



## *Local Programs Procedures*

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**LPP 11-05**      **Manual Update**  
**Subject:**      **Office Bulletin Consolidation Phase I & Technical Changes**

Reference:      *Local Assistance Procedures Manual (LAPM)*,  
Chapter 2- Roles and Responsibilities; Chapter 3- Project Authorization;  
Chapter 5- Accounting/Invoices; Chapter 6- Environmental Procedures;  
Chapter 7- Field Review; Chapter 9- Civil Rights & Disadvantaged Business  
Enterprise; Chapter 10- Consultant Selection; Chapter 11- Design Standards;  
Chapter 12- Plans, Specifications & Estimate; Chapter 13- Right of Way;  
Chapter 14- Utility Relocations; Chapter 15- Advertise & Award Project;  
Chapter 17- Project Completion; Chapter 19- Oversight & Process Reviews;  
Chapter 20- Deficiencies & Sanctions  
*Local Assistance Program Guidelines (LAPG)*,  
Chapter 12- Other Federal Programs; Chapter 23- Local Agency STIP Projects

Effective Date: December 12, 2011

Approved: \_\_\_\_\_  
Denix Anbiah, Chief  
Division of Local Assistance

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## **WHAT IS AN LPP**

LPPs are Local Programs Procedures. These documents are used for the deployment of procedures and policies between updates of the Local Assistance manuals, guidelines and programs. They are numbered according to calendar year and order in which released.

## **PURPOSE**

The purpose of this LPP is to incorporate several Division of Local Assistance Office Bulletins (DLA-OBs) and other technical changes into the LAPM and LAPG. This is Phase I of II to consolidate all relevant DLA-OB policy changes issued prior to January 1, 2011, into the LAPM and LAPG.

## **BACKGROUND**

DLA-OBs were developed in September 2008 to disseminate recent policy or procedural changes until LPPs can be issued. DLA-OBs supersede specific DLA policy and or procedural publications including the LAPM, LAPG, and electronic forms. Six DLA-OBs were issued in 2009 and 16 were issued in 2010. This Phase I LPP consolidates 9 of those 22 DLA-OBs, and also incorporates several miscellaneous technical changes.

## **POLICY & PROCEDURE**

The following Office Bulletins are incorporated into this Office Bulletin Consolidation Phase I LPP and therefore expire with its issuance: DLA-OB 09-03, 10-03, 10-04, 10-06, 10-08, 10-12, 10-13, 10-14, 10-15. Several miscellaneous technical changes are also included in this LPP.

DLA-OB 09-02, 10-09, and 10-10 will be included in the Office Bulletin Consolidation Phase II LPP. The remaining DLA-OBs issued prior to January 2011 are not included in Phase I or Phase II LPPs because they:

- have already been issued as LPPs;
- have been superseded by other Office Bulletins;
- are temporary in nature, or;
- are in the process of being modified.

## **USER FRIENDLY FEATURES**

- These new procedures are incorporated in the electronic version of the LAPM and LAPG that are available at the Division of Local Assistance (DLA) Home Page on the Internet at: <http://www.dot.ca.gov/hq/LocalPrograms/>. Under “Publications” select *Local Assistance Procedures Manual* or *Local Assistance Program Guidelines*.
- Sidebars are used to indicate where revisions were made to affected pages. However, when a chapter is released in its entirety, sidebars are not indicated. The revised pages in this LPP are to replace the pages affected in the hard copy of the LAPM and/or LAPG. The online versions of the LAPM and LAPG will already incorporate these changes.
- To receive an electronic notification when new information is posted on the DLA web site, please subscribe to the DLA list server at: <http://www.dot.ca.gov/hq/LocalPrograms/sub.htm>

- Comments and suggestions for improvement to the manual or the processes and procedures are welcome. They may be submitted to:

Department of Transportation  
Division of Local Assistance, MS 1  
Attention: David Saia  
P.O. Box 942874  
Sacramento, CA 94274-0001  
FAX (916) 654-2409  
[David\\_Saia@dot.ca.gov](mailto:David_Saia@dot.ca.gov)

