

# Section A

## PROGRAM BACKGROUND

**Note:** The following chapter has been revised because the new Local Programs Manuals has replaced most of the guidelines that were published earlier. Changes are noted with strikethru of the old and new wording initialized. Please revise your copy of the guidelines as noted.

### About the Program(page A-2)

California may receive more than \$200 million over a 6 year period (which started with the 1992 Federal fiscal year) for transportation enhancement activities from the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). This represents a 10 percent set-aside of one of the ISTEA programs, the Surface Transportation Program funds. This money is available only for transportation enhancement activities.

Administering agencies (those receiving Federal-aid funds for transportation enhancement activities) have found it to be in their best interest to be aware of the procedures and requirements for developing Federal-aid projects. These are substantially more involved in time and money than the requirements for claiming State funds. Agencies unfamiliar with the requirements of Title 23, United States Code are encouraged to obtain and review copies of Caltrans' Local Streets and Roads booklets, which are summaries of detailed processes in the Local Programs Manual, a 3-volume set:

- ~~Process Guide: Procedures for Developing Federal Aid Highway Projects on Local Streets and Roads,~~
- ~~Environmental Analysis: Procedures for Developing Local Federal Aid Highway Projects,~~
- ~~Right of Way: Procedures for Developing Local Federal Aid Highway Projects, and~~
- ~~Consultant Selection: Procedures for Selecting Consultants for Federal Aid Highway Projects on Local Streets and Roads.~~ *review the Local Assistance Procedures Manual.*

~~A new Local Programs Manual will be published in summer 1995. It will be important for administering agencies to become familiar with implementation changes contained in it. The booklets, for a nominal fee, and Manual, for a more expensive fee, can be obtained from:~~

~~———— PUBLICATIONS UNIT  
———— 1900 Royal Oaks Drive  
———— SACRAMENTO CALIFORNIA 95815.~~

Also, the Manual, the Federal Highway Administration's Draft Cross-Cutting Federal Requirements August 1994, these guidelines and the application forms will be available electronically through the Internet at the Caltrans Home Page ([www.dot.ca.gov](http://www.dot.ca.gov)) in August 1995.

# Section B

## ELIGIBILITY

**Note: Certain chapters in Section B have been revised to reflect the reengineered local assistance procedures. Changes are noted with strikethru of the old and new wording initialized. Please revise your copy of the guidelines as noted.**

### **Eligible Costs** (page B-11)

The applicant must prepare an accurate cost estimate for proposed transportation enhancement activities. Agencies unfamiliar with the kinds of costs incurred on Title 23 Federal-aid projects that are eligible for reimbursement should refer to the Local ~~Streets and Roads~~ *booklets Programs Manual* and must confer with their Caltrans District prior to the application deadline (see page E-1.)

Transportation enhancement activities funds are reimbursable Federal-aid moneys, subject to all the requirements of Title 23 *and other applicable*, United States Code. They are for capital improvements. Feasibility study projects are ineligible, which of themselves provide no enhancement to the public. If a study shows the project to be feasible and a financial plan shows a credible source of operating funds, capital phases may be eligible for enhancement funds. These include preliminary engineering (including environmental studies), real property acquisition, and construction costs associated with conducting an eligible activity. These funds are not to be used for program planning; however, they may be used for archaeological planning projects.

Improvements to private property and commercial facilities are not eligible, but may include properties for public use, owned by a public not-for-profit corporation.

Many projects are a mix of elements, some on the list of 10 categories and some not. Those project elements which are on the list may be counted as transportation enhancement activities. For example, a rest area might include an adjacent historic site purchased and developed as an interpretive site illustrating local history. The historic site purchase and development qualifies as a transportation enhancement activity.

Activities which are not explicitly on the list might qualify if they are an integral part of a larger qualifying activity. For example, if the rehabilitation of a historic railroad station required the construction of new drainage facilities, the entire project could be considered a transportation enhancement activity. Similarly, environmental analysis, project planning, design, land acquisition, and construction activities necessary for implementing qualifying transportation enhancement activities are eligible for funding. For example, costs for environmental mitigation required for the enhancement project itself are reimbursable.

Transportation enhancement activities may not in themselves be routine or customary elements of transportation projects or mitigation for project impacts in compliance with the requirements of environmental, or other Federal, State, or local laws, even if those aspects will otherwise constitute a specified transportation enhancement.

Project funding under the transportation enhancement program is not available for a non-applicant agency to perform its normal required review and permit functions.

Convict labor is not a reimbursable cost.

Costs involved in applying for funds are not eligible. Any costs incurred prior to ~~written approval to proceed by receiving a "Authorization to Proceed" from~~ Caltrans are not eligible. (See page B-17.)

### **Local Funding Share (Match)** (page B-12)

Transportation Enhancement Activities are reimbursable projects. Applicants are expected to finance the project as it proceeds. Up to 88 percent of the actual eligible expenditures – up to the ceiling of the Federal funding share – will be reimbursed with each invoice. The amount programmed into the State Transportation Improvement Program (STIP), based on the original estimate of the project costs, will determine the Federal funding ceiling. Local funding share must be used in each phase.

