously purchased and stockpiled material, the value of the material should be the same as the price listed on the LPA's cost inventory. All material must comply with FHWA's general material requirements in 23 CFR Subpart D.

c. Work items

The LPA must include all work items in the LPA cost estimate (regardless of federal participation) so that a fair comparison can be made with the estimate of contract work.

d. LPA's total cost estimate

The LPA's total cost estimate must include an adjustment for the agency's overhead or indirect cost rates for labor, equipment, and materials. The agency's overhead or indirect costs rates must be developed in compliance with the Cost Principles for State, Local, and Indian Tribal Governments (2 CFR Part 225).

e. Reductions not allowed to LPA's total cost estimate

The total LPA cost estimate must not be reduced by: potential savings resulting from use of less than complete plans, potential savings from reduced quality assurance during construction, and anticipated savings from reduced construction management and documentation.

f. Assurances that the project will comply with all federal-aid requirements

The LPA must assure that it will comply with all applicable Title 23 requirements during construction such as the applicable sections of Form FHWA-1273, job site poster requirements, environmental commitments, etc.

The DLAE must sign to approve the submitted public interest finding (Exhibit 12-F).

## Emergency Work

In an emergency situation competitive bidding may be waived on any of the federal-aid programs, and the work may be performed by either force account or negotiated contract. For projects that are exempt from FHWA oversight, the waiver must be approved by the DLAE. An emergency is a situation that requires emergency repair work, as provided under the [Emergency Relief Program](#) or when a major element or segment of a highway system has failed and the situation is such that competitive bidding is not possible or is impractical. Competitive bidding under such circumstance may not be possible or practical because immediate action is necessary to:

- Minimize the extent of the damage,
- Protect remaining facilities, or
- Restore essential travel.

As an example: The LPA has a bridge programmed for replacement using Highway Bridge Program (HBP) funds and has begun preliminary engineering on the bridge replacement project. A major storm causes damage to the bridge before the LPA completes the design of the bridge, such that repairing the bridge is not practical. At this point, the LPA can contact their

America waiver process can be found at:

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

After-the-fact discoveries of non-domestic materials incorporated in the project are not considered Buy America waivers. The LPA's failure to comply with Buy America provisions will result in the loss of federal funding for not only the applicable contract items, but likely all federal funding authorized for the construction phase of the project. In the event an after-the-fact discovery occurs, the LPA must expeditiously inform their DLAE, which will coordinate with FHWA to determine the appropriate resolution.

### Form FHWA-1273

[Form FHWA-1273](#) 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~~ means one of the following:

- ~~• Referencing the 1273 and wage rates in the main body of the contract and label, such as "Form FHWA-1273—Required Contract Provisions Federal-Aid Construction Contracts, Appendix B"~~
- ~~• Placing headings on the Form FHWA-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 FHWA-1273 and wage rates~~
- ~~• Contract number on all pages including Form FHWA-1273 and wage rates~~
- Form FHWA-1273 is inserted in the project's final contract agreement package signed by the LPA and the contractor and continuously numbered on all pages including Form FHWA-1273.
- Form FHWA-1273 is referenced and numbered in the table of contents of the contract, and attached as an appendix. The appendix and the project's final contract agreement package signed by the LPA and the contractor must be within the same document.

In the same manner, Form FHWA-1273 must be physically inserted into any subsequent subcontracts.

~~FHWA does not consider placing the Form FHWA-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.~~

FHWA does not consider simply placing, or stapling Form FHWA-1273 in the special provisions or standards specifications to be directly incorporated into the contract. Even if contract documents such as the contract special provisions or standard specifications are considered by the LPA as part of the contract, the LPA still must insert the Form FHWA-1273 into the contract by one of the two methods mentioned above.

Failure of the LPA to incorporate the Form FHWA-1273 in the executed contract makes the construction phase of the project ineligible for federal reimbursement. 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 exempted from either of these two provisions, it must be specified elsewhere in the contract by special provision that it does not apply.

Form FHWA-1273 includes significant changes to the applicability of Davis-Bacon and Related Acts which states that where applicable law requires that projects be treated as a project on a federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. ~~Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C.117, and National Highway Freight Program projects funded under 23 U.S.C.167.~~

#### **Use of Local Hiring Preference**

The Infrastructure Investment and Jobs Act (IIJA), commonly referred to as the Bipartisan Infrastructure Law (BIL) allows LPAs to implement geographic or economic hiring preference (including local hiring preferences) relating to the use of labor on federal-aid construction projects.

LPAs may now include local hiring preference specifications in federal-aid contracts. The LPA must ensure the establishment and implementation of a hiring preference complies with all federal, State, and local laws, policies, and procedures. FHWA review and approval is not required.

Local hiring preferences should not be confused with project labor agreements (PLAs). Local hiring preferences may be implemented through contract specifications, without the use of a PLA. While local hiring preferences may be added to a PLA, doing so will trigger FHWA review and approval. This will add up to four to six months to the process.

More information regarding use of local hiring preference can be found at:

<https://www.federalregister.gov/documents/2022/02/11/2022-02974/enhancing-highway-workforce-development-opportunities-contracting-initiative>.

#### **Nondiscrimination**

The provisions of this section related to 23 CFR 230 are applicable to federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR 230 are not applicable to material supply, engineering, or architectural service contracts. Please read the Form FHWA-1273 for complete details on Section II. Include Item 12, Female and Minority Goals of [Exhibit 12-G: Required Federal-aid Contract Language](#) in contract provisions. The contractor and each non-material subcontractor are required to report annually, on the composition of their workforce by race, gender, and job category who perform work during the last payroll period of July, using Form PR-1391 Federal- aid Highway Construction Contractors Annual EEO Report to the LPA. The LPA must forward completed Form PR-1391's (see Exhibit 16-O) to the Caltrans District Local Assistance Engineer.

### **Cargo Preference Act Requirements**

~~All federally funded construction contracts must comply with the requirements of the Cargo Preference Act of 1954 and the implementing regulations in 46 CFR 381. Form FHWA-1273 includes the required Cargo Preference clauses.~~

### **Federal Trainee Program**

On selected federal-aid highway construction projects, Federal Trainee Program or On-the-Job Training (OJT) special provisions (Item 14 of Exhibit 12-G) must be included in the contract provisions to establish the number of trainees for the construction contract.

The main objectives of the Federal Trainee/OJT Program are to:

- Provide training for women and minorities which will upgrade their job skills, thereby increasing their access to higher paying trade jobs and journeyman-level positions and
- Ensure that a diverse work force will meet future labor needs in the construction industry.

Filling training positions on each project must focus on hiring women and minorities, but not exclude anyone. If a contractor cannot meet the OJT objectives, direct recruitment efforts must be documented to show an effort at OJT compliance.

The major components of an OJT program include:

- The LPA must include the required federal training special provisions in the PS&E package if the project size and duration warrant an OJT program.
- The LPA should select contracts that contribute to the Contract Training Goals. These contracts must show the number of trainees, the number of trainees upgraded to journeyman, and the level of skills.
- The LPA must review the training programs proposed by contractors. Approval or rejection is based on the legitimacy of the job-skill classifications proposed and the number of training hours specified.
- Caltrans must determine if statewide OJT is effective.
- The contractor is responsible for recruitment and selection of trainees.
- The contractor must evaluate training based on an approved training program.
- OJT provision costs are reimbursed by the FHWA in accordance with the Federal Requirement Training Special Provisions included in selected contracts. Required trainees/apprentices are to be funded on the bidding schedule or by change order at \$0.80/hour; or the training program can be a bid item with the same reimbursement ratio as the construction project. OJT support services include recruiting, counseling, remedial training, and an OJT program administration by others.
- If the contractor does not show a good faith effort to provide acceptable training to the trainees specified, a sanction may be applied. Sanctions may include withholding progress payments if effective on-the-job training is not provided.

In California, federal trainees are considered registered apprentices. There are relatively few crafts in highway work which utilize apprentices - bricklayers, carpenters, cement masons,

14,000,000	14		
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\* 25, plus 1 additional trainee for every \$5,000,000 over \$50,000,000

4. If the totals for each of the work categories listed under Step 2 above are all less than \$400,000 then no trainees and no Federal Trainee Program special provisions are needed.
5. For any work category equal to or greater than \$400,000, total the trainees obtained for the applicable work categories and include the Federal Trainee Program special provisions. Calculate the contract cost using \$800 per trainee and include Federal Trainee Program under Trainees of the Engineer's Estimate.

### Federal Wage Rate Determinations (29 CFR 1.6)

The payment of federal prevailing wage rates on federal-aid contracts is derived from the Davis-Bacon Act of 1931 and is prescribed by 23 U.S.C.113. The federal prevailing wage rates must be physically inserted [into the contract](#) or referenced by [an internet website address the applicable Wage Determination \(WD\) # website address](#) in the project special provisions [during advertisement](#). ~~and must be physically attached to the project's final contract agreement package signed by the LPA and contractor on all federal-aid highway construction projects exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempted.~~

The federal prevailing wage rates are available directly from the U.S. Government website at <https://sam.gov/content/wage-determinations>.

See Chapter 15.3: Project Advertisement for conformance with 29 CFR 1.6.

~~For contracts entered pursuant to competitive bidding procedures, LPAs must be in conformance with the [federal 10-day rule](#). LPAs must monitor the minimum federal wage rate determinations posted at <https://www.sam.gov/> to determine if project's applicable federal prevailing wage rates have been modified from the time of initial advertisement to 10 calendar days prior to bid opening. If federal prevailing wage rates are modified, LPAs are required to issue an addendum to incorporate the modified version of the federal prevailing wage rates to the contract.~~

~~It is important to ensure the project's applicable federal prevailing wage rates physically be attached as an exhibit to the final contract agreement package prior to its execution by the contractor and LPA. The same provision set forth applies to the contractor's subcontracted works as well.~~

### Relations with Railroad

Where construction of a federal-aid project requires use of railroad properties or adjustments to railroad facilities, there must be an agreement in writing between the LPA and the railroad company.

FHWA approval of railroad agreements is required for nonexempt projects. A copy of the conformed agreement must be transmitted through the DLAE for FHWA review.

The pertinent portions of this agreement applicable to any protective services required during performance of the work must be included in the project specifications and special provisions for any construction contract. Caltrans uses standard special provisions for this section on Caltrans projects.



The LPA must provide documentation of these conditions in the project files. LPAs are advised that items of maintenance are not eligible for federal participation. Including maintenance items will result in the items being considered non-participating and requiring pay back of the federal funds involved.

### Proprietary Items

For the purpose of providing greater flexibility and encouraging innovation in the development of highway transportation technology and methods, the use of federal funds for patented or proprietary materials, specifications, or processes is allowed. Therefore, federal fund participation is not restricted when LPAs specify a trade name in federal-aid contracts. In addition, federal-aid participation is not restricted when the LPA specifies patented or proprietary materials in design-build (DB) Request-for-Proposal (RFP) documents.

This Federal regulation does not, however, affect State requirements for the use of patented or proprietary products. For State requirements on the use of patented or proprietary products, California Public Contract Code 3400 still applies.

### Equipment Rental Rates

Federal policy requires that actual costs be used to determine extra work payments; however, actual equipment costs are not readily available. Therefore, FHWA permits the LPAs to specify in their construction contract specifications the use of predetermined rate guides as well as equipment rate schedules developed by the LPA which are in conformance with the federal cost principles and FHWA's policy contained in the Contract Administration Core Curriculum, published by FHWA. Caltrans' Equipment Rental Rates are in conformance with these requirements.