## **SUMMARY OF CHANGES**

<b>LAPM Item</b>	<b>Change</b>
LAPM Cover Page	Revised office title.
Chapter 2 Table of Contents	Table of Contents was reissued due to added subsection, “ <i>Conflict of Interest.</i> ”
Section 2.11 (Caltrans Responsibilities) Pages 2-12 thru 16	Added third paragraph. Added subsection “ <i>Conflict of Interest.</i> ” Text shifted on pages 2-12 thru 2-16 due to new subsection added.
Chapter 3 Section 3.6 (Underfunded Projects) Page 3-14	Added High Profile projects and replaced “Demonstration Discretionary” with Historic.
Exhibit 3-A Pages 3-21 thru 22a	Added “Toll Credit Usage” to page 3-21. Removed first check box under “Disadvantaged Business Enterprise” and changed \$250,000 to \$1 million under “Pre-Award Audit” on page 3-22. Revised content under “Project Agreement and Liquidation of Funds.” Added signature line to page 3-22a.
Exhibit 3-B Pages 3-23 thru 24	Added “Toll Credit Usage” and removed first check box under Disadvantaged Business Enterprise on page 3-23. Revised content under “Project Agreement and Liquidation of Funds.” Added signature line to page 3-24.

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<p>Exhibit 3-C Pages 3-25 thru 27</p>	<p>Added “Toll Credit Usage” to page 3-25 and “Disadvantaged Business Enterprise” shifted to page 3-26.  Removed first check box under “Disadvantaged Business Enterprise” on page 3-26.  Revised content under “Project Agreement and Liquidation of Funds.”  Added signature line to page 3-27.</p>
<p>Exhibit 3-D Pages 3-29 thru 31</p>	<p>Added “Toll Credit Usage” and removed first check box under “Disadvantaged Business Enterprise” on page 3-29.  “Right of Way” shifted to page 3-30 and was revised.  Revised content under “Project Agreement and Liquidation of Funds.”  Added signature line to page 3-31.</p>
<p>Exhibit 3-L Page 3-51</p>	<p>Under “Standard Federal Programs Prefixes,” changed BH to BR.  Under “Sub-Level Identifier,” changed HBRR to HBP.</p>
<p>Chapter 5 Section 5.8 (Audit of Local Agency Expenditures) Page 5-18</p>	<p>Removed bolded NOTE from paragraph.  Changed \$300,000 to \$500,000.</p>
<p>Exhibit 5-E Page 5-36</p>	<p>Corrected header; changed “Exhibit 5-E” to “Exhibit 5-D.”</p>
<p>Chapter 6 Section 6.5 (Step-by-Step Procedures – Categorical Exclusion with No Technical Studies) Page 6-27</p>	<p>Under step 14, revised content under sub-step number three.</p>
<p>Section 6.6 (Step-by-Step Procedures – Categorical Exclusion with Technical Studies) Page 6-27 &amp; 31 thru 34</p>	<p>Under step 17, revised first sentence on page 6-27 and last paragraph on page 6-31.  Revised step 19 and the <i>Note</i> below it on page 6-32.  Revised step 28 on page 6-33.  Revised steps 33, 34, 36, &amp; 37 on page 6-34.</p>

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Section 6.7 (Step-by-Step Procedures – Routine Environmental Assessment) Page 6-39 thru 41	Revised steps 14, 15, & 19 on page 6-39. Revised steps 20 on page 6-40. Revised steps 33 and 34 on page 6-41. Step 31 shifted from page 6-41 to 40.
Section 6.8 (Step-by-Step Procedures – Complex Environmental Assessment) Page 6-45, 49, & 50	Revised steps 14 and 15 on page 6-45. Revised steps 26 and 27 on page 6-49. Revised steps 40 and 41 on page 6-50.
Section 6.9 (Step-by Step Procedures – Environmental Impact Statement) Page 6-55, 60, 61, 63, & 65	Revised step 24 on page 6-55. Revised step 29 on page 6-60. Revised steps 38 and 40 on page 6-61. Revised step 55 on page 6-63. Revised steps 61 and 62 on page 6-65.
Chapter 7 Section 7.2 (Type & Requirement for Field Review) Page 7-4	Under “ <i>Required Review</i> ,” changed “major” to “significant.”
Exhibit 7-B Pages 7-14 thru 14a	Under “Project Manager’s Concurrence,” added Representative to Local Entity and Caltrans (District) and added FHWA Representative and signature/title. Number 12, “List of Attachments” shifted to page 7-14a.
Exhibit 7-C Page 7-15	Under “Traffic Data,” removed a zero from each “year.”
Chapter 9 Section 9.2 (Nondiscrimination: Title VI of the Civil Rights Act) Pages 9-2 thru 3	Under “ <i>Implementing Title VI</i> ,” added “Local Agency Contact with LEP Persons.” “ <i>Construction</i> ” shifted to page 9-3.
Exhibit 9-A Page 9-40	Added “Date” field next to signature field.
Chapter 10 Table of Contents	The Table of Contents was reformatted and Exhibits 10-T and 10-U were added.