Where the applicant chooses to use Federal funds, a match of approximately 12 match dollars to each 88 Federal dollars for a total of 100 dollars is required in each enhancement project phase. Administering agencies may "overmatch" enhancement projects; that is, additional match dollars may be used in the transportation enhancement activity beyond the match requirement. Because of Federal policies and the possibility of cost overruns, administering agencies are encouraged to use the full extent of Federal funds in the project. Agencies are discouraged from including more than 49 percent non-Federal dollars in the total enhancement project cost. The Federal Highway Administration authorizes expenditures on a project phase by phase (preliminary engineering, right of way, construction).

~~The exception to the 12 percent match is for bicycle and pedestrian facilities. "For purposes of this title, construction of a pedestrian walkway and a bicycle transportation facility shall be deemed to be a highway project and the Federal share payable on account of such construction shall be 80 percent." (Section 217(f) of Title 23). A 20 percent match will be required on bicycle and pedestrian facilities; that is, 20 match dollars to each 80 Federal dollars for a total of 100 dollars is required in each enhancement project phase.~~

Match may be provided from Caltrans State Highway Account funds for projects directly related to the State Highway System. Each Caltrans District Director has responsibility for recommending use of these funds to the Commission. Project applicants are encouraged to have an alternate funding source when requesting State Highway Account funds, as there is no guarantee they will be approved by the Commission. (See Application, part Five.) State Highway Account match may only be requested during the application process; it may not be requested after a project is programmed.

Under the Federal Highway Administration's new innovative financing test and evaluation project, a nationwide project has been established to allow greater flexibility for matching funds; for example,

match may now be other Federal dollars or private cash. Administering agencies may contact their Caltrans District Local Assistance Engineer for details.

Section 323 of Title 23 allows certain right of way donations to count towards the local funding share of a project. Donations must be from private ownership to public ownership for project purposes. Acquired right of way is not eligible as the match. Land that has been acquired previously and is already intended or available for use by the public does not qualify for donation credit.

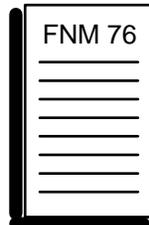
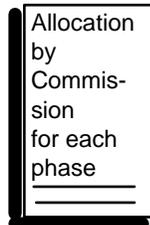
“Soft match” refers to instances where the value of activities accomplished away from the project are credited toward the non-Federal share (match) of the project. An example of this is the toll credit provisions of Section 1044 of the ISTEA. Soft match generally is not eligible under current Federal rules.

Occasionally, an administering agency’s partner seeks to provide labor or materials to design or construct a given project. Or sometimes an administering agency wants to use its own forces to do part or all of the work. In both of these cases, a competitive bidding process is precluded. When this is desired, the administering agency must ~~give justification for~~ justify not utilizing contracting by competitive bid; a comparison must be made between a) doing work by the agency’s own forces [or sole-sourcing the work to the partner] and b) by contracting out. When justifying the use of the partner as a sole source, the administering agency also must show that these are the only people who can do the work, and that services are available only from this single source. ~~Caltrans will make a “Finding of Public Interest” on the justification. In addition, some agencies’ regulations may limit work by methods other than contracting out.~~ *Public Works Director, or head of the administering agency, must approve the justification.*

## When Eligible Costs Can Be Incurred/ Authorization to Proceed (page B-16)

An administering agency may proceed to incur reimbursable costs for a given phase (preliminary engineering, right of way [acquisition], construction) only after it receives ~~written notification to start a~~ “Authorization to Proceed” from the Caltrans District Local Assistance Engineer. This occurs after: 1) Federal approval of the project in the FSTIP (Federal State Transportation Improvement Program), and 2) ~~execution of the Federal form FNM76 Submittal of the “Request for Authorization” by the administering agency to the DLAE .~~ Even though the project may proceed to incur costs, it may not be reimbursed until the agreements between Caltrans, ~~and the~~ administering agency *and FHWA* are executed and the Commission has voted funds into the blanket allocation for all enhancement projects' preliminary engineering.

Eligible costs can be incurred after the project is included in these documents:



Each phase of work requires approval to proceed by execution of a Federal form, the FNM 76 a "Authorization to Proceed". The ratio of Federal funds to non-Federal match remains the same in each phase of the project.

FNM 76 "Authorization to Proceed"

	Federal \$	Match \$
1st Authorization: Preliminary Engineering	\$	\$
2nd Authorization: Right of Way (Acquisition)	\$	\$
3rd Authorization: Construction	\$	\$

If the project begins with a preliminary engineering phase, the 'blanket' FNM 76 "Authorization to Proceed" covering the preliminary engineering phase for all transportation enhancement activities is put in place as of July 1 of each year. Therefore, reimbursable work usually can proceed as soon as the FSTIP is approved. *When the Administering Agency is ready to begin the preliminary engineering phase they should contact their (The Caltrans District Local Assistance Engineer informs the Project Administrator in writing.) to find out if the blanket has been approved and should contact their MPO/RTPA to see if their project in a approve FSTIP.* The Project Administrator can begin incurring reimbursable expenses for the preliminary engineering phase only once the blanket "Authorization to Proceed" FNM 76 and FSTIP are in place. Reimbursement requires execution of the agreements between Caltrans and the Administering Agency. (See page D-3.)

Once the project is ready to incur capital outlay costs (acquisition phase and construction phase), a second vote by the Commission is required prior to the "Authorization to Proceed", the FNM 76.

