Chapter 19 **Oversight and Process Reviews**

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EXHIBITS

Exhibits applicable to this chapter can be found at:
http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm

Exhibit 19-A: Construction Review Checklist (Preliminary)
Exhibit 19-B: Construction Review Checklist (Mid-project)
Exhibit 19-C: Construction Review Checklist (Post)

Chapter 19 Oversight and Process Reviews

19.1 INTRODUCTION

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

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

19.2 LOCAL AGENCY RECORDS AND DOCUMENTATION

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

19.3 OVERSIGHT AND PROCESS REVIEW METHODS

Caltrans Oversight and Process Reviews

As outlined in *LAPM Chapter 1: Introduction and Overview* and *Chapter 2: Roles and Responsibilities*, Caltrans provided local agencies with broad delegation, latitude and responsibility for developing their federal-aid projects. Caltrans will provide the necessary

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

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

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

Other Caltrans Guidance and Assistance

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

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

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

FHWA Oversight and Process Reviews

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

- **Construction Contractor Payment Reviews**

  The purpose of these reviews is to evaluate and test the controls that are related to the financial aspects of construction contractor payments for local agency federal-aid projects. The review may include preparation of the project cost estimate, approval of and payment of monthly cost estimates, the preparation and processing of change orders and the completion, and final acceptance of the work.

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

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

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

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

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

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

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

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

- **FHWA's Verification Process**

  Used for project authorizations/final vouchers; retained project-level approvals; High Profile project approvals; and inactive obligations.

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

Oversight and Reviews by Other Federal Agencies

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

Oversight Using Mini Process Reviews

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

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

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

Other Oversight Methods

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

19.4 OVERSIGHT/PROCESS REVIEW COMMITTEE

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

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

The Oversight/Process Review Committee shall consist of appropriate headquarters Division of Local Assistance senior level management and Process Review Engineers. Others may be invited to participate depending on the items or areas to be covered. This could include but not limited to:

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

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

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

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

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

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

19.5 FINDINGS/RECOMMENDATIONS

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

Other objectives include:

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

Final Report

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

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

Based on the reviews, assurances can be established that engineered processes and procedures are being implemented as intended, and local agencies are producing the desired product.

Synopsis of each report, approved by the Review Committee, will also be posted on the Division of Local Assistance Internet Homepage at: http://www.dot.ca.gov/hq/LocalPrograms/Reports_db.htm.

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

Corrective Actions

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

19.6 Construction Oversight Program

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

Types of Reviews

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

Preliminary Construction Review

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

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

During preliminary construction reviews, the COE will meet with the local agency's construction contract administration team and discuss project record documentation requirements using *Exhibit 19-A: Construction Review Checklist (Preliminary)*. 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. *Exhibit 19-B: Construction Review Checklist (Mid-project)*, 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. *Exhibit 19-B* 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 *LAPM Chapter 20: Deficiencies and Sanctions*, major deficiencies are those errors of commission or omission, which violate federal or state law or regulation, and if uncorrected, would prevent federal or state participation in all or a portion of the project.

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

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

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

Roles and Responsibilities

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

Construction Oversight Engineers

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

Construction Oversight Program Coordinator

- Maintain Construction Oversight Database, monitoring for consistency and accuracy utilizing weekly newsletters and major deficiency notification letters.
- Issue quarterly report for construction oversight (programmatic findings) to FHWA Division Administrator, DLA division chief, DLAEs and COEs. Report to include review metrics, common problem areas, recommendations for improvements, programmatic actions/improvements taken (e.g. policy, procedures and training), performance measure trend analysis to establish first year baseline and subsequent performance, and sanctions taken.

- Issue quarterly report for construction oversight (project specific findings) to FHWA Division Administrator, Division of Local Assistance (DLA) division chief, DLAEs, and COEs. Report to include district, project number, local agency, review type, review date, reviewer, major deficiencies identified, notification letter date, local assistance dispute resolution referral date, corrective action plan submittal date(s), approval date of corrective action plan, status of major deficiency resolution, sanction description, and sanction amount.
- Provide input to the construction oversight engineers on projects subject to preliminary and mid-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.

19.7 REFERENCE

- *Caltrans/FHWA Joint Stewardship Agreement*
  http://www.dot.ca.gov/hq/oppd/stewardship/