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Section 10.1 (General) Page 10-3	Under “ <i>Pre-Award Audit</i> ,” “\$250,000” was changed to “\$1 million or more” as well as other minor grammar changes.
Section 10.2 (Identifying & Defining a Need for Consultants) Pages 10-6b thru 7	Under “ <i>DBE Participation</i> ,” revised second sentence in paragraph on page 10-6b. Revised first paragraph on page 10-7
Section 10.5 (Consultant Selection Using the One-Step RFQ Method) Page 10-20	Under “ <i>Negotiate Contract with Top-ranked Consultant</i> ,” last paragraph was modified.
Section 10.8 (Miscellaneous Considerations) Pages 10-25 thru 26b	Content under “ <i>Retaining a Consultant as an Agency Engineer</i> ” was revised. “ <i>Construction Engineering Services</i> ” and “ <i>References</i> ” shifted to pages 10-26a and 10-26b.
Exhibit 10-K Page 10-59	Changed “\$250,000” to “\$1 million,” and other minor revisions to paragraph.
Exhibit 10-T Page 10-99 thru 102	Added new exhibit, “Panel Member Conflict of Interest and Confidentiality Statement.”
Exhibit 10-U Page 10-103 thru 105	Added new exhibit, “Consultant in Management Position Conflict of Interest and Confidentiality Statement.”
Chapter 11 Section 11.2 (Statewide Design Standards for Local Assistance Projects) Page 11-13 & 14	Under “ <i>Bridge Design Procedures</i> ,” modified web address. Removed last paragraph and web link regarding publications. On page 11-14 under “ <i>Clear Width Design</i> ,” fixed typo.
Chapter 12 Table of Contents	Table of Contents was reissued due to a change in page numbers caused by added content.
Section 12.5 (Value Engineering Analysis) Page 12-6	Revised paragraph under “SAFETEA-LU.”

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Section 12.9 (Required Federal Contract Provisions) Page 12-25 thru 26	Under “ <i>Relations with Railroad</i> ,” removed last sentence of first paragraph on page 12-26. Moved “agency and the railroad company.” to page 12-25.
Section 12.10 (Restricted Contract Provisions) Page 12-29 thru 31b	Content under “ <i>Project Labor Agreement</i> ,” was rewritten. Reference to Executive Orders and web link were updated on page 12-30 A portion of content on pages 12-30, 31, & 31a shifted to the next page.
Exhibit 12-D Page 12-54	Removed “(Complete this section if project is on the NHS)” from “E. Proprietary Items.”
Exhibit 12-E Page 12-59, 64, & 95	Under “X. Project Plans and Specifications,” “and specifications” was added to first paragraph on page 12-59. Minor miscellaneous grammar & formatting changes made on pages 12-64 & 95.
Chapter 13 Table of Contents	Table of Contents was reissued due to a change in page numbers caused by deleted content.
Section 13.6 (National Environmental Policy Act [NEPA]) Page 13-12	Section number was corrected from 13.5 to 13.6.
Section 13.10 (Right of Way Certification) Page 13-20 thru 27	Under “ <i>Certification Forms</i> ,” removed reference to Exhibit 13-A and reference to Caltrans Publications Unit on page 13-20. And, removed last sentence in subsection on page 13-21. Sub-sections “ <i>Project Certification---No Additional Right of Way Required</i> ” and “ <i>Acceptance of the No Right of Way Certification</i> ” were removed from page 13-21. Content on pages 13-22 thru 27 shifted to the previous page.
Section 13.15 (References) Page 13-41	Removed reference to Publications for Local Assistance.
Exhibit 13-A Page 13-43 thru 44	“Exhibit 13-A No Right of Way Certification” was deleted.
Figure 13-1 Page 13-61	Flowchart was changed to Figure.