**Application Submittal**(page B-17)

No costs incurred before Caltrans' written approval "Authorization to Proceed" date can be reimbursed. Therefore, application preparation costs are not eligible for reimbursement.

**Preliminary Engineering - What is included/ What is excluded**(page B-17)

The preliminary engineering phase includes preparation of environmental documentation and preparation of construction documents. Preliminary right of way work to provide data for environmental documentation may also be reimbursed from preliminary engineering phase moneys.

No costs beyond project-related costs are eligible. To be eligible for reimbursement, all project support costs, such as preliminary engineering, must be included in the project cost approved in the State Transportation Improvement Program (STIP) . Costs can be shifted between phases. Mitigation costs, which arise in the course of the project, are covered up to the limit of the project cost approved in the STIP.

The administering agency may use its own workforce to do preliminary engineering work. It may also retain consultants after satisfying Caltrans' requirements for selecting consultants. ~~Agreements~~

~~between administering agencies and consultants must be approved by Caltrans. (See Implementation Section D.)~~

Some applicants prefer to pay for preliminary engineering themselves. They prefer to hire their own local design consultants, thereby avoiding the cost and time required to meet Federal requirements for contracting services (three to six months for the Request for Proposal, interviews and selection process). Following this path makes preliminary engineering non-reimbursable.

Proposed projects must obtain Federal environmental clearance under the National Environmental Policy Act (NEPA) and other Federal regulations. This process can be more costly and take longer than State clearance under the California Environmental Quality Act (CEQA). If the proposed project includes a railroad, historic properties, archaeological sites, parkland, endangered species, wetlands, or if public controversy is involved, additional time could be involved in the process. Projects utilizing State funds for match must comply with requirements of both NEPA and CEQA.

One of the Federal environmental regulations is Section 4(f) of the Department of Transportation Act of 1966. It requires preservation of publicly-owned parks, recreation areas, wildlife and waterfowl refuges, and historic sites of national, State, or local significance (see Implementation Section, page D-8). Projects affecting these types of resources are subject to Section 4(f).

All projects are subject to Section 106 of the National Historic Preservation Act of 1966, even though not all will have cultural resources. For example, a pedestrian facilities project under construction could find historic or cultural artifacts during the process of grading.

~~Agencies are encouraged to obtain the Local Streets and Roads booklets, Process Guide: Procedures for Developing Federal Aid Highway Projects on Local Streets and Roads, Environmental Analysis: Procedures for Developing Local Federal Aid Highway Projects from the Publications Unit of Caltrans.~~

When development is part of the project, starting the preliminary engineering phase obligates the agency to begin construction within ten years of Federal approval. Regardless of the source of funds used to construct, Federal funds used for preliminary engineering must be returned if construction does not start.

### **Right of Way (Acquisition) - What is included/What is excluded**(page B-18)

Generally, the right of way phase is included when: utilities will be relocated; a purchase, easement, or lease is involved; an operating railroad facility will be crossed or modified; an occupant or business will be relocated; or an access issue is involved (see Appendix for Right of Way Checklist).

Environmental analysis and public hearing requirements must be completed before starting most right of way activities. Acquisition projects often require special environmental studies, even when no development will occur on the site. For example, these might include archaeological resources or endangered species database searches. Federal authorization to begin work, "*Authorization to Proceed*", must be obtained in advance when Federal funds are to be used for reimbursement of right of way costs.

All right of way activities must be performed in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act as amended, and in conformance with Caltrans Right of Way procedures for local Federal-aid projects *even if the administering agency uses their own funds to obtain the right of way*. Funds may be used for costs such as appraisals, surveys, legal matters, purchase, relocation assistance, or utilities relocation.

An offer to acquire property must be written and may be made only after appraisals are approved and funding is authorized by a vote of the Commission. Commencement of negotiations with property owners prior to Federal approval, "*Authorization to Proceed* ", may jeopardize reimbursement eligibility.

~~Agreements between local agencies and right of way consultants, private negotiators, and private relocation assistance service personnel must be approved by Caltrans. Federal funds may be used only for costs incurred after Caltrans approves the consultant agreements and the authorization to proceed (ENM 76).~~

Obtaining an option to purchase property is not considered to be an offer to purchase. Therefore, the requirement that no offer be made until after receiving environmental clearance and project approval will not be violated by obtaining an option.

Obtaining an appraisal, at an early stage, for the purpose of estimating the capital cost of a project will not bar FHWA participation in project costs. Such an appraisal generally serves the same functions as the project estimates Caltrans prepares, providing cost projections used in planning, applying for funding, etc.

- However, FHWA will not participate in the cost of an appraisal prepared prior to Environmental Clearance, Project Approval and Federal Authorization.
- Any appraisal used as the basis for an offer must be current. This means that if the original appraisal used for estimating purposes is so old as to be suspect as to its timeliness, it must be reviewed to determine if it is still current and if not, a new or revised appraisal must be obtained.

Private, not-for-profit organizations are not barred from receiving reimbursement of transportation enhancement activities funds for the purpose of acquiring real property rights. In addition, private not-for-profit organizations may take title to real property purchased with transportation enhancement activities funds, providing binding language in an appropriate document: a) requires continued use of the property as was proposed in the approved application; and b) provides for appropriate reversion of the property or repayment of public funds in the event that such use ceases.

Property purchased with transportation enhancement activities funds may be vested in an agency of the Federal government to accomplish the purpose of the project, and this will not bar FHWA participation.