## 12.12 Estimates

The estimate used to authorize the construction phase of a federal-aid project must reflect the anticipated cost of the project in sufficient detail to provide an initial prediction of the financial obligations to be incurred by the LPA and FHWA and to permit an effective review and comparison of the bids received. Initially, a preliminary estimate is prepared by the LPA, which includes the basic items that a contractor will be asked to bid. This is a confidential document, which represents the LPA's best estimate of a fair and reasonable price for the items or work to be performed. As such, the Engineer's Estimate should not be made available to contractors and the general public prior to opening bids. This estimate must be prepared in a format, which describes the item of work, unit amount, quantity, unit price, amount, a subtotal, contingencies, and a total ([LAPM 3-A: Project Authorization/Adjustment Request](#)). Other estimates must also be prepared, if appropriate, for LPA furnished materials, supplemental work, construction engineering, the Federal Trainee Program, and force account (day labor) work performed by the LPA. ~~The estimates must be segregated by major construction categories.~~ Also, for Highway Bridge Program projects, the quantities and costs for each structure or bridge must be tracked individually, even if there are multiple structures or bridges in the same project or contract. Furthermore, any items of work, which are ineligible for federal participation in a category, must be segregated from the eligible items of work. These estimates are used to prepare the Finance Letter and the Request for Authorization for Construction. After bids are opened and the project has been awarded, a Detail Estimate is prepared by the LPA, which upgrades the preliminary estimate by using actual bid amounts rather than estimates. For more information on detail estimates, refer to [LAPM Chapter 15: Advertise and Award Project](#).

## Nonparticipating Work

On all federal-aid construction projects, work which is not within the limits of the project must be segregated under a category called Not Part of Federal Project for purposes of the preliminary and detail estimates (work funded by others is most generally nonparticipating).

Work within the federal-aid project limits, but ineligible for federal funding, is referred to as nonparticipating work. Items considered nonparticipating work include but are not limited to the following:

- Betterment work such as capital outlay, safety improvements, or operational improvements that goes beyond restoring a site to its original condition or to the current standard (for emergency relief work)
- Right-of-way obligations when right of way is nonparticipating
- Maintenance-related activities
- Spare parts not incorporated in the work
- Bid items ineligible for the federal program funding the project

Except as permitted by 23 CFR 630.106(f)(2), when a cost or item of work is identified as nonparticipating at the time the authorization (E-76) is executed it must remain that way for the life of the project.

A full list of nonparticipating work can be found at: <https://dot.ca.gov/-/media/dot-media/programs/construction/documents/contract-administration/change-order-information/fhwa-nonpart-cost-items-a11y.pdf>.

These nonparticipating cost items must also be identified and segregated for the purposes of the preliminary and detail estimates. Quantities for each structure must be shown separately with an appropriate structure code. Miscellaneous work, such as utility adjustments by a utility company, must also be separate.

## Contract Items

In order to determine which contract items should be included in the preliminary estimate, the work is broken down into the basic types of construction, such as excavation, concrete, and steel.

Each type and each classification of a type of construction comprises one bid item. Each contract item must be measured accurately. When practical, work performed by a different subcontractor should also be segregated into separate contract items. The list of contract items should be analyzed to be sure that all phases of the work are included in the estimate. Care should also be taken to ensure that there is no overlap of contract items, which could result in a duplication of payments. The [Coded Contract Item List](#) published by Caltrans may be used by the LPA with or without the item code number. The contract item list should be used if the LPA is using Caltrans Standard Specifications as the item descriptions are matched with the specifications.

## Local Public Agency Furnished Materials

Federal regulations require that the contractor must furnish all materials to be incorporated in the work. Exceptions to this requirement may be made when a public interest finding (PIF) is approved for the LPA to furnish materials (23 CFR 635.407). LPA Furnished Materials are a part of the total cost of the project and should be subtotaled and included in the total project cost. All LPA Furnished Materials are subject to Buy America requirements.

To be eligible for federal participation, any material (other than local natural material) purchased by the LPA and furnished to the contractor for mandatory use in the project must be acquired on the basis of competitive bidding, except when there is a finding of public interest, ~~approved by the LPA and submitted to the DLAE for review~~ that justifies the use of another method of acquisition (23 CFR 635.407). PIFs are to be approved by the LPA and submitted to the DLAE for review. The unit cost eligible for federal participation is limited to the unit cost of such material to the LPA.

## Supplemental Work

Supplemental work is work that is anticipated and required but cannot be described and quantified for delivery on a unit-price or lump sum basis.

Such work must be included in the project estimates and should follow the Subtotal Contract Items. Supplemental work should include extra work, additional work, traffic control (if required) or other work to be performed by the contractor and charged to the contract work order. Supplemental work can be listed and included in the total project cost, as a separate line item, or included in the contingencies section of the preliminary estimate. Supplemental work must be included in the contingencies of the Detail Estimate (see [Exhibit 15-M: Detail Estimate](#)).

For additional information on the use of supplemental work as an item of work, refer to the [Construction Contract Development Guide](#) (Section 7: Preparing the Project Cost Estimate).

## Contingencies

Estimates may include contingencies, including supplemental work, of five to ten percent of the total estimate. Contingency amounts should be adjusted to give the total contract a round number. If there is a large amount of supplemental work, ten percent may be exceeded, but contingencies should always be at least five percent.

## Construction Engineering

FHWA defines construction engineering as the supervision and inspection of construction activities; additional staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates. Construction engineering costs should be shown on the Estimate if federal reimbursement is desired.

Historically, federal participation in construction engineering (CE) was limited to fifteen percent of the federal participating construction costs. Current federal statutes no longer contain such a limitation. As a general guide, it is highly recommended that LPAs continue to use 15% as a guide for estimating CE costs and maintain justification for higher CE costs. CE costs in excess of 15% will continue to need justification by LPAs and approval by the DLAEs. Projects funded from federal programs under direct Caltrans management (i.e., those programs for which Caltrans selects and programs the project) will need approval by the appropriate program manager.

**B. DBE Goal** (refer to Exhibit 12-E: PS&E Checklist Instructions)

- LPA non-zero DBE Goal percentage for this contract is: \_\_\_\_\_ Page No: \_\_\_\_\_
- The DBE Goal for this contract is zero percent because there are no subcontracting opportunities for DBE participation. Documentation verifying this determination is attached to this PS&E Checklist and is also on file with the LPA.
- The contract has no DBE Goal because:
  - This is ~~an Emergency Relief project~~ an Emergency Opening (EO) project under the Emergency Relief Program
  - This contract is “non-profit”
  - This contract uses Force Account
  - Other (specify): \_\_\_\_\_

Documentation verifying the above “no DBE Goal” determination is attached to the PS&E Checklist and is also on file with the LPA.

**C. Certifications / Disclosures** (refer to Exhibit 12-H: Sample Bid)

- Equal Employment Opportunity Certification or equivalent Page No: \_\_\_\_\_
- Non-collusion Affidavit or equivalent Page No: \_\_\_\_\_
- Debarment and Suspension Certification or equivalent Page No: \_\_\_\_\_
- Non-lobbying Certification for Federal-aid contracts Page No: \_\_\_\_\_
- Disclosure of Lobbying Activities Page No: \_\_\_\_\_

**D. Other Required Forms**

The following forms are applicable with the above required federal requirements

- [LAPM 9-I: DBE Confirmation](#) Page No: \_\_\_\_\_
- Exhibit 12-B: Bidders List of Subcontractors (DBE and Non-DBE) Page No: \_\_\_\_\_
- Exhibit 15-G: Local Agency Bidder DBE Commitment (Construction Contracts) Page No: \_\_\_\_\_
- Exhibit 15-H: DBE Information – Good Faith Efforts Page No: \_\_\_\_\_

**E. Federal Wage Rates**

- Federal wage rates are physically incorporated into this contract advertising package Page No: \_\_\_\_\_  
LPA's must verify and incorporate the current wage determination published by US DOL into the contract, including updated wage rates by addendum.
- Federal wage rates are not physically incorporated in the contract advertising package but are referenced to a website address on page number \_\_\_\_\_ of the Special Provisions where the applicable federal wage rates can be found. The final contract documents signed by the LPA and the contractor must physically include the current federal wage rates.

**F. Relations with Railroads**

- The required provisions are included Page No: \_\_\_\_\_
- The project does not involve the use of railroad properties or adjustments to railroad facilities

**XIII. Restricted Contract Provisions** (check applicable)**A. Indian Preferences**

- Not included
- Included. The project is on or near the \_\_\_\_\_ Indian Reservation

**B. Bonding and Prequalification** (prequalification requires Caltrans pre-approval pursuant to 23 CFR 635.110)

- Not included
- Bonding included
- Bid Bond included
  - Performance Bond included
  - Payment Bond included
- Prequalification 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.

**D. Warranty Clauses** (complete this section if project is on the NHS)

- Warranty clauses are not included
- Warranty clauses are included. Documentation of the required conditions on the use of these clauses is in the project files.

**E. Project Labor Agreement** (check applicable)

- Project Labor Agreement is not needed, and therefore not included
- Project Labor Agreement is included along with written justification

Approval Date: \_\_\_\_\_

**XIV. Materials and Equipment****A. Publicly Owned Equipment** (for use by Contractor)

- Not included
- Included. A Public Interest Finding justifying this use is in the project files, and the project specifications meet the requirements for federal participation listed in LAPM Chapter 12.

**B. Equipment Purchases for Local Ownership**

- Not included
- Included. The amount charged to Construction Engineering will be limited to amortized equipment costs (over its useful life) attributable to the time equipment is used on the project.

**C. Convict Produced Materials**

- Not included
- Included. The conditions placed on the use of these materials by the contractor meet federal requirements and are included in the contract specifications.

**D. LPA Furnished Materials** (check applicable)

- LPA furnished materials are not included
- LPA furnished materials have been acquired on the basis of competitive bidding; a Public Interest Finding is on file

(DO NOT DETACH)

PROPOSAL TO THE CITY / COUNTY OF \_\_\_\_\_

DEPARTMENT OF PUBLIC WORKS

CONTRACT NO. - \_\_\_\_\_

NAME OF BIDDER \_\_\_\_\_

BUSINESS P.O. BOX \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

BUSINESS STREET ADDRESS \_\_\_\_\_

*(Please include even if P.O. Box used)*

CITY, STATE, ZIP \_\_\_\_\_

TELEPHONE NO:            AREA CODE ( ) \_\_\_\_\_

FAX NO:                    AREA CODE ( ) \_\_\_\_\_

CONTRACTOR LICENSE NO. \_\_\_\_\_

The work for which this proposal is submitted is for construction in conformance with the special provisions (including the payment of not less than the State general prevailing wage rates or Federal minimum wage rates), the project plans described below, including any addenda thereto, the contract annexed hereto, and also in conformance with Current California Department of Transportation Standard Plans, Standard Specifications, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished.

The special provisions for the work to be done are dated (Insert advertisement date) and are entitled:

CITY / COUNTY OF \_\_\_\_\_

DEPARTMENT OF \_\_\_\_\_

**NOTICE TO ~~CONTRACTORS~~ BIDDERS AND SPECIAL PROVISIONS FOR**

*(Description of Work)*

IN

*(Location)*

The project plans for the work to be done were approved \_\_\_\_\_ and are entitled:

The Bidder must list the name and address, Contractor license number, and description of portion of work subcontracted of each subcontractor to whom the Bidder proposes to subcontract portions of the work, as required by the provisions of the Standard Specifications and of the special provisions.

**LIST OF SUBCONTRACTORS**

Business Name and Location	California Contractor License Number	Contractor Division of Industrial Relations Registration Number	Description of Portion of Work	Bid Items Numbers	Percentage of Bid Item Subcontracted

*(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL CONSTITUTES AN ENDORSEMENT AND EXECUTION OF THOSE CERTIFICATIONS WHICH ARE A PART OF THIS PROPOSAL)*



Insert completed  
[Exhibit 15-G *Local Agency Bidder DBE Commitment (Construction Contracts)*]  
here.

Insert completed  
[LAPM 9-I *DBE Confirmation*]  
here.

Insert completed  
[Exhibit 15-H *DBE Information —Good Faith Efforts*]  
here.

Attach  
[RAILROAD AGREEMENT]  
(if required)

# LAPM C.13 RIGHT OF WAY

## LAPM C.13 Right of Way

Section / Exhibit	Description of Changes
<p><b>13.2.2</b> The Monitoring Process</p>	<ul style="list-style-type: none"> <li>Last two sentences deleted and a note added.</li> </ul>
<p><b>13.4</b> Right of Way Authorization</p>	<ul style="list-style-type: none"> <li>Added NEPA/CEQA Re-Validation Form to list for R/W authorization request.</li> </ul>
<p><b>13.6.1</b> Preliminary Environmental Review</p>	<ul style="list-style-type: none"> <li>Reference added to source text.</li> </ul>
<p><b>13.8</b> Appraisal and Just Compensation for Temporary Real Property Rights</p>	<ul style="list-style-type: none"> <li>Clarifying language added regarding re-certification if the TCE expires during construction.</li> </ul>
<p><b>13.8.2</b> Appraisal Waiver Valuation</p>	<ul style="list-style-type: none"> <li>OB #24-05: Waiver valuation thresholds increased from \$10,000 to \$15,000.</li> </ul>
<p><b>13.8.3</b> Separation of Appraisal and Acquisition Functions</p>	<ul style="list-style-type: none"> <li>OB #24-05: <ul style="list-style-type: none"> <li>Total valuation threshold increased from \$10,000 to \$25,000.</li> <li>Non-complex Valuation threshold increased from \$10,000 to \$15,000.</li> </ul> </li> </ul>
<p><b>13.8.5</b> Owner Initiated Appraisals</p>	<ul style="list-style-type: none"> <li>New subsection added.</li> </ul>
<p><b>13.9</b> Right of Way Acquisition</p>	<ul style="list-style-type: none"> <li>Last two sentences of the second paragraph modified / deleted.</li> <li>New subsection added: Title VI of the Civil Rights Act of 1964.</li> </ul>
<p><b>13.10</b> Right of Way Certification</p>	<ul style="list-style-type: none"> <li>OB #24-01: text changes incorporated.</li> </ul>
<p><b>13.10.3</b> Age of Right of Way Certifications</p>	<ul style="list-style-type: none"> <li>First sentence replaced with expanded list for when R/W certifications must be updated.</li> </ul>
<p><b>Exhibit 13-A</b> Short Form R/W Certification</p>	<ul style="list-style-type: none"> <li>Section 5; removed the sentence: <del>“Existing utilities located within project limits are shown on Project Plan”</del> in first checkbox.</li> </ul>
<p><i>Note: subsection numbering implemented in LAPM Chapter 13 for ease of reference.</i></p>	

When the project requires the relocation of utility facilities, Caltrans is responsible for approval of the [Exhibit 14-C: FHWA Specific Authorization/ Approval Utility Agreement](#). More information is available in [LAPM Chapter 14: Utility Relocation](#). These agreement forms are both part of form RW 13-15, found in Chapter 13: Utility Relocation of the [Caltrans Right of Way Manual](#).

Caltrans is responsible for fully informing LPAs of their responsibilities accompanying federal-aid transportation projects by ensuring that every LPA receives all current regulations and procedural instructions affecting R/W activity, and on request will provide training, guidance, and advice on R/W matters. Further information is provided in the Caltrans Right of Way Manual. FHWA's Project Development Guide and Caltrans Right of Way Manual are available to each LPA. Refer to Figure 13-1, Right of Way Procedures Flowchart, in this chapter which gives an overview of the R/W process.

When questions arise in the development of a federal-aid project, or if it is determined that property rights will be required on the project, the Caltrans District Local Assistance Engineer (DLAE) should be promptly notified. The DLAE has the overall responsibility as liaison with each LPA in that district. In addition, each district has an R/W Local Programs Coordinator who is responsible for working with each LPA whose projects involve federal funds.

As part of the overall responsibility assigned to Caltrans by FHWA, Caltrans R/W is required to monitor LPA's procedures for R/W appraisal, acquisition, relocation assistance, property management, excess land disposal, and utility relocations on all local assistance projects for compliance with applicable state and federal laws and regulations.

### The Monitoring Process

The District R/W Local Programs Coordinator may monitor R/W activities at any time during the project to ensure that such activities are performed in compliance with state and federal laws and regulations. Acquisition and relocation activities must be in conformance with the Uniform Act, Federal Stewardship requirements, the FHWA Project Development Guide, and the Caltrans Right of Way Manual. All R/W functional areas are subject to review. These reviews should occur in real-time at each R/W activity, so any deficiencies discovered can be corrected, prior to moving onto the next R/W activity (e.g., Appraisals reviewed prior to start of Acquisitions, Acquisition contracts prior to offer, Administrative Settlements when appropriate, relocation assistance documents, etc.). Spot-check monitoring will normally be limited to no more than 25% of the total work performed. Additional reviews must be made only when violations are discovered and then only to determine if the violations are prevalent or one-time occurrences (see Monitoring Findings below). The reviewer must bring all violations discovered to the attention of the LPA. It is the LPA's responsibility to ensure correction. Monitoring must be at the discretion of the district based on staff availability, familiarity with the LPA, the project, and consultants which may be used, as well as the complexity of the R/W issues. Monitoring will usually use checklists or outlines to guide the review.

~~Both entry and exit conferences will be conducted to advise LPA staff of the scope and findings of the monitoring visit. A written report will usually be provided to the LPA, though not necessarily at the time of the exit conference.~~

**Note:** For projects in which real-time reviews have not been performed, acceptance of Right of Way Certification will be delayed until those reviews have been completed.

- The assignment of a Contract Manager who is knowledgeable in all aspects of the project is needed to serve as the contact person during the course of the project (see Contract Administration below).
- If the LPA has any questions or concerns regarding the hiring of R/W Consultants, they are encouraged to contact the nearest District Right of Way Office for assistance or guidance.

#### Contract Administration

The LPA must designate a Contract Manager to act as the official representative of the agency with full authority and responsibility to manage the contract. In addition to the duties listed in [LAPM Chapter 10: Consultant Selection](#) for the Contract Manager, R/W projects also require the following:

- Performing a functional review for each R/W activity
- Approving and coordinating all consultant activities
- Approving requests for payment (after completion of the work)
- Preparing interim/final contract completion reports and performance evaluations

### 13.3 Master Agreement

A master agreement is required with the LPA whenever federal funds are to be used on a local transportation project. In the master agreement, the LPA agrees to comply with all federal and state laws, regulations, policies, and procedures relative to the design, R/W acquisition, construction, and maintenance of the completed facility. It is normally processed once with the agency when it begins its first federal-aid funded project. The Local Agency-State Master Agreements are occasionally updated and re-executed to account for changes in laws and policies.

#### **Program Supplement Agreement**

The Program Supplement Agreement (PSA) supplements the Master Agreement and formalizes the financial responsibilities and provisions for each specific federal-aid funded project. The PSA identifies the reimbursable phase(s) of work in addition to the types and amounts of federal and local funds used to finance the locally sponsored project. It is the contractual basis for the state to reimburse the LPA for work done.

Special covenants or clauses in the supplement agreement define the agency's specific responsibilities in implementing and maintaining the project. Others define state or local responsibilities for providing project funds.

### 13.4 Right of Way Authorization

When federal funds are to be used for R/W costs the following must be obtained before requesting authorization:

- [Exhibit 7-B: Field Review Form](#)
- Completed R/W estimate
- National Environmental Policy Act (NEPA) approval
- [NEPA/CEQA Re-Validation Form \(if applicable\)](#)

## 13.6 National Environmental Policy Act

All LPA federal-aid transportation projects off the SHS must comply with the provisions of the National Environmental Policy Act (NEPA) and the implementing of regulations (23 CFR 771). LPAs may not proceed with final design, R/W acquisition, or project construction until full compliance with the NEPA has been documented and approved by Caltrans.

The level of documentation required in the NEPA process will vary depending upon the NEPA Class of Action. A proposed major highway or a new highway on a different alignment, for example, will normally require an extensive study, an Environmental Impact Statement (EIS), while minor improvements to existing highways such as a roadway intersection signal installation may require only a short analysis, a Categorical Exclusion (CE). All LPA projects must demonstrate compliance with NEPA and other federal environmental laws before proceeding with R/W work or the final design of a project.

### 13.6.1 Preliminary Environmental Review

[Exhibit 6-A: Preliminary Environmental Study \(PES\)](#) is designed to identify such items as the existing conditions in the project area, environmental issues that may require further study, and the need for public hearing, or resource, or regulatory agency permit. ~~Question No. 24 in Exhibit 6-A and Exhibit 6-B: Instructions for Completing the Preliminary Environmental Study (PES) Form Exhibit 6-A specifically relates to R/W impacts and a “yes” answer would indicate that further action is necessary. If there are relocation impacts or R/W needs identified, see LAPM Chapter 9, Section 9.2.4: LPA Title VI Implementation.~~

~~Note: Upon completion of the Exhibit 6-A, if questions 23-32 are marked “yes,” or if the PES results in an Environmental Assessment or Environmental Impact Statement:~~

- ~~a. Title VI implementation and outreach may be triggered. Any vital public communication must be translated and accessible when a significant number or percentage of the population is eligible to be served, or likely to be directly affected by the program/activity.~~
- ~~b. The LPA must contact the District Senior Environmental Planner and the District Senior Right-of-Way Agent to inform them the agency may implement Title VI and outreach for this project.~~

### 13.6.2 Public Hearings

In general, public hearings should be held for a project if there is substantial environmental controversy, if there is widespread interest in holding the hearing, or if an agency with jurisdiction over the project requests one. The procedures for holding hearings, including the requirements for notifying the public, the contents of the notification, scheduling, and the hearing process are all discussed in [LAPM Chapter 8: Public Hearings](#). Federal regulations require public hearings under certain circumstances. For example, projects being processed with an Environmental Assessment (EA) require a public hearing when significant amounts of R/W will be required for the project. Public hearings are also required during the circulation period of all draft EISs. Public involvement is advantageous because it can broaden the agency’s knowledge of the project area. If a public hearing is to be held and additional R/W or property rights will be required for the project, R/W personnel should be involved as early as possible. A public forum offers an excellent opportunity to discuss the acquisition and relocation impacts with the affected persons.

the owner's loss of utility and enjoyment of the encumbered area, and whether the impacts are consistent throughout or varying, for the duration of the entire TCE term/window period of potential activity (EIS).

In order to comply with possession and control requirements of 23 CFR 635.309(c) the TCE commencement date must begin on or before the project's Right of Way Certification date. Should the TCE expire before the construction is complete, a revised appraisal and agreement with the property owner (including the additional calculated compensation) is required prior to the LPA's continued possession of the property. (49 CFR 24.101(C)(2), 49 CFR 24.101(d) and 49 CFR 24.103(a); please also see Right of Way Manual Chapter 7, Section 7.04.08.00).

[It is not necessary to re-certify the project, but the LPA must provide copies of the revised agreements and support documentation for renewing the TCE to the Local Programs Liaison.](#)

### 13.8.1 Appraisal Review

As noted above, on federal-aid projects, a formal review of the appraisal is necessary (see 49 CFR 24.104). If the LPA is using a private sector review appraiser, the review appraiser must have a valid California license issued by the state Office of Real Estate Appraisers (OREA). If the project sponsor is a qualified agency and performing its own appraisal work, the Department of Consumer Affairs – Bureau of Real Estate Appraisers (BREA) has held that, as employees of a public agency, neither the appraiser, nor the review appraiser needs such a license. The review appraiser must determine whether the appraisal meets applicable requirements and make any necessary corrections or revisions.