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Chapter 14 Section 14.4 (Audit Requirements) Page 14-10	Under “ <i>Pre-Award Evaluation</i> ,” added “equal or” and changed \$250,000 to \$1 million.
Chapter 15 Table of Contents	Table of Contents was reissued due to deletion of Exhibit 15-E and other miscellaneous changes.
Figure 15-1 Page 15-1	Changed from Flowchart 15-1 to Figure 15-1.
Section 15.5 (Contract Bid Opening) Page 15-10	Under “ <i>Procedures</i> ,” removed reference to NHS projects and the last bullet point.
Section 15.7 (Award Package) Page 15-15	Removed bullet regarding copy of the Local Agency Bidder UDBE Commitment.
Exhibit 15-E Page 15-27	“Exhibit 15-E National Highway System Bid Tabulation Data” was deleted.
Chapter 17 Table of Contents	Table of Contents was reissued due to deletion of Exhibit 17-H.
Chapter 17 Section 17.5 (Report of Expenditures) Page 17-6	Under “ <i>Federal-Aid Projects</i> ,” removed bullet point regarding Statement of Materials and Labor Used by Contractors Involving Federal Funds FHWA – Form 47.
Exhibit 17-A Page 17-11	Removed “Statement of Materials and Labor Used by Contractors Involving Federal Funds...” from checklist.
Exhibit 17-H Page 17-25 & 26	“Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds” was deleted.
Exhibit 17-O Page 17-43	Corrected miscellaneous typos.
Chapter 19 Section 19.3 (Oversight & Process Review Methods) Page 19-2	Removed last sentence under “ <i>Caltrans Oversight and Process Reviews</i> .”

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Chapter 20 Section 20.2 (Deficiencies) Page 20-4	Changed “over \$250,000” to “of \$1 million or more.”
<b>LAPG Item</b>	<b>Change</b>
Chapter 12 Table of Contents	Table of Contents was reissued due to changes made to section 12.1, section 12.6, and the addition of Exhibit 12-C.
Section 12.1 (High Priority Project Program) Page 12-1 thru 4	Section 12.1, previously Demonstration Projects, was revised. References to “demonstration project” changed to High Priority Project (HPP).
Section 12.5 (Defense Access Roads) Page 12-13 thru 14	Some content under “ <i>Project Administration</i> ,” was shifted to page 12-13 to make room for new content in section 12.6. Some content under “ <i>Strategic Highway Network</i> ,” was shifted to page 12-14 to make room for new content in section 12.6.
Section 12.6 (Highways For Life Program) Page 12-15 thru 16	Added section. Section 12.6 was previously deleted.
Exhibit 12-C Page 12-21 thru 24	“Exhibit 12-C Highways for LIFE Project Application Packet” was added.
Exhibit 23-N Page 23-72	Changed “> \$250,000” to “≥ \$1 million.”

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**STATE OF CALIFORNIA**  
**Department of Transportation**  
**Division of Local Assistance**  
**Office of Policy Development & Quality Assurance**



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# **LOCAL ASSISTANCE PROCEDURES MANUAL**

**Processing Procedures for  
Implementing Federal and/or  
State Funded Local Public  
Transportation Projects**



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## 2.10 FHWA RESPONSIBILITIES

As discussed above, the FHWA has the overall responsibility for the Federal-Aid highway Program (FAHP) pursuant to 23 USC § 106 with the exception of the environmental responsibilities under SAFETEA-LU Sections 6004 and 6005 (23 USC § 326 and 327). In addition, the FHWA is ultimately responsible for ensuring the financial integrity and compliance with applicable federal laws and regulations.

Through the stewardship agreement, FHWA and Caltrans have committed to work cooperatively to identify appropriate stewardship and oversight initiatives using a risk-based, performance management approach. At the program level, strategic stewardship and oversight are to be achieved by effectively managing the program through: continuous program-level involvement; promoting new initiatives and concepts; participating on relevant joint task forces, joint committees, and joint quality improvement teams; assisting other stakeholders with program-related issues; conducting program assessments; conducting program reviews; and performance monitoring via performance measures and indicators.

### PROJECT IMPLEMENTATION

At the project-level, strategic stewardship and oversight are accomplished through: conducting routine approval actions; verifying compliance through project-level samples; and conducting strategic project oversight. Routine approval actions are identified in Exhibit 2B and are those actions which have not been delegated to Caltrans. These include, but are not limited to:

- Federal-aid project agreements and modifications
- obligation of federal funds
- reimbursement to Caltrans of interim and final vouchers
- project-level conformity determinations
- right-of-Way Certificate 3
- protective buying and hardship acquisition
- new/modified interstate access determination of engineering and operations acceptability (minor access changes assigned to Caltrans, see letter dated September 15, 1994)
- design exceptions on the interstate
- Buy America waivers
- innovative contracting practices

Strategic project oversight is accomplished through the High Profile project process described in Section 2.5. For projects that are determined to be of high-risk to the FAHP, FHWA and Caltrans will jointly determine which project-level approvals will be retained by the FHWA Division office or delegated to Caltrans. In general, all major projects (those projects with total cost greater than \$500 Million) will be High Profile projects