Situations where real property rights are purchased by a private not-for-profit agency first and then re-sold to a public agency with transportation enhancement activities reimbursement do not automatically disqualify the transactions from FHWA participation. There should be some assurance in these cases that the serial transaction format was not undertaken in collusion between the two agencies

to circumvent the requirements of the Uniform Act. Short of evidence of collusion or circumvention these transactions will not be barred from FHWA participation.

In the event that a) the private, not-for-profit agency purchased the property rights prior to the award of enhancement funds, b) seems to be making a financial gain on the property or c) has been using the property for some period of time for the same use as is proposed in the transportation enhancement activities application, the facts should be reviewed as early as possible with the Caltrans District Local Assistance Engineer and Right of Way Agent.

Situations where there is a coordinated plan for more than one agency to acquire substantially all of the properties contained in an area should be reviewed as early as possible with the Caltrans District Local Assistance Engineer and Right of Way Agent.

If the proposed project is for a scenic viewshed or other type of land preservation purpose, the issue of possible dollar savings should be investigated. Sometimes the proposed project can be satisfactorily carried out if a scenic easement is acquired rather than full fee title. The amount of cost savings should be justified. For example, the continuation of livestock grazing land use may be compatible with the preservation of a scenic viewshed. Thus acquiring development rights from the property owner in the form of restrictive easement deed clauses, while allowing the owner to retain ownership rights with permitted continuation of the existing limited agricultural usage is a proper application of the scenic easement concept.

When development will occur in the project, starting the right of way phase obligates the agency to begin construction within ten years of the Federal approval date.

### **Construction - What is included/What is excluded**

The construction phase includes advertising the project, awarding the contract and performing construction.

Before advertising a project for bidding, funding must be allocated by a vote of the Commission; ~~the FNM 76 must be executed~~ *Submittal of the "Request for Authorization" by the administering agency and receipt "Authorization to Proceed" from the DLAE*, the right of way must be certified, utility clearance and railroad clearance must be obtained (if required); ~~and Caltrans must approve the plans, specifications and estimate, and authorize advertising.~~

The local agency must inspect project work to ensure compliance with the contract, and must provide a Resident Engineer who is a full-time public employee. A consultant on retainer as City or County Engineer is considered to be a full-time public employee.

Convict labor shall not be used on ant Federal-aid project..

Involving other organizations in the construction does not absolve administering agencies from complying with Federal regulations such as for sole source contracts, prevailing wage, or disadvantaged business enterprise.

For construction, the contractor is to be chosen through a competitive bidding process. Otherwise, the administering agency must justify using its own workforce or doing the work by "sole source".  
~~Caltrans makes a "Finding of Public Interest" on the justification.~~

~~Agencies are encouraged to obtain the Local Streets and Roads booklet, Process Guide: Procedures for Developing Federal Aid Highway Projects on Local Streets and Roads from the Publications Unit of Caltrans or on the Internet.~~ The California Conservation Corps (CCC) and local corps certified by the CCC, and Urban Youth Core have expressed an interest in being involved in the implementation of transportation enhancement activities projects.

## **Section D**

# **PROJECT ADMINISTRATION/ IMPLEMENTATION**

**Note: This Section has been comply revised to conform to Caltrans Office of Local Programs Reengineering procedures. Please discard your old Section D and replace it with this new Section D.**

Administration of the transportation enhancement activity project occurs after it is approved for inclusion in the Federal State Transportation Improvement Program (FSTIP). Inclusion into the FSTIP occurs after the Commission votes the project into the State Transportation Improvement Program (STIP). The following procedures reflect both Federal and State requirements for subsequent implementation of a project.

### **(Administering Agencies)**

#### **Agencies with Master Agreements**

Agencies with the November 29, 1995 Local Agency-State Agreement (new Master Agreement) and determined to be capable by the Caltrans District Local Assistance Engineer (DLAE) may administer projects.

Agencies that have not secured the new Master Agreement are encouraged to work diligently with their DLAE to secure a new Master Agreement. Or, Caltrans suggests that agencies having minimal staff and background in Federal-aid projects and therefore unable to administer Federal-aid projects should work closely with a city, county or Regional Transportation Planning Agency to partner with an agency that has adequate staff and a master agreement in place.

Agencies with Master Agreements may do the preliminary engineering work themselves, or contract it out.

#### **State Agencies**

State agencies may administer transportation enhancement activities projects under a Master Agreement and a supplemental agreement with Caltrans. These agreements will ensure compliance with Federal requirements. The agency must have statutory authority to charge on a reimbursable basis. State agencies are included as "local agencies" in this Implementation Section of the Guidelines.

**Federal Agencies**

Federal agencies may administer transportation enhancement activities projects under a master agreement and supplemental agreement with Caltrans. The agency must have statutory authority to charge on a reimbursable basis. This agreement will ensure compliance with Federal requirements.

**Caltrans**

Caltrans districts may administer transportation enhancement activities, using the same procedures as other projects using reimbursable Federal-aid funds.

As a last resort, Caltrans may be available to administer projects for agencies having no Master Agreement as 'reimbursed work for others'. Administering agencies must enter into a cooperative agreement with Caltrans and must pay 100 percent of Caltrans overhead charges, which are not eligible for Federal reimbursement. Caltrans encourages agencies to seek project administration through other means.

Even though Caltrans may administer a project, it does not mean that Caltrans will take responsibility for maintaining it when the project is completed.

Match from the partner will be an up-front cost (advance deposit) for each phase, when Caltrans administers the project. Agencies should work closely with their Caltrans' district to negotiate agreements.

## **Implementation – A Phased Process**

Implementation of a transportation enhancement project is a phased process, where authorization must be received before reimbursable work can begin in each phase. Enhancement projects have up to three phases: 1) preliminary engineering, 2) right of way, and 3) construction. Not all projects go through all three phases; some are only one- or two-phase projects. Refer to Chapter 1 of the *Local Assistance Procedures Manual* for flow charts that show the process.

The administering agency will have one primary contact at Caltrans, the DLAE at the district where the project resides.

Briefly, the administering agency works with the DLAE to fulfill the following responsibilities:

- Discuss field review
- Submitting "Request for Authorization" and receiving "Authorization to Proceed"
- Request agreements with Caltrans
- Comply with all applicable Federal and State laws, rules and regulations, including environmental requirements in executing the project
- Request allocation vote (second vote) from Commission (for right of way or construction phases)
- Submit final invoice and final project report.

## **Use of Metric System**

Transportation enhancement activities shall comply with the Federal mandate to utilize the metric system for all federally financed projects that will begin construction after October 1, 2000. All projects that utilize Federal funds are under the same Federal mandate and will be subject to loss of Federal funding eligibility for noncompliance.

## **Master Agreement**

Before funds can be reimbursed, a new master agreement and program supplemental agreement must be executed by Caltrans and the administering agency.

In the new master agreement (Local Agency - State Agreement), the administering agency agrees to conform to all State and Federal laws, regulations, policies, procedures, and instructional memoranda. Administering agency agrees to provide or arrange for adequate supervision and inspection of each improvement.

The agreement describes fiscal provisions, including non-Federal match and administering agency responsibility for charges not financed with Federal funds. The administering agency agrees to give access and assistance to State and Federal auditors.

The administering agency agrees to ensure work performed under the new master agreement conforms to Federal and State employment practices. In the event of consultant contracted work, the Administering Agency will certify that they conformed to the Federal-aid consultant selection process. Consultants must agree to give access and assistance to State and Federal auditors. In the event of right of way action, rigorous Federal and State rules apply. Record retention periods are described in the agreement.

The administering agency agrees to provide long-term maintenance to maintain and protect the completed Federal-aid project in a manner satisfactory to the State and Federal government.

The new master agreement describes clauses that must be inserted into any and all deeds, licenses, leases, permits, contracts, and contract specifications.

The new master agreement is a "blanket agreement" under which program supplemental agreements are executed specifically for each project.

The new Master agreement and program supplemental agreements are to ensure that administering agencies and projects are in compliance with Federal requirements. The master agreement includes the mechanisms whereby the administering agency refunds Federal moneys to the State, should the agency not be in compliance with these Federal regulations and maintenance provisions.

## **Field Review**

To start project implementation, the Project Administrator from the administering agency holds a field review or just completes the field review form. The administering agency may invite key funding partners to the field review. The Project Administrator invites the DLAE, Regional Transportation Planning Agency, Caltrans District Landscape Architect, Environmental Planner, Right of Way Agent, Art Coordinator, Office of Local Programs Area Engineer, FHWA representative, and others as

appropriate. Caltrans attendance will be optional due to cut backs in local assistance staff. Caltrans staff will try to attend the field review on those projects where major issues need to be addressed. Therefore, it is important to give Caltrans staff as much advance notice on those projects you wish Caltrans to attend.

The field review is intended to provide the administering agency the opportunity to explain the project scope and to determine the Federal and State requirements that must be satisfied. At the discretion of the administering agency, potentially involved Federal, State, and local representatives and permitting agencies are invited to explain their requirements and time frames.

The Regional Transportation Planning Agencies may attend the field review to approve and project scope and cost changes (see discussion of Under-Expenditures and Over-Expenditures, in this section).

If Caltrans staff can attend the field review, the administering agency should submit a filled out copy of the field review form to the DLAE and other Caltrans personnel that will be attending prior to the meeting.

The basic project description, funding, administration and environmental portions of the field review form should be filled out for submittal. For other than roadway-related projects, much of the remaining data requested on the form may not apply.

For some projects, the field review may be an office meeting or even handled by phone conversation to discuss how to fill out the form. The procedure used should be agreed upon between the Project Administrator and the DLAE. In most cases the field review serves a very important function, especially to inform the Project Administrator of the process to comply with the Federal requirements, to ensure maximum Federal funding eligibility.

Generally, field reviews are scheduled for projects after they are in a Federal-approved Federal State Transportation Improvement Program (FSTIP). Since the date of Federal eligibility is established by the FSTIP approval and the "Authorization to Proceed", all costs, including the field review, will then be eligible for reimbursement.

Field reviews may be held prior to the project being on an approved FSTIP to expedite the process. In this case the field review will not be a reimbursable cost.

Even if the field review is itself an eligible cost, reimbursement can only occur after execution of the new master agreement and supplemental agreement. The supplemental agreement is usually executed after the field review.

The administering agency should take a copy of the transportation enhancement activities application and a filled out field review form to the field review and be prepared to discuss the following:

- Project scope and cost
- System identified (on or off the State Highway system)
- Proposed funding, strategy for meeting requirements for each funding program
- Environmental studies and management plans previously conducted
- Environmental document and studies required

- Right of way and utility requirements
- Permit requirements
- Project timelines
- Maintenance responsibilities.

### **Allocation of Funds for Capital Outlay – The Second Vote**

Projects voted into the State Transportation Improvement Program (STIP) proceed through the preliminary engineering phase before returning to the Commission for their “second vote”. Once a project has environmental approval, but prior to acquisition or construction contract advertisement, a Commission “second vote” for funding is scheduled. Generally, the vote is scheduled 60 days in advance of the Commission meeting. Allocation requests are for the capital phases of the project (right of way and/or construction), which will be initiated within six months. The Project Administrator will coordinate this process with the DLAE.

The Commission releases funds through the State budget system, but expenditure of funds is still subject to obtaining Federal “Authorization to Proceed” and execution of the master and supplemental agreements. In addition, State transportation funding shortfalls may require projects to be put on "hold" when they are ready for their second vote.

### **Consultant Selection for All Phases**

To ensure eligibility for reimbursement, consultant selection should occur after receiving the “Authorization to Proceed” for the preliminary engineering phase. Consultant selection must conform to Federal requirements, including participation by disadvantaged business enterprises (DBEs). Administering Agency is required to certify that they complied with those requirements.

Consultant contracts for design-related services must result from negotiations which utilize qualifications-based selection procedures. Qualifications-based procedures do not allow for price to be used as a factor in the selection process. See Chapter 14 “Consultant Selection in *the Local Assistance Procedures Manual*.”

### **Preliminary Engineering Phase**

Eligible costs for preliminary engineering usually may be incurred beginning on the date the Federal Highway Administration and Federal Transit Administration approve the Federal State Transportation Improvement Program (FSTIP) or FSTIP amendments that include the project, and issuance of the blanket “Authorization to Proceed”. The administering agency should contact their RTPA for the FSTIP date and their District Local Assistance Engineer to see if the blanket “Authorization to Proceed” has been approved.

### **Environmental Documentation**

Transportation enhancement projects must meet the requirements of the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA) and all other relevant Federal environmental requirements. (See Chapter 5 “Overview Of Environmental Process” in *the Local Assistance Procedures Manual*.)

All environmental investigations, reviews, and consultations will be administering agency responsibility, and compliance with all applicable environmental requirements will be reflected in the environmental document and the conditions of the environmental document approval.

The DLAE will review the environmental document for completeness before sending it on to FHWA for approval.

The administering agency is the lead agency responsible for complying with the provisions of the CEQA. Where a State Highway is involved, Caltrans reviews the CEQA document.

FHWA reviews and approves for compliance with NEPA and the other Federal environmental requirements for all Federal-aid projects. The other requirements include:

- Section 4(f) of the Department of Transportation Act of 1966 applies when a proposed project will result in the use of land in a publicly owned park, recreation area, or wildlife and waterfowl refuge, or any significant historic site. Such a use may not occur unless there is adequate documentation that there is no prudent and feasible alternative to the use of the land in the property, and the action includes all possible planning to minimize harm to the property resulting from such use. Each enhancement project must be evaluated to determine if Section 4(f) applies. Specific documentation and procedural requirements involving FHWA and other Federal agencies must be followed.
- Section 7 of the Endangered Species Act of 1973 requires Federal agencies to consult with the U. S. Fish and Wildlife Service (National Marine Fisheries Service, if applicable) if a federally-funded project may affect a listed endangered species or critical habitat of an endangered species. The administering agency will be responsible for assessing the potential for impact.
- Section 106 of the National Historic Act of 1966 provides authority for the protection of historic and cultural properties. Section 106 requires Federal agencies to take into account the effects of any federally-funded project on National Register listed or eligible properties and consult with the State Historic Preservation Officer and the Advisory Council on Historic Preservation as appropriate pursuant to Title 36 Code of Federal Regulations 800. The administering agency will be responsible for preparing any documentation necessary to fulfill these requirements. The "106" process can be completed in two months to two years or more, depending on the type of project, impact on the historic property and mitigation measures required to protect the historic property.
- Executive Order 11990, May 24, 1977, "Protection of Wetlands" requires Federal agencies to make a wetlands finding which determines whether or not there is a practicable alternative to construction located in wetlands, whether all practicable measures to minimize harm to the wetlands have been included in the Federal action, taking into account all economic, environmental, and other pertinent factors that have a bearing on practicability. The administering agency is required to delineate wetlands, identify impacts and evaluate avoidance alternatives in the environmental phase of project development. The administering agency is required to obtain a 404 permit prior to advertisement for construction. This law and the Section 404 permit program of the Clean Water Act of 1977 play an important part in the preliminary engineering phase. Timing of the field review should be arranged usually in late winter, spring, or early summer to identify wetlands plant species.

- Other Federal environmental laws. The administering agency will be required to prepare any other studies necessary to comply with any other Federal statutes or executive orders commensurate with the anticipated impacts of the project.
- Executive Order 11991, Floodplain Management, May 24, 1977 applies to projects in the floodplain. It requires that FHWA make a “Only Practicable Alternative Finding” if a federally funded project will encroach upon the base (100-year) floodplain. The administering agency is responsible for any studies necessary to support such finding, if necessary.

Required mitigation and permits will be incorporated into the final construction documents (plans, specifications and estimate).

### **Construction Documents – Design Standards & Reviews**

Instructions for preparing project plans, specifications and estimates are contained in Chapter 11 “Design Standards” and 12 “PS&E” of the *Local Assistance Procedures Manual*.

As a minimum, transportation enhancement activities will use American Association of State Highway and Transportation Officials (AASHTO) standards or Local Agency’s Standards on local roads, Caltrans standards for bikeways or when an encroachment permit is required on a Caltrans facility, and the California Uniform Building Code whenever it is applicable.

Exceptions to design standards must be approved by the Local Agency’s Director of Public Works prior to the project proceeding to construction. While safety is of paramount concern, design solutions are encouraged that respect the integrity and value of historic preservation, communities, rivers, streams, lakes and coastal areas, wetlands and other environmental, scenic and aesthetic resources.

The administering agency will certify compliance with the above requirement and the environmental document.

Whenever applicable, the Americans with Disabilities Act must be met.

### **Right of Way (Acquisition) Phase**

Local agencies must comply with Federal acquisition regulations if transportation enhancement activities funds are used for either acquisition or construction. Violation of right of way provisions could jeopardize Federal funds for acquisition and construction.

The Commission votes to allocate funds for capital outlay before the Right of Way phase is eligible for reimbursement and can proceed. CEQA and NEPA approvals are required prior to the right of way phase allocation vote.

Whenever Federal funds will ultimately be used for the project, the acquisition of real property for the project is subject to the provisions of the Uniform Act, no matter if carried out by private parties or by Federal, State or local agencies.

When the acquisition of the real property qualifies for the voluntary sale provisions of the Act, no relocation assistance payments are to be provided to the grantor(s) being displaced from the property because of the project.

Tenants being displaced because of the project are entitled to all relocation assistance benefits under the Act. Grantor(s) being displaced from the property due to the project are entitled to all relocation assistance benefits under the Act, when the acquisition does not meet the requirements for a voluntary sale.

When a transportation enhancement project involves acquisition of land and the administering agency desires to have transportation enhancement activities funds deposited into an escrow account, step-by-step procedures for this exception to the usual process are as follows:

- “Authorization to Proceed” is received for Right of Way phase for state share of TEA and EEM
- Program Supplemental Agreement includes clauses so warrants can be payable to an escrow agent and so that different funding sources are clearly identified with their pro-rata share of costs
- Caltrans executes E-76 with FHWA, required before invoices can be paid. Finance letter required from the administering agency to begin the process.
- Escrow opens
- Administering agency prepares invoice
- Administering agency signs agreement declaring restrictive covenant, for example, on a scenic view shed
- Administering agency submits invoice, grant deed (not recorded) and agreement declaring restrictive covenant (not recorded) to Caltrans District Local Assistance
- Caltrans District Right of Way approves invoice and drafts further instructions to escrow
- Caltrans pays escrow (a memo explaining the expedite to the State Controller's Office may be required. Expedite requests cost \$18.50 for a five-day turn-around and \$50.00 for a three-day turn-around costs to be paid by administering agency.)
- Escrow closes
- Escrow records grant deed and agreement declaring restrictive covenant and sends recorded documents to DLAE
- Copies are distributed
- Final detailed estimate is made
- Final audit is performed.

### **Construction Phase**

The construction phase steps generally include project advertising, bid opening, award, daily reporting, labor compliance, contract change orders and project completion. In order to ensure Federal fund eligibility, projects shall not be advertised for construction until receipt of “Authorization to Proceed”, see Chapter 15 “Advertise/Award Project” in the *Local Assistance Procedures Manual*.

The CTC’s allocation of construction capital funds and the administering agency receipt of “Authorization to Proceed” are required before the construction phase is eligible for reimbursement. CEQA and NEPA approvals are required prior to the construction phase CTC allocation vote.

To initiate the construction phase, the administering agency provides the following information to Caltrans District Local Assistance:

- Request for allocation vote to Caltrans District Local Assistance
- Verification that project is in the Federal-approved State Transportation Improvement Program (FSTIP), available from the RTPA
- Right of Way Certification
- PS&E certification and complete PS&E.
- Copy of the approved environmental document (if not sent earlier)
- Completed “Request for Authorization”

Note: all of the above are part of Local Agency PS&E Certification, see Chapter 12, “PS&E” in the *Local Assistance Procedures Manual*.

After awarding the construction contract, the administering agency submits the Award Package and requests for a revised E-76 to reflect award information. The E-76 request should be sent along with Award Package, which includes the following information:

- Disadvantaged Business Enterprise/Woman-Owned Business Enterprise (DBE/WBE) information
- Good Faith Effort statement of DBE/WBE participation if DBE/WBE goals are not met
- List of all bidders in order of ranking from lowest to highest bid and the total of each bid
- Tabulated list showing the engineer’s cost estimate and at least the three lowest bidders plus the successful low bidder in an item-by-item breakdown
- Engineer’s estimate and the percentage the successful bid is over or under this estimate
- Responsible low bidder’s proposal
- Finance letter
- Detailed estimate

Note: all of the above are part of Local Agency Contract Award Checklist, see Chapter 16, “Administer Contract” in the *Local Assistance Procedures Manual*.

For project completion, before the Caltrans District Local Assistance does a project completion review. The administering agency provides a Report of Expenditures to Local Assistance within six months of project completion. This report includes:

- Final invoice
- Final detail estimate
- Change order summary
- Liquidated damages/contractor’s claims
- Date of project completion
- DBE/WBE final report
- Project certification.

**Project Completion Timeline**

Caltrans expects Project Administrators to start their projects by holding the field review, executing the agreements and beginning preliminary engineering during the fiscal year they are programmed in the STIP, either 1997/98 or 1998/99. Projects should be ready for the second vote within four years and completed within five years from July 1 of their programmed year. An accelerated

schedule of implementation will be required if the Federal act reauthorizing ISTEA of 1991 does not include the enhancement program; in that case all projects must receive their allocation of funds for capital outlay before September 30, 2000.

### **Under-Expenditures and Over-Expenditures**

The Federal cost programmed into the State Transportation Improvement Program (STIP) is a fixed amount. In general, cost increases must be covered with local funds.

Project cost changes can be expected due to environmental or design decisions, from contractor's bidding, or during construction. The administering agency should plan to work with its DLAE staff to identify accurate and reasonable costs before the project application is submitted.

If the cost of the project exceeds the amount identified in the STIP, the local agency has at least one of the following options:

- Fund the additional cost with available local resources;
- Change the scope of the project to fit within the funding programmed (subject to the Federal Highway Administration, Regional Transportation Planning Agency, Commission and Caltrans approval);
- Fund the additional cost in one project phase with identified savings from another project phase;
- Re-advertise the project for new contractor bids;
- Request additional funding from the Commission, even though Commission policy does not allow additional funding; or
- Drop the project as no longer cost effective and repay FHWA for any reimbursements received for preliminary engineering and right of way.

Caltrans must approve a change in project scope or shift of funding between project phases. The Regional Transportation Planning Agency and the Commission must approve any additional State funding or substantive change in project scope.

The Commission encourages cost savings on projects, to conserve funding so that more future projects can be funded in the program. The Commission will retain cost savings on any project within the same program for future programming.

### **Audits and Records Retention**

Caltrans performs financial and compliance audits on agencies receiving Federal funds. Audits are mandatory for any project involving over \$100,000 in Federal funds. Audits can establish that dollars must be paid back by the administering agency.

Audits are also performed on nonprofit institutions receiving Federal funds from an administering agency to carry out a project.

The final audit for most projects is satisfied by the Single Audit Process. If an administering agency is not subject to single audit, the State Controller's Office may be requested to perform the audit. Project records must be kept for three years after the final audit. Agencies receiving Federal-aid funds will be audited for compliance with the following:

- Title 23 and Title 49 Requirements
- Political Activity (Hatch Act and Intergovernmental Personnel Act of 1970, as amended) These acts specify that Federal funds cannot be used for political activity of any kind.
- Construction contracts (Davis-Bacon Act): For construction phase, laborers and mechanics employed by contractors on Federal-aid highway projects must be paid at wages not less than those established by the Secretary of Labor as the prevailing regional wage rate. Davis-Bacon Act does not apply to TEA projects that are not linked to Federal-aid highways.
- Civil Rights: No person shall be excluded from participation in, or be subjected to discrimination in, any program funded in whole or part by Federal funds because of race, color, national origin, sex, age, or physical impairment. (Includes Disadvantaged Business Enterprise (DBE) requirements.)
- Cash Management (Cash Management Act of 1989): Many recipients receive funds through a letter of credit arrangement with Caltrans. Cash should be withdrawn only in amounts necessary to meet immediate needs or to cover program disbursements already made.
- Relocation assistance and real property acquisition: When property is acquired by a public agency and subsequently displaces households and businesses, the agency must carry out certain actions in compliance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.

The audit can determine whether: the financial statements present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles; the organization has internal accounting and other control systems; and the organization has complied with laws and regulations that may affect its financial statements and the enhancement project.

### **Invoicing**

For reimbursement, the administering agency may submit monthly progress (not final) payment invoices for work completed on its letterhead to Caltrans Headquarters Local Programs Accounting. As an option, the agency may wait and request full payment with a Final Invoice upon notification of project completion to DLAE.

The administering agency is required to submit separate billings or invoices for work completed and separate final reports of completion for each funding source. For example, a transportation enhancement project that uses Environmental Enhancement and Mitigation funds as a match will be invoiced so that the two funds and their respective reimbursement items are accounted for separately. The administering agency may not bill for donated labor or materials.

**Federal Transit Administration (FTA) Transfers**

Administering agencies which are transit agencies may request transfer of their transit-related enhancement project from Federal Highway Administration (FHWA) to Federal Transit Administration (FTA). This decision rests with these two agencies. Every project is reviewed by the Federal Highway Administration and the Federal Transit Administration prior to the start of the project. Requests may be made during the field review or before. Transfer is limited to agencies (mostly transit) prequalified by FTA.

**Maintenance and Monitoring**

Administering agencies are generally responsible for maintaining projects into the future. The agency pays for the maintenance effort unless subsequent agreement specifies otherwise. Maintenance costs are not eligible for enhancement funding. The effort is monitored by the Caltrans Headquarters' Transportation Enhancement Activities Branch with input from Caltrans District Local Assistance.