If the review appraiser is unable to approve or recommend approval of the appraisal, the reviewer may develop additional documentation to support what is felt to be an approved or recommended value unless it meets the requirements of an Appraisal Waiver Valuation as discussed below. The reviewer must state the basis for the value conclusion. The Uniform Act makes it clear that the LPA must establish an amount believed to be just compensation. Therefore, if another agency or a consultant does an appraisal review, the acquiring agency must retain the responsibility for establishing an estimate of just compensation. Another agency or a consultant cannot do so.

### 13.8.2 Appraisal Waiver Valuation

When the LPA determines that the valuation problem is uncomplicated and the market value is estimated at ~~\$10,000~~ \$15,000 or less based on a review of available data, the appraisal can be waived. In this case, the LPA will prepare a Waiver Valuation. The ~~\$10,000~~ \$15,000 amount includes any damages to the remainder property but excludes any non-substantial construction contract work. This information is consistent with 49 CFR 24.102(c)(2). The Waiver Valuation cannot be used as a basis for deposit when obtaining an Order for Possession. If condemnation is needed, an appraisal must be completed.

### 13.8.3 Separation of Appraisal and Acquisition Functions

LPAs should maintain a separation of the appraisal and acquisition functions, except that the same person can appraise and acquire a parcel if the total valuation excluding non-substantial construction contract work is ~~\$10,000~~-\$25,000 or less. This dollar limit also applies to appraisal revisions where the appraiser was previously assigned to negotiate the parcel. The valuation document can be either an appraisal or Waiver Valuation.

When the same person prepares the appraisal and does the acquisition, the appraisal should contain a statement substantially as follows: I understand that I may be assigned as the Acquisition Agent for one or more parcels contained in this report, but this has not affected my professional judgment or influenced my opinion of value.

All railroad properties should be valued in the full, narrative format. The Non-complex Valuation of ~~\$10,000~~ \$15,000 or less and the Determination of Just Compensation (waiver of appraisal) formats must not be used. Railroad parcels are not eligible for the one-agent appraise/acquire process. This also includes the appraisal and acquisition of a temporary construction easement from the railroad. For additional details refer to Section 7: Appraisals of the [Caltrans Right of Way Manual](#).

### 13.8.4 Dual Appraisal Report

Caltrans policy no longer requires dual appraisal reports. LPAs may determine that a dual report is needed to ensure the owner receives a fair market value offer. Dual appraisal reports should be considered for unusually large or complicated parcels or parcels exceeding \$500,000 in value. This amount includes improvements pertaining to realty, severance damages, and construction contract work.

Consider the following when determining which parcels require dual appraisal reports:

- There is a serious question as to highest and best use.
- Market data is inconclusive because of its scarcity and/or absence of established patterns and value conclusions must, therefore be based primarily on opinion.
- There are substantial improvements not compatible with the highest and best use of the land. In other words, there is a high degree of economic obsolescence.
- A significant portion of the appraised value is severance damages or there is a substantial question regarding damages or benefits.
- The value of the land is primarily on a development-analysis approach, or there is reliance on a specific plan of proposed development.

Dual appraisals must be separate and fully independent in calculations, analysis, and conclusions. This will give a better basis for determining market value and help ensure a sound offer. The appraisers and the LPA management are responsible for maintaining the fact, spirit, and appearance of this independence.

### 13.8.5 Owner Initiated Appraisals – Appraisal Cost Reimbursement Agreement

Pursuant to Code of Civil Procedure Section 1263.025(a), a public entity must offer, in writing, to pay the reasonable costs, not to exceed \$5,000, of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain, at the time the public entity makes the offer to purchase the property. The independent appraisal must be conducted by an appraiser licensed by the Office of Real Estate Appraisers (BREAs).



## 13.9 Right of Way Acquisition

The Uniform Act contains basic requirements for the acquisition of real property, which apply to all projects. For additional details, refer to 49 CFR 24 and to the Chapter 8: Acquisition of the [Caltrans Right of Way Manual](#).

Prior to initiating negotiations for the acquisition of real property, the agency must establish an amount it believes to be just compensation and must make a written offer to the owner(s) to acquire the property for the full amount so established. All LPAs are encouraged to establish a Nominal (minimal) dollar amount of Just Compensation for any private property right needed to complete a project. Thus, estimated or appraised property rights acquired, rented, or used for a project would be consistent from project to project. In no event, shall such amount be less than the agency's approved appraisal of the fair market value of the property. The agency should make every effort to acquire the property by negotiation. Any increase or decrease in the value of the property to be acquired prior to the date of valuation caused by the transportation project must be disregarded in determining the compensation for the property. All property owners must be provided a copy of the approved appraisal and Appraisal Summary Statement or Valuation Summary Statement. ~~and Summary Statement Relating to the Purchase of Real Property or an Interest Therein. See [Caltrans Right of Way Manual Chapter 8, Section 8.02.00.00](#) for additional information.~~

The acquisition agent is responsible for securing all property rights necessary to certify the project (See Right of Way Certifications in this chapter).

Note: If a private sector consultant is used in the acquisition phase, the consultant must have a valid California Real Estate Broker's license, or Salesperson's license if supervised by a licensed Real Estate Broker. All R/W Contracts must be approved for content and signed or initialed by the Real Estate Broker or Principal of the Company.

By signing the R/W Contract, the Broker or Principal of the Company acknowledges responsibility for a complete file; see [Exhibit 13-C: Consultant Selection Criteria and Guide](#).

The general Uniform Act requirements are as follows:

- All real property rights (both temporary and permanent) must be appraised, and the acquiring agency must also establish an amount it believes to be just compensation (49 CFR 24.102) before the initiation of negotiations with the owner.
- The written offer must be made promptly in the full amount of the appraisal and contain a summary for its basis.
- At least a 90-day written notice must be given to all lawful occupants per 49 CFR 24.203(c).
- The owner's incidental escrow cost must be paid.
- A written (parcel) diary must be maintained.

### Title VI of the Civil Rights Act of 1964

LPAs must comply with all the requirements of Title VI of the Civil Rights Act of 1964 on federal-aid projects. This is to ensure that all services and/or benefits derived from any right of way activity will be administered without regard to race, color, or national origin (23 CFR 200 and 710, Subparts B and E).

Documentation of these Title VI activities, including providing language interpretation or translation services, must be documented with an appropriate R/W diary entry.

In addition, USDOT Order 1050.2A introduced language required in R/W contracts, deeds, permits to enter and other real property documents, as applicable, to ensure compliance with Title VI. Refer to LAPM Chapter 9, Section 9.2 for additional Title VI requirements, including specific Title VI contract language to include in federal-funded contracts.

The below referenced two clauses must be included in R/W contracts and are to be standalone separate clauses:

- “The parties to this contract shall, pursuant to Section 21.7(a) of Title 49, Code of Federal Regulations, comply with all elements of Title VI of the Civil Rights Act of 1964. This requirement under Title VI and the Code of Federal Regulations is to complete the USDOT-Non-Discrimination Assurance requiring compliance with Title VI of the Civil Rights Act of 1964, 49 CFR Part 21 and 28 CFR Section 50.3.”
- "No person in the United States shall, 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 under any program or activity that is the subject of this contract.”

### **13.9.1 Permit to Enter and Construct (PTE&C) or Equivalent Document**

The only appropriate scenario for use of a Permit to Enter and Construct (PTE&C) or LPA equivalent document, for access/use of a grantor’s property to accommodate construction work/activity is one for which all of the following conditions must exist: 1) the subject property is located within the project area; however, the work identified is not within the construction project scope, 2) Access to subject property is not required in order to construct the project, 3) The access is to the grantor’s benefit and not the benefit of the project, 4) Construction of the project can be completed without the need to condemn for subject access. Consult with your District Right of Way Coordinator(s) if you have any questions regarding use of a PTE&C, or its equivalent, versus a Temporary Construction Easement (TCE) for access/use of a grantor’s property to accommodate construction work/activity.

### **13.9.2 Permit to Enter (PTE) for Environmental or Geological Studies**

Written permission from a grantor via a Permit to Enter or equivalent document must be obtained to allow access for the purpose of Environmental Studies or Geological Studies. Subject permit may be non-compensable or compensable, depending on resulting property impacts, if any. Contact your District Right of Way Local Programs Liaison for any additional guidance, if needed.

### **13.9.3 Condemnation/Eminent Domain**

Eminent Domain is the inherent power of government to acquire property for public use. The Fifth and Fourteenth Amendments to the U.S. Constitution and Article I of the California Constitution provide that such private property must not be taken without just compensation. Condemnation is the legal proceeding by which the power of eminent domain is exercised. Public agencies may condemn private property provided that the governing body of the condemning agency (e.g., the Board of Supervisors or City Council) adopts a Resolution of Necessity at a public hearing. The owner(s) must be provided advance notice of the hearing. If the owner(s) believe that their property should not be required, they have the right to appear at

The R/W Certification is necessary prior to authorization for construction and must be consistent with the project's approved PS&E (23 CFR 635.309). The purpose of the R/W Certification is to document that any interests necessary for the project have been, or are being secured, and physical obstructions including buildings, utilities, and railroads have been, or will be removed, relocated, or protected as required for construction, operation, and maintenance of the proposed facility. The R/W Certification also documents that R/W activities, including the relocation of any displaced persons, are conducted in accordance with applicable state and federal laws and regulations.

The R/W Certification ([Exhibit 13-A: Short Form Right of Way Certification Local Assistance Project](#) or [Exhibit 13-B: Right of Way Certification Local Assistance \(Off-State Highway System\)](#)) must be submitted for review and acceptance with the signature of the person authorized to sign for the submitting LPA. Signing authority is granted by a Resolution passed by the City Council, or by the County Board of Supervisors. The Resolution will name the person, or the position of the person authorized to sign the certification document on behalf of the LPA. A copy of the Resolution is to be submitted to Caltrans Local Assistance R/W staff along with the signed Certification document.

Note: For projects requiring CTC allocation approval, see [LAPG Chapter 25: State Programs for Local Agency Projects](#).

For 100% state funded projects and for direct recipient funding, LPAs are to self-certify. LPAs may follow Exhibits 13-A and Exhibit B as sample certification formats.

### Certification Forms

A separate R/W Certification must be completed by LPAs for each local assistance project even if no R/W is required for the project. All Certifications for federal-aid off-system projects can be prepared using forms specified by Caltrans (see [Exhibit 13-A](#) and [Exhibit 13-B](#)). The format of the R/W Certification form contains specific wording required by FHWA. Changes made in wording could invalidate the certification and must be pre-approved by District/HQ RW. Also, do not delete any of the numbered sections. However, within the numbered sections, the LPA should use only the portions applicable to the project being certified. Data supporting all the project right of way activities (e.g., acquisitions, relocation assistance, railroad, and utility improvements, etc.) are also required at the time of submittal and must be consistent with the final project plans. See list of support documents at: <https://dot.ca.gov/programs/right-of-way/local-programs>.

Note: Exhibit 13-A is intended for projects that do not require R/W acquisition, relocation assistance, have no railroad involvement, and the only utility relocation involvement is limited to utility cover adjustments.

### Utility Relocation

LPA transportation projects often involve utility relocation. For utility relocation details refer to [LAPM Chapter 14: Utility Relocation](#) and Chapter 13: Utility Relocation in the [Caltrans Right of Way Manual](#).

### Project Certification – Right of Way Required

When additional property rights are required for a local federal-aid project, it is necessary for the agency to certify that these rights were acquired in conformance with the Uniform Act. All LPAs

Authorization. All certifications must be reviewed and accepted by Caltrans Division of Right of Way. Certification No's. 1 and 2 are approved at the district level. Certification No's. 3 and 3W require headquarters acceptance and may require FHWA approval pursuant to the current Stewardship and Oversight Agreement.

In those cases when a project advances to advertising with a Conditional Certification No. 3, an upgraded Certification No. 1 or No. 2 must be received by the DLAE a minimum of 15 working days prior to bid opening date. In rare cases where a Special Certification No. 3W is used, an Updated Special Certification No. 3W must be provided to the DLAE no later than 15 working days prior to bid opening. The Certification No. 3W does not need to be raised to a Certification No. 1 or No. 2, but must be updated to provide any progress pertaining to the work-around parcel(s).

For a full discussion on R/W Certification and their usage, see Chapter 14: Right of Way Certification and 17.08.06.00 of the [Caltrans Right of Way Manual](#).

### 13.10.3 Age of Right of Way Certifications

~~R/W Certifications over a year old from the time the LPA submits the RFA for CON phase must be updated to confirm there are no project scope changes and re-certified.~~

Right of Way Certifications must be updated:

- When the Certification is one year old and the project it was prepared for has yet to be advertised
- At the request of the Project Manager or Project Engineer
- When dates or anticipated actions are no longer consistent with the current date of the Certification
- When there are any changes in project scope or R/W requirements
- When the project description is no longer consistent with the PS&E

Additionally, the NEPA must be re-evaluated if older than 3 years from the time the LPA submits the RW Certification.

## 13.11 Emergency Relief Project Certification

### Emergency Opening Phase

Emergencies require rapid response. A R/W Certification for Emergency Opening (EO) work is not required until after the roadway is opened. Upon FHWA approval of the Damage Assessment Form (DAF), actions to advertise, award and administer Emergency Relief (ER) projects may proceed without going through the usual R/W steps. EO work performed outside existing LPA right of way is extremely rare. If R/W acquisition is required for EO work, immediately contact your District Right of Way Local Programs Liaison for guidance. See [LAPG Chapter 11: Emergency Relief](#) for further discussion.

After the facility has been reopened, the emergency actions must be reviewed for R/W implications. If either persons or properties were affected during the emergency repair phase, even temporarily, appropriate steps must be taken to ensure compliance with the Uniform Act.

**3. Material Site(s)**

- None required
- Material site(s) required. **If this box is checked, STOP and use Exhibit 13-B.**

**4. Disposal Site(s)**

- None required
- Disposal site(s) required. **If this box is checked, STOP and use Exhibit 13-B.**

**5. Status of Required Utility Relocation** (check all that apply)

- No relocation required; therefore, Buy America requirements do not apply. ~~Existing utilities located within project limits are shown on Project Plan.~~
- Utility Agreements are not required on this project; therefore, Buy America requirements do not apply.
- Utility involvement is limited to adjusting UTILITY COVERS (manhole cover, water valve cover, and box lids) to grade and said work is compliant with all terms and conditions including Buy America requirements. **If this box is checked, please complete page 5 of this form entitled "Utility Cover Adjustment Summary" and provide a copy of the Specific Authorization if federally participating.**
- All utility work (other than the adjustment of utility covers) has been completed. **If this box is checked, STOP and use Exhibit 13-B.**
- All utility work (other than the adjustment of utility covers) will be completed by a stated date prior to award of the contract. **If this box is checked, STOP and use Exhibit 13-B.**
- All necessary arrangements have been made for the completion of all remaining utility work (other than the adjustment of utility covers) required to be coordinated with project construction. Arrangements have been made with the owners of all utility encroachments which will remain within the right of way of the project so that adequate control of the right of way will be achieved. **If this box is checked, STOP and use Exhibit 13-B.**
- Utility facilities (other than the adjustment of utility covers) will be relocated by the project's contractor under bid items. **If this box is checked, STOP and use Exhibit 13-B.**

**6. Right of Way Clearance**

- There are no improvements or obstructions located within the limits of this project.
- All right of way clearance work has been completed and there are no improvements or obstructions remaining within the right of way area required for construction. **If this box is checked, STOP and use Exhibit 13-B.**
- All necessary arrangements have been made for remaining right of way clearance work to be undertaken and completed as required for proper coordination with the construction schedule. **If this box is checked, STOP and use Exhibit 13-B.**

**7. Airspace Agreements:**

- There are no airspace lease properties within the limits of the project.
- All necessary arrangements have been made with airspace lessee(s) and/or in contract provisions to minimize conflicts between lessee's activities and contractor's operations. **If this box is checked, STOP and use Exhibit 13-B.**
- Airspace lease has been cancelled. **If this box is checked, STOP and use Exhibit 13-B.**
- Other **(if this box is checked, STOP and use Exhibit 13-B)**

# LAPM C.14 UTILITY RELOCATION

## LAPM C.14 Utility Relocation

Section / Exhibit	Description of Changes
<b>14.1</b> Introduction	<ul style="list-style-type: none"><li>• Clarifying language added.</li></ul>
<b>Exhibit 14-G</b> Utility Agreement Clauses	<ul style="list-style-type: none"><li>• Clause II-13. Local Agency Requests Undergrounding revised for additional clarification for regulation compliance.</li><li>• Clause IV-9. Lump-Sum/Flat Sum SBC Billing Agreements updated for consistency in standard payment timeline.</li><li>• Clause V-3. Owner to Acquire New Rights of Way title modified to add clarifying information.</li><li>• Clause V-14a. Acknowledgements clarifying information added to assist in compliance with regulation.</li></ul>

## Chapter 14 Utility Relocation

### 14.1 Introduction

The procedures in this chapter have been designed to comply with Federal Highway Administration (FHWA) regulations and requirements under Code of the Federal Regulations (CFR) governing utility relocations. The purpose of this chapter is to provide guidelines to the Local Public Agency (LPA) when performing R/W utility relocations on projects outside of the State Highway System (SHS) and financed with federal funds.

Utility relocation procedures in this chapter only apply when relocating public utility facilities that serve the general public. Service connections and private utilities are handled through R/W Acquisition under Cost to Cure (23 CFR 710.203), and Uniform Act (49 CFR 24: Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-assisted Programs).

Forms and Exhibits referenced in this chapter are to provide the LPA with working samples. The language in these forms has been reviewed and approved by Caltrans Legal Department. The LPA has the option to modify the format of these forms or to use its own forms. However, the LPA's own forms must satisfy all required elements under 23 CFR 645.113, and the use of non-approved forms and clauses will require review and approval by Caltrans Headquarters Utilities Relocation office and Caltrans Headquarters Legal Department on a case-by-case basis. [For convenience, the Exhibits referenced within may be utilized for off or on-system projects.](#)

Any federal-aid project that involves any R/W utility relocations must be accomplished in accordance with the Utility and Buy America Procedures described in the [Caltrans Right of Way Manual](#), Chapter 13.

[Adjustment of utility covers \(manhole cover, water valve cover, and box lids\) to grade are considered utility relocations and said work must be compliant with all terms and conditions including Buy America requirements.](#)

The following manuals are available online at:

- Right of Way Manual: <https://dot.ca.gov/programs/right-of-way/right-of-way-manual>
- Encroachment Permits Manual: <https://dot.ca.gov/programs/traffic-operations/ep/ep-manual>

### 14.2 Terms and Definitions

**Public Utility Facilities** – Publicly and privately owned utility facilities, which serve the public.

**Impacted Utility Facility** – A public utility facility that has been identified in conflict with the proposed activity of a transportation project.

**Utility Relocation** – Any adjustment to the impacted utility facility required by the proposed transportation project.

**Owner** – Utility company, municipal utility department, who owns the impacted facility.

**Utility Coordinator** – LPA's person who acts as a liaison with owners.

**District R/W Utility Coordinator** – District Right of Way Utility Coordinator assigned to this project.



**II-13. Local Agency Requests Undergrounding:**

~~“LOCAL AGENCY chooses to have the utility company relocate their facilities underground at the cost of the Local Agency funds only. This relocation work is not federally eligible for reimbursement and does not meet the criteria to be mitigated any other way.”~~

~~**NOTE: When a Local Agency chooses to pay for undergrounding not necessary for the project, this clause must be used.**~~

“LOCAL AGENCY chooses to have the utility company relocate their facilities underground, unrelated to engineering necessity or documented cost effectiveness. The underground relocation work is not federally eligible for reimbursement, however, federal reimbursement will be allowed and limited to the cost of overhead relocation.”

**NOTE: When a Local Agency chooses to pay for undergrounding not necessary for the project, clause II-13 must be used.**

**Section III. Performance of Work****III-1. Owner's Forces or Continuing Contractor Performs Work:**

“OWNER agrees to perform the herein-described work with its own forces or to cause the herein described work to be performed by the OWNER's contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools, and equipment required therefore; and to prosecute said work diligently to completion.”

**III-2. Owner Performs Work by Competitive Bid Process:**

“OWNER agrees to cause the herein described work to be performed by a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure, and to furnish or cause to be furnished all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion.”

**III-3. Local Agency's Contractor Performs All or Portion of Work:**

“OWNER shall have access to all phases of the relocation work to be performed by LOCAL AGENCY, as described in Section I above, for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the Highway Construction Contract; however, all questions regarding the work being performed will be directed to LOCAL AGENCY's Resident Engineer for their evaluation and final disposition.”

**III-4. Owner to Hire Consulting Engineer:**

“Engineering services for locating, making of surveys, preparation of plans, specifications, estimates, supervision, inspection, \_\_\_\_\_ (delete or add services as established by the Owner's Agreement with the consultant) are to be furnished by the consulting engineering firm of \_\_\_\_\_ on a fee basis previously approved by LOCAL AGENCY. Cost principles for determining the reasonableness and allow ability of consultant costs shall be determined in accordance with 48 CFR, Chapter 1, Subpart E, Part 31; 23 CFR, Chapter 1, Part 645; and 18 CFR, Chapter 1, Parts 101, 201 and OMB Circular A-87, as applicable.”

**NOTES:**

**(1) If the Utility Owner is not regulated by the Federal Energy Regulatory Commission (FERC), you may delete reference to 18 CFR.**

**(2) OMB Circular A-87 applies to local agencies and local governments.**

shall not in any way affect the amount or acceptability of the lump sum amount herein agreed to. OWNER shall keep supporting detailed records available for LOCAL AGENCY review for a period of one year following OWNER's submittal of final bill."

**NOTES:**

- (1) Lump-sum Utility Agreements should be used for all utility involvements where the STATE's cost is estimated to be \$100,000 or less, and the conditions of Section 13.05.04.00 can be met.
- (2) See Clause IV-9 for Pac Bell/SBC lump-sum Utility Agreements.

IV-9. Lump - Sum/Flat Sum SBC Billing Agreements:

"Upon completion of the potholing and relocation work, and within ~~90~~ 45 days after receipt of OWNER's bill, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead; LOCAL AGENCY will pay OWNER the lump sum amount of \$\_\_\_\_\_. The above lump sum amount for the physical relocation work has been agreed upon between the LOCAL AGENCY and the OWNER and includes any credits due the LOCAL AGENCY for betterment, depreciation, and salvage."

**NOTE:** Although most positive location will be done pursuant to the Positive Location Agreement, if Pac Bell/SBC will be conducting their own potholing, the following clause should be added.

"In addition to the amount specified above, the LOCAL AGENCY will pay the OWNER an additional amount of \$\_\_\_\_\_ for each pothole location requested by the LOCAL AGENCY in order to determine the location of the OWNER's facilities. It is estimated that \_\_\_\_\_ pothole locations will be required. The final cost for potholing will be the lump sum amount of \$\_\_\_\_\_ per pothole location times the actual number of pothole locations."

**NOTE:** For lump sum amounts in excess of \$25,000, the following clause should be added.

"LOCAL AGENCY and OWNER further agree that for lump sum payments in excess of \$25,000 the LOCAL AGENCY shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of LOCAL AGENCY's audit shall be to establish the continued acceptability of using lump sum payments for high cost relocations and shall not in any way affect the amount or acceptability of the lump sum amount herein agreed to.

OWNER shall keep supporting detailed records available for LOCAL AGENCY review for a period of one year following OWNER's submittal of final bill."

**NOTE:** Lump sum Utility Agreements should be used for all utility involvements where the LOCAL AGENCY's cost is estimated to be \$100,000 or less and the conditions of Section 13.05.04.00 can be met.

IV- 9a. Lump - Sum/Flat Sum AT&T Billing Utility Agreements:

"Upon completion of the Preliminary Engineering, and within 45 days after receipt of OWNER's bill, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead, LOCAL AGENCY will pay OWNER the lump-sum amount of \$\_\_\_\_\_. The above lump-sum amount, for the preliminary engineering design work, has been agreed upon between the LOCAL AGENCY and the OWNER."

IV-10. Local Agency's Contractor Performs Portion of Work-Owner Liability:

[Insert the following Clause after Clause IV-1 or IV-2, unless the Owner is liable]

"The OWNER shall pay its share of the actual cost of said work included in the LOCAL AGENCY's highway construction contract within 90 days after receipt of LOCAL AGENCY's bill;

compiled on the basis of the actual bid price of said contract. The estimated cost to OWNER for the work being performed by the LOCAL AGENCY's highway contractor is \$\_\_\_\_\_."

"In the event actual final relocation costs as established herein are less than the sum of money advanced by OWNER to LOCAL AGENCY, LOCAL AGENCY hereby agrees to refund to OWNER the difference between said actual cost and the sum of money so advanced. In the event that the actual cost of relocation exceeds the amount of money advanced to LOCAL AGENCY, in accordance with the provisions of this Agreement, OWNER hereby agrees to reimburse LOCAL AGENCY said deficient costs upon receipt of an itemized bill as set forth herein."

## **Section V. General Conditions**

### **V-1. Local Agency Liable for Review and Design Costs, and Project Cancellation Procedure Clause:**

"All costs accrued by OWNER as a result of LOCAL AGENCY's request of \_\_\_\_\_ to review, study and/or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement."

"If LOCAL AGENCY's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, LOCAL AGENCY will notify OWNER in writing, and LOCAL AGENCY reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement."

"All obligations of LPA under the terms of this Agreement are subject to the acceptance of the Agreement by LPA Board of Directors or the Delegated Authority (as applicable), the passage of the annual Budget Act by the State Legislature, and the allocation of those funds by the California Transportation Commission."

### **V-2. For All Owners - Notice of Completion:**

"OWNER shall submit a Notice of Completion to the LOCAL AGENCY within 30 days of the completion of the work described herein."

### **V-3. Owner to Acquire New Rights of Way [with Local Agency Liable for a Portion of Costs:](#)**

"Total consideration for rights of way to be acquired by OWNER for this relocation shall not exceed (e.g. \$2,500) unless prior approval is given by the LOCAL AGENCY. Said property shall be appraised and acquired in accordance with lawful acquisition procedures."

**NOTE: A reasonable easement cost limitation should be stated to preclude excessive acquisition cost.**

### **V-4. Local Agency to Provide New Rights of Way Over State Lands:**

"Such Easement Deeds as deemed necessary by the LOCAL AGENCY will be delivered to OWNER conveying new rights of way for portions of the facilities relocated under this Agreement over available LOCAL AGENCY owned property outside the limits of the highway right of way."

"LOCAL AGENCY's liability for the new rights of way will be at the proration shown for the relocation work involved under this Agreement."

**NOTE: New rights of way means a right of way described in the same language as found in the OWNER's document by which it is acquired, or held, in its original right of way.**

---

**Combined Cost of Only those Materials that are Subject to Buy America and are Non-Compliant (limited to the individual UA)**

---

**Total Utility Relocation Cost (cited in the individual UA)**

(2) Applies only to non-domestic iron and steel materials used in this relocation.

V-14a. Acknowledgments:

“If, in connection with OWNER’s performance of the Work hereunder, LOCAL AGENCY provides to OWNER any materials that are subject to the Buy America Rule, LOCAL AGENCY acknowledges and agrees that LOCAL AGENCY shall be solely responsible for satisfying any and all requirements relative to the Buy America Rule concerning the materials thus provided (including, but not limited to, ensuring and certifying that said materials comply with the requirements of the Buy America Rule).”

NOTE: Clause is used when the LOCAL AGENCY is supplying any material that falls within the Buy America Rule to the OWNER.

V-14b. Acknowledgments:

[Mandatory Language for ALL OWNERS]

“LOCAL AGENCY further acknowledges that OWNER, in complying with the Buy America Rule, is expressly relying upon the instructions and guidance (collectively, “Guidance”) issued by LOCAL AGENCY and its representatives concerning the Buy America Rule requirements for utility relocations within the State of California. Notwithstanding any provision herein to the contrary, OWNER shall not be deemed in breach of this Agreement for any violations of the Buy America Rule if OWNER’s actions are in compliance with the Guidance.”

# LAPM C.15 ADVERTISE & AWARD PROJECT

## LAPM C.15 Advertise & Award Project

Section / Exhibit	Description of Changes
<b>15.3</b> Project Advertisement	<ul style="list-style-type: none"><li>• OB #24-03: text changes incorporated.</li></ul>
<b>15.4</b> Contract Bid Opening	<ul style="list-style-type: none"><li>• Language added to recognize the use of electronic bidding platforms which provide instant public availability of bid results to satisfy the “public reading of bids” requirement.</li><li>• OB #24-03: text changes incorporated.</li></ul>
<i>Note: subsection numbering implemented in LAPM Chapter 15 for ease of reference.</i>	

### 15.3.2 Procedures

Upon receipt of Authorization to Proceed for construction from Caltrans, the LPA can proceed to advertise the project. ~~Prior to project advertisement, the LPA must certify that their final PS&E package complies with all applicable federal and state regulations and procedures.~~ LPAs should also complete and retain [Exhibit 15-C: Project Advertising Checklist](#) in the project files prior to advertisement ~~requesting an Authorization to Proceed. All LPAs must submit a completed Request for Authorization with the PS&E Certification before they can receive verification that construction has been authorized by Caltrans.~~

~~Upon receipt of Authorization to Proceed for construction from Caltrans, the LPA can proceed to advertise the project.~~

During the advertising period, the LPA must notify all prospective bidders of PS&E addenda in the same manner as all other nonfederal-aid projects. For award of federal-aid contracts, the LPA is required to certify that all bidders certify receipt of all addenda. The LPA must ensure free and open competition. The advertisement period is determined by the LPA. A minimum advertisement period of three weeks is required for all federal-aid projects. Caltrans DLAE may approve shorter periods in special cases where justified with a LPA's [Exhibit 12-F: Cost – Effectiveness/Public Interest Finding](#). The advertising period begins with publication of a Notice to Contractors. Advertisement in a newspaper receiving wide local circulation, technical publications of widespread circulation, contractor/professional associations and societies, recognized DBE organizations, web hosting or clearinghouses known for posting government contract solicitations such as BidSync, and/or posting on the LPA's or other widely used social media/websites are all acceptable methods of solicitation. The Notice must identify the DBE goal. The LPA is responsible to approve and issue all addenda to the PS&E during the advertising period.

The LPA must assure that all updated estimates are fundable from available local or federal resources.

Upon advertising of the project, the LPA must furnish the DLAE with an electronic copy of the as-advertised construction contract (including plans and special provisions).

### 15.3.3 Federal Wage Rate Determinations

For contracts entered pursuant to competitive bidding procedures, LPAs must monitor the federal wage rate determinations to determine if federal prevailing wage rates have been modified from the time of initial advertisement to 10 calendar days prior to bid opening. If federal prevailing wage rates are modified, LPAs are required to issue an addendum to incorporate the modified version of the federal prevailing wage rates into the contract.

LPAs are also required to monitor federal wage rate determinations up until bid opening. If federal prevailing wage rates are modified, LPAs are required to either issue an addendum to incorporate the modified version of the federal prevailing wage rates to the contract or document in the project files that there is not a reasonable time still available before bid opening to notify bidders of the revision.

The federal prevailing wage rates must be physically attached to the executed contract signed by the LPA and the contractor on all federal-aid construction projects exceeding \$2,000 and to all related subcontracts (regardless of tier or subcontract size). Projects located on roads classified as local roads or rural minor collectors may be exempt from this requirement.

If the contract is not awarded within 90 calendar days of bid opening, the LPA must insert the most current federal prevailing wage rates into the contract.

## 15.4 Contract Bid Opening

The contract bid opening is a public forum for the announcement of all bids and is that point in time where the bids are opened and read aloud. It is also the last moment that bids can be accepted. No bids can be accepted during or after bids are opened. Normally the advertisement/bid documents will state a final time in which bids can be accepted. For bidders, the reading of the bids confirms whether their bid is successful. For the LPA and the general public, this forum establishes the cost to build the project. The bid opening requirements as outlined below apply to all federal-aid highway construction projects.

### 15.4.1 Requirements

FHWA policy requires all bids to be opened publicly and read aloud either item-by-item or by total amount. If a bid is not read, the bidder is to be identified and the reason for not reading the bid announced. [The LPA may also post the bids in a timely manner at a location accessible to the general public, such as on the LPA's web page while noting the reason for not reading them aloud.](#)

Reasons for not reading a bid include the bid itself being nonresponsive, often called irregular or the bidder is determined to be unreliable. Responsive bid and responsible bidder are defined as:

A Responsive bid is one that meets all the requirements of the advertisement and proposal, meaning all bid-related paperwork or electronic forms are completed and signed. A Responsible bidder is one who is physically organized and equipped with the financial ability to undertake and complete the contract. A Responsible bidder is also one that is not suspended or debarred, or whose business ethics have not been otherwise determined to be inadequate.

Among the reasons a bid may be considered non-responsive and be precluded from reading are:

- Failure to sign the bid, not signing the bid in ink, or not supplying a valid electronic signature where electronic bidding is used.
- Failure to furnish the required bid bond
- Failure to include a unit bid price for each item
- Failure to include a total amount for the bid
- Failure to prepare the bid in ink
- Failure to submit a completed addenda certification statement
- Failure to submit a non-collusion affidavit
- Failure to commit to the achievement of the DBE contract goals or demonstrate good faith efforts to do so
- Inclusion of conditions or qualifications not provided for in the specifications
- Submission of a materially and mathematically unbalanced bid
- Not meeting specified prequalification, or bonding and insurance requirements



The above examples do not include all possible bidding irregularities. The LPA's standard specifications govern regarding what constitutes a bidding irregularity. Accordingly, the LPA's bidding documents should clearly identify those requirements with which the bidder must comply to make the bid responsive.

Just as the bid may be rejected for being irregular or unresponsive, a bid may also be rejected on the grounds that the bidder is not a responsible bidder. A bidder may be deemed not responsible because of past unsatisfactory performance, as evidenced by failure to meet the LPA's qualification requirements, or because of state or federal suspension/debarment action. The LPA should check to see if a contractor is suspended or debarred from federal contracts [and document in the project file that the LPA has verified that the low bidder and subcontractors have not been suspended or debarred](#). A publication titled "A Listing of Parties Excluded from Federal Procurement and Non-procurement Programs" is available at [www.sam.gov](http://www.sam.gov).

Note: Contractor's Debarment and Suspension Certification is part of [Exhibit 12-H: Sample Bid](#).

In summary, a successful bid opening should identify the responsible bidder submitting the lowest responsive bid.

### 15.4.2 Procedures

The LPA must follow its own procedures for bid opening, provided such procedures include:

- As bids are received, they must be logged in and stamped with the time and date.
- The bids must be retained in a secure place until the designated time and place for public opening.
- All bids received in accordance with the terms of the advertisement must be publicly opened and announced either item by item or by total amount.
- If any bid received is not read aloud [or posted at a location accessible to the general public](#), the name of the bidder and the reason for not reading the bid aloud must be publicly announced [or noted](#) at the bid opening.
- Negotiation with contractors, during the period following the opening of bids and before the award of the contract, must not be permitted.

The LPA's bidding procedures must not discriminate against any qualified bidder regardless of political boundaries. No bidder must be required to obtain a license before submitting a bid or before the bid is considered for award of a contract, which includes federal financing; however, a State contractor's license must be obtained upon award of the contract. The LPA may also withhold payment under such contract until such time as the contractor furnishes proof of a proper license in compliance with state laws. The LPA must not bid in competition with or enter into a subcontract with private contractors. As bids are received, they must be logged in and stamped with the time and date. The bids must be retained in a secure place until the designated time and place for public opening.

The LPA must retain the following completed documents for the successful bidder in the project file:

- [Exhibit 15-G: Construction Contract DBE Commitment](#)
- A list of bidders and total amounts bid with an item-by-item breakdown (see [Exhibit 15-D: Bid Tabulation Summary Sheet \(Sample\)](#)) of the three lowest bidders
- The Non-collusion Affidavit (see [Exhibit 12-H: Sample Bid](#))

# LAPM C.16 ADMINISTER CONSTRUCTION CONTRACTS

## LAPM C.16 Administer Construction Contracts

Section / Exhibit	Description of Changes
<b>Exhibit 16-G</b> Corroboration Report	<ul style="list-style-type: none"> <li>Archived and removed from LAPM.</li> </ul>
<b>Exhibit 16-K</b> Report of Inspection of Material	<ul style="list-style-type: none"> <li>Archived and removed from LAPM.</li> </ul>
<b>Exhibit 16-O</b> Federal-aid Highway Construction Contractor's Annual EEO Report	<ul style="list-style-type: none"> <li>Exhibit 16-O is retired and will be replaced with a link to Form FHWA-1391 to ensure the current revision of the form is referenced and utilized.</li> </ul>
<b>Exhibit 16-W</b> Source Inspection Request to TransLab	<ul style="list-style-type: none"> <li>Archived and removed from LAPM.</li> </ul>
<p><i>Note: subsection numbering implemented in LAPM Chapter 16 for ease of reference.</i></p>	

State of California - Department of Transportation  
**CORROBORATION REPORT**  
Form MR-0104 (Rev.6/94)

File: Materials Category 100

**Instructions:** Use this form to compare Split-Sample Test results (Acceptance Tester's test results of the Independent Assurance Sample and Tester)

NAME (Acceptance Tester) Valid MR-0111  
[ ] YES [ ] NO

DATE (When the split sample was presented to the Acceptance Tester)	DATE(when the Acceptance Tester's results were received by the IAST)	DATE (When the Independent Assurance Sampler's & Tester's results were completed.
---------------------------------------------------------------------	----------------------------------------------------------------------	-----------------------------------------------------------------------------------

CORROBORATION OF TEST RESULTS

TEST PROCEDURE OR CALIFORNIA TEST NUMBER	ACCEPTANCE TESTER (AT)		INDEPENDENT ASSURANCE SAMPLER & TESTER (AST)		CORROBORATION BETWEEN THE AT AND THE AST		
	TEST RESULTS	SAMPLE ID NUMBER	TEST RESULTS	SAMPLE ID NUMBER	GOOD	FAIR	POOR

(1) SUBSEQUENT ACTION TAKEN FOR POOR CORROBORATION (List all actions taken and follow-up tests performed.

Attach copy of each test report. If no action was taken, document reason(s) for no action taken).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LAST NAME (Please print)	DISTRICT
SIGNATURE (Last)	AST CERTIFIED? [ ] YES [ ] NO
IF YES, AST CERTIFICATE NUMBER	REPORT DATE

FM93 1901 M

NOTE: ATTACH ALL TEST DATA (Form MR-0107)

APPENDIX C

RE/ Br Rep  
Contract file

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
**OFFICE OF MATERIALS**  
ENGINEERING AND TESTING SERVICES  
**REPORT OF INSPECTION OF MATERIAL**

Dist.: \_\_\_\_\_ Co.: \_\_\_\_\_ Rte.: \_\_\_\_\_ P.M.: \_\_\_\_\_  
Contract No.: \_\_\_\_\_  
F.A.P. No.: \_\_\_\_\_  
Purchase Order: \_\_\_\_\_  
Estimate (Requisition) No.: \_\_\_\_\_  
Date Inspected: \_\_\_\_\_

The following material has been inspected in accordance with Section 6 of the Standard Specifications and found to substantially comply\* with contract plans and specifications at the source which is at \_\_\_\_\_

Lot Number	Quantity	Description of Material
H -		

Identification: \_\_\_\_\_ Contractor \_\_\_\_\_

RESIDENT ENGINEER

Shipped to: **JOBSITE**

Signed \_\_\_\_\_

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_

\*Based on random sampling, testing and inspection procedures. Subject to final inspection and by the Resident  
MR-0029 (old:TL-29) (Rev. 9/94)

**EXHIBIT 16-O FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS ANNUAL EEO REPORT**

1. MARK APPROPRIATE BLOCK <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	2. COMPANY NAME, CITY, STATE:	3. PROJECT NUMBER:	4. DOLLAR AMOUNT OF CONTRACT:	5. PROJECT LOCATION: (County and State)
------------------------------------------------------------------------------------------------------------	-------------------------------	--------------------	-------------------------------	-----------------------------------------

This collection of information is required by law and regulation 23 U.S.C. 140a and 23 CFR Part 230. The OMB control number for this collection is 2125-0019 expiring in March, 2016.

**6. WORKFORCE ON FEDERAL-AID AND CONSTRUCTION SITE(S) DURING LAST FULL PAY PERIOD ENDING IN JULY 20\_\_ (INSERT YEAR)**

JOB CATEGORIES	TABLE A																TABLE B					
	TOTAL EMPLOYED		TOTAL RACIAL/ ETHNIC MINORITY		BLACK or AFRICAN AMERICAN		HISPANIC OR LATINO		AMERICAN INDIAN OR ALASKA NATIVE		ASIAN		NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER		TWO OR MORE RACES		WHITE		APPRENTICES		ON THE JOB TRAINEES	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
OFFICIALS	0	0	0	0																		
SUPERVISORS	0	0	0	0																		
FOREMEN/WOMEN	0	0	0	0																		
CLERICAL	0	0	0	0																		
EQUIPMENT OPERATORS	0	0	0	0																		
MECHANICS	0	0	0	0																		
TRUCK DRIVERS	0	0	0	0																		
IRONWORKERS	0	0	0	0																		
CARPENTERS	0	0	0	0																		
CEMENT MASONS	0	0	0	0																		
ELECTRICIANS	0	0	0	0																		
PIPEFITTER/PLUMBERS	0	0	0	0																		
PAINTERS	0	0	0	0																		
LABORERS-SEMI SKILLED	0	0	0	0																		
LABORERS-UNSKILLED	0	0	0	0																		
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**TABLE C (Table B data by racial status)**

APPRENTICES	0	0	0	0																		
OJT TRAINEES	0	0	0	0																		

8. PREPARED BY: (Signature and Title of Contractors Representative)	9. DATE	10. REVIEWED BY: (Signature and Title of State Highway Official)	11. DATE
------------------------------------------------------------------------	---------	------------------------------------------------------------------	----------

**SAMPLE COVER MEMO  
SOURCE INSPECTION REQUEST  
FROM LOCAL AGENCY’S RESIDENT ENGINEER TO CALTRANS’ OFFICE OF MATERIALS  
ENGINEERING AND TESTING SERVICES  
(Prepared by Applicant on Applicant Letterhead )**

**To:** Office of Materials Engineering & Testing  
Services, MS #5  
California Department of Transportation  
5900 Folsom Blvd.  
Sacramento, CA 95819

**Date:** \_\_\_\_\_

**EA:** \_\_\_\_\_

**Project Number:** \_\_\_\_\_

**Project Description:** \_\_\_\_\_

**Subject:** *(Source Inspection for Project Name, County)*

We are requesting that Caltrans provide Source Inspection (reimbursed) services for the above-mentioned project. We requested and received prior authorization for this service from our district Local Assistance Engineer, as noted by the attached approval memo from District Local Assistance Engineer.

Please find the following documents enclosed as required:

- 1. Completed CEM-3101
- 2. One set of PS&E

Any question you might have about the materials, to be inspected, should be directed to: \_\_\_\_\_, at \_\_\_\_\_ (phone #) \_\_\_\_\_.

\_\_\_\_\_  
*(Applicant Representative Name)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
(Local agency, name & address)

# LAPG C.6 HIGHWAY BRIDGE PROGRAM

## LAPG C.6 Highway Bridge Program

Section / Exhibit	Description of Changes
<b>6.3</b> Bridge Preventive Maintenance Program	<ul style="list-style-type: none"><li>• Dollar threshold for total cost of work increased from \$100K to \$200K.</li></ul>
<b>6.7</b> Project Delivery Policy	<ul style="list-style-type: none"><li>• Modification to language in 2b and 2c under Delivery Management due to repeal of PE&gt;10 policy.</li></ul>
<b>6.7</b> High-Cost Projects Programming Policy	<ul style="list-style-type: none"><li>• Clarification added to sixth bullet.</li></ul>
<b>6.8</b> Mandatory Field Reviews	<ul style="list-style-type: none"><li>• Clarification added for Bridge Preventive Maintenance Projects and paint-only projects.</li></ul>
<b>6.8</b> Mandatory Type Selection Report Review	<ul style="list-style-type: none"><li>• Clarification added for Bridge Preventive Maintenance Projects, scour countermeasure-only, and paint-only projects.</li></ul>



## Bridge Painting

The purpose of this scope of work is to help LPAs fund eligible bridge painting projects as a stand-alone scope of work when the LPA does not wish to rehabilitate or replace a subject bridge. The paint condition is good when the PCI is > 85%, is Fair when the PCI > 70% and ≤ 85%, is Poor when the PCI ≤ 70%.

1. The PCI for a bridge must be in poor condition, or SLA must provide concurrence for a bridge painting project to participate in the HBP. The PCI is available from the BIR.
2. Minor rehabilitation of corroded structural members is an eligible participating cost under stand-alone paint projects. The cost of the rehabilitation effort must not exceed 10 percent of the cost of the painting project (paint contract items only).
3. The costs of resolving major deficiencies causing the bridge to be in poor condition are not participating in a painting project. If the bridge is in poor condition with SR<80, rehabilitation must be considered prior to the development of a painting project. Background information supporting this consideration must be documented in the LPA's project file.
4. HBP funded bridge painting is for major scopes of work. Minor spot painting is considered preventive maintenance and is not participating work under the HBP as a standalone paint project. When the PCI is in fair condition the work may be eligible under the BPMP.

## Scour Countermeasure

The purpose of this scope of work is to help LPAs implement scour countermeasures as a stand-alone scope of work when the LPA does not wish to rehabilitate or replace a subject bridge.

1. To receive funds the bridge must have a rating of NBI Item 113 ≤ 3 or SMI Hydraulics must provide a recommendation that scour countermeasure is necessary.
2. The participating cost of a scour countermeasure project is limited to the installation of monitoring devices and/or modifying the bridge foundation or bank protection to resist scour damage. The repair of damage caused by scour without mitigating the scour problem is considered maintenance work and is not participating.
3. Correcting major deficiencies on a bridge is not a requirement of a scour countermeasure project. If the bridge is eligible for rehabilitation or replacement it must be considered prior to the development of a scour countermeasure project.
4. Scour countermeasure projects utilizing HBP funds must be designed to HEC-23 and SM&I must be able to change the NBI 113 code to 4 or greater.

## Bridge Preventive Maintenance Program

The purpose of this program is to help LPAs fund bridge preventive maintenance work to keep their bridges in good condition. There are specific requirements for the LPA to request funding for BPMP projects, but the total cost of the proposed work needs to exceed ~~\$100,000~~ \$200,000 for programming purposes. The BPMP has separate guidance that can be found on the [HBP website](#) that lays out the requirements, eligibility, and timelines for submittal. Once programmed, BPMP projects follow the policy found in this chapter.

Exceptions will be granted provided there will be no impact on the delivery of current year programmed projects. The HBP Managers will try to hold back a reserve of un-programmed capacity each year to fund construction change orders, cost overruns, and other mid-phase cost increases to help ensure smooth project development activities.

## 2. Advancing non-Prop 1B Seismic Retrofit Projects

- a. Advancing means obligating funds on a project where the funds are not programmed in the current year of the FSTIP.
- b. If there are schedule slippages or savings in current year programmed projects, and no Prop 1B seismic projects can be advanced to use current year funds, the Department will make HBP funds available to other HBP funded bridge projects programmed in future years within the 4-year element of the FSTIP.
- c. The priority for programming federal HBP funds will be based on having a complete request for authorization package in the possession of the DLAE, the type of work, the deficiencies with the bridge, and having approved scopes of work.

## Project Delivery Policy

This Policy is for programmed projects to address funds and delivery management. The intent is to maximize the use of funds and to have project delivery a high priority for HBP projects.

### 1. Funds Management

- a. New projects are metered into the program. A project's PE phase may not be obligated in an earlier year than programmed.
- b. LPAs that utilize AC to authorize PE will have the conversion to federal funds in the year PE is programmed.
- c. To avoid delivery failure, by February 1 LPAs must either submit an RFA or notify Local Assistance of an anticipated project delay.
- d. When an agency requests additional funding for an authorized phase, the funds must be obligated in the year programmed. If the LPA does not request the additional funding in the year programmed, it is considered a delivery failure and the funding will be moved to the last year of the FSTIP in the October updates. Project phases that fail to deliver will be required to wait until April 1 to advance the funding.
- e. If LPAs fail to deliver the R/W or CON phase of a project as programmed, the phase will be moved to the last year of the FSTIP and will be required to wait until April 1 to advance the funding.

### 2. Delivery Management

- a. Metering of the new projects will give the LPA, at a minimum, a 2-year notice of the available project start date. LPAs must authorize the PE Phase in the year programmed. Projects that fail to authorize PE, will have the project removed from the program. Re-application into the program will be under current guidelines.
- b. LPAs that have projects with PE authorized over 10 years, ~~with or without an approved time extension,~~ without NEPA clearance will not have new bridge projects programmed.

- c. LPAs ~~with HBP that have~~ projects with PE authorized over 8 years without NEPA ~~greater than eight years~~ are required to submit a detailed environmental status report with the annual HBP status.
- d. LPAs that have projects with NEPA clearance for more than five years and R/W certification is not complete, or construction authorized, will not be allowed to add new HBP projects to the program.

Exceptions to the above will require approval from HBP Managers. Projects will be evaluated regarding Project Delivery Policy during the annual HBP status. Data is processed at the end of the federal fiscal year.

### **Project Ranking Policy for Construction Programming**

Subject to budgetary constraints, the PE phase for eligible projects is programmed only in one of the two new years of a new FSTIP cycle to facilitate the development of new projects.

Also subject to budgetary constraints, the R/W phase for eligible projects is programmed in the last year of the FSTIP. Funding for the R/W phase may be advanced to the year requested once full compliance with the provisions of NEPA has been documented and approved by Caltrans.

The ranks below will be used to determine funding priorities of the construction phase for developing financially constrained HBP program lists. After projects are ranked and funds programmed, Caltrans submits the financially constrained program lists to the MPOs for inclusion into the FSTIP.

The lowest number rank is the highest construction priority. Within each rank, projects are sorted by the NBI condition rating to reflect the general condition of the bridge. The lowest condition rating is the highest priority. This means that lower priority projects will have PE and R/W funded even though construction may be pushed out of the 4-year element of the FSTIP. When these projects are ready for construction authorization, the ranking system will allow these projects to receive a high priority for construction programming within updated statewide program lists.

These project ranks will be applied to programmed projects to financially constrain any program list needed to update the FSTIP. The DLAEs are responsible for maintaining fields in the HBP FileMaker database that indicate a project's readiness to advertise. LPAs are responsible for closely coordinating with the DLAEs on project status, schedule, and estimates as documented in these guidelines.

#### **Rank 0**

This is not technically a project rank. All projects with HBP funds obligated for construction fall in this rank for listing purposes only. These projects cannot be pushed out of the 4-year element of the FSTIP because funds have been obligated for construction. Local-funded AC projects not subject to cash management commitments are Rank 0 projects. Local-funded AC conversion can be converted to HBP funds when programming capacity is available.

#### **Rank 1A**

Projects for the general support of the federally-mandated Bridge Inspection Program.

#### **Rank 1B**

Projects that are ready to advertise AND;

Table 6-4: Off System Calculation Examples

Example Number	Participating Phase Cost, \$ Million	Reimbursement Rate Calculation	Reimb. Rate, %	HBP Reimb. Amount, \$ Million	Local Match Amount, \$ Million
1	25	N/A	88.53	22.13	2.87
2	80	N/A	88.53	70.82	9.18
3	100	=88.53 – 0.1765 x (100 – 80)	85	85	15
4	250	=88.53 – 0.1765 x (250 – 80)	58.53	146.33	103.67
5	300	N/A	N/A	146.33	153.67

Once reimbursement rates for project phases are determined, they cannot be changed. The HBP reimbursement rate of a high cost R/W phase will be determined at time of R/W authorization. The HBP reimbursement rate for a Construction phase will be determined at contract award.

When a high cost project phase is ready to be programmed in the 4-year element of the FSTIP, the LPA will notify the DLAE and discussions on programming the phase will begin.

- A funding commitment letter will be issued when a high cost phase of work needs to be programmed in the 4-year element of the FSTIP or as needed for an FHWA Project Financial Plan. NEPA and/or R/W clearance along with status of the PS&E package will play a role in determining the need for the funding commitment letter.
- The HBP Managers will issue a funding commitment letter, [Exhibit 6-E: Sample Funding Commitment Letter](#), and associated funding sheet, [Exhibit 6-F: Sample Funding Sheet for Commitment Letter](#), to the LPA for a high cost project that commits the Department, subject to state and federal budget legislation and other limitations, to specify HBP in the FSTIP over a multiple year period. The Department will program the HBP funds in the FSTIP after the LPA executes the AC Commitment Block included in Exhibit 6-E.
- LPAs will need to secure the availability of local funds (budget authority) to back the AC commitment.
- LPAs that cannot obtain a source of local funds for AC will not have R/W or construction programmed within the 4-year element of the FSTIP using HBP funds. These LPAs may appeal this policy and request a meeting with the Department to review the specific situation. Members of the Local Assistance HBP Advisory Committee (Committee) may be invited to the meeting to offer advice to the Department on implementing the policy as applied to the project in question.
- The sum of cash-managed high cost projects in any federal fiscal year must not exceed 50% of the annual revenue for that federal sub-apportionment for which the project is eligible without concurrence from the Committee.
- Funds allocated to a project for AC conversion should not exceed \$20 million per year without concurrence from the Committee. [LPAs must manage the cashflow and expenditure needs of high cost projects utilizing other sources of funding with this understanding. Financing costs such as interest or other costs incurred by the LPA while borrowing funds is not HBP eligible.](#)
- High cost projects will not be accepted into the local assistance HBP if all (including high cost projects) projects cannot be funded over a 15-year period. If the project is not

- Introductions between all relevant parties involved in the project development.
- Review the most recent LAPG 6-A to ensure no revisions are necessary.
- Begin to scope the project and discuss HBP eligibility; the project will not be fully scoped until after type selection concurrence.
- Identify project constraints.
- Verify that the as-built plans accurately represent the existing conditions.
- Discuss environmental considerations and complete the draft PES form at the field review.

Important items to keep in mind for HBP field reviews include access, clearance, coordination, detours, environmental, falsework, obstructions, utilities, modifications, hydraulics, and permits.

The field reviews must be attended by:

- Consultants, if any.
- LPA staff knowledgeable of utilities, R/W, environmental, traffic, etc.
- Caltrans SLA, DLAE staff, and District Environmental; the DLAE may invite other Caltrans staff as necessary.

The field review results:

- The preliminary scope of the project is documented.
- The existing conditions are verified, and any modifications are documented.
- Construction controls are identified.
- Responsibilities are reviewed.

All projects that have PE authorization after January 1, 2019 must comply with the mandatory field review requirement.

[Bridge Preventive Maintenance Projects and paint-only projects are not subject to the mandatory field reviews, but field reviews are highly recommended to be held by the LPA and their consultant.](#)

### **Mandatory Field Reviews for Local Seismic Retrofit Projects**

Field reviews for seismic retrofit projects are mandatory. The objectives of field review for seismic retrofit projects are different in several ways from typical HBP projects. Seismic projects have additional objectives compared to Mandatory Field Reviews for HBP projects. These additional objectives are to:

- Begin to scope the project; the project will not be fully scoped until after the strategy meeting.
- Check for modifications that would affect the seismic response of the structure.
- Dimension any members that are not accurately shown on the as-built plans.
- If as-built plans are not available, measure and dimension all pertinent structural members.

- Check for new conditions that would be affected by construction work.

### **Mandatory Type Selection Report Review**

Type Selection Reports for rehabilitation and replacement projects must be submitted to SLA and HBP Managers for review and concurrence. Preliminary hydraulic and geotechnical reports should accompany the Type Selection Report to substantiate the alternatives studied and proposed, if applicable. This review is to ensure that the chosen structure type and associated details are the most cost-effective solution that meets the structural needs of the project. SLA's review will focus on the technical structural issues (i.e., structure type, foundation type, hydraulics, bridge length, span configuration, vertical profile, etc.) and HBP Managers' review will cover eligibility (i.e., bridge width, approach road work, vertical and horizontal alignments, etc.). The objective of this review is to ensure that the most cost-effective solution is being considered and that the preferred alternative has justification for HBP eligibility. The Type Selection Report submittal timeline should be discussed at the Field Review. It is recommended that Type Selection concurrence is obtained from SLA prior to NEPA clearance. All projects with a NEPA clear date after September 30, 2021 must comply with this mandatory Type Selection Report review requirement.

[Bridge Preventive Maintenance Projects, scour countermeasure-only, and paint-only projects are not required to submit a Type Selection Report for Caltrans concurrence.](#)

### **Mandatory Strategy Meetings for Local Seismic Retrofit Projects**

The objectives of the strategy meetings are to:

- Offer seismic designers support or alternative approaches.
- Determine that standard seismic retrofit details are being fully utilized.
- Establish alternative acceptable procedures to satisfy retrofits when unusual problems are encountered.
- Recommend alternative analysis when appropriate.
- Inform the project engineer of solutions to similar problems encountered by Caltrans, consultants, or other LPAs.
- Provide LPA personnel with information regarding potential traffic control, right-of-way, utility, and environmental problems.
- Achieve consensus agreement on economical and practical retrofit strategies.

The strategy meeting must be attended by:

- Design Consultants (Structural, Geotechnical, and Traffic if necessary)
- LPA staff
- Caltrans DES staff from Earthquake Engineering, Design, Construction, Maintenance, and/or Geotechnical.
- SLA
- DLAE