



*Expired Upon Issuance of LPP 16-03 Manual Update*

## Construction Oversight Program

### I. BACKGROUND

The California Department of Transportation (Caltrans) is responsible for the approval and oversight of all federal-aid highway projects, including those off the State Highway System (SHS) administered by local agencies. This responsibility is found in *23 United States Code (USC) 106* and *23 Code of Federal Regulations 635.105*. The Joint Stewardship and Oversight Agreement signed by the Federal Highway Administration (FHWA) and Caltrans further delineates these responsibilities. For the oversight of federal-aid highway projects administered by local agencies, a Local Oversight Action Plan (LOAP) was agreed upon by the FHWA and Caltrans that further prescribes construction oversight responsibilities. The LOAP included some oversight responsibilities over Local Public Agency (LPA) projects by Caltrans that have until now been delegated to the LPAs in accordance to Caltrans 1995 Reengineering Process.

In 1995, when Caltrans Local Assistance Program (LAP) resources were reduced by approximately 50 percent, the LAP went through a “Reengineering Process” by maximizing delegation of oversight authority to local agencies. As a result, construction contract administration has been delegated to the local agencies administering federal-aid contracts off the SHS. While the LAP retained the responsibility for developing policy and procedures and providing training to aid local agencies of federal requirements, it has relied, for the most part, on self-certification by local agencies to certify they are meeting the federal requirements. Process reviews are conducted to verify the accuracy of local agency certification and to identify deficiencies. Despite these aids, reviews and audits have shown these efforts are insufficient to achieve necessary compliance with federal requirements.

In the last few years, both FHWA and Caltrans have conducted various reviews of federal-aid construction projects. Findings from these reviews identified risk areas in construction contract administration by local agencies that require improved oversight by Caltrans LAP.

The purpose of this Office Bulletin is to publish Caltrans policy and procedures for its Construction Oversight Program of federal-aid highway projects administered by local agencies off the SHS.

### II. POLICY

For locally administered federal-aid highway projects off the State Highway System, construction oversight reviews will be performed by Caltrans Local Assistance Construction Oversight Engineers (COEs). District Local Assistance Engineer (DLAE) staff may participate in the reviews, if available. The purpose of these reviews is to verify local agency compliance with federal-aid construction contract administration requirements. These reviews may be conducted prior to the start of the construction contract, during construction, and/or after the completion of the construction contract as described below. The objective is to perform at least one review on all projects.

### **Preliminary Construction Review:**

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

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

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

### **Mid-Project Review:**

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

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

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

### **Post Construction Review:**

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

### **Review Findings:**

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

corrective action plan by the local agency to Caltrans within 30 days of receipt of the major deficiency notification, unless the agency disagrees with the major deficiencies identified and appeals the decision as discussed below. As defined in Chapter 20 of the Local Assistance Procedures Manual (LAPM), major deficiencies are those errors of commission or omission, which violates federal or state law or regulation, and if uncorrected, would prevent federal or state participation in all or a portion of the project.

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

Certain deficiencies may be unrecoverable as described in Chapter 20, *Deficiencies and Sanctions*, of the LAPM.

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

### III. PROCEDURE

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

#### **Construction Oversight Engineers**

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



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

#### **Construction Oversight Program Coordinator**

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



- Assist DLA division chief with issues referred to the Local Assistance Dispute Resolution Process.

**District Local Assistance Engineer**

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

**IV. APPLICABILITY/IMPACTS**

Applicable to all federal-aid projects administered by local agencies off the SHS during the three-year pilot period.

Recommended:	<b>Original Signed By</b>	4/24/2013
	_____	_____
	Tim Buchanan, Committee Chair	Date
Approved:	<b>Original Signed By</b>	4/24/2013
	_____	_____
	Rihui Zhang, Chief Office of Policy Development and Quality Assurance	Date

Attachment: Construction Review Checklist

Superseded by LPP 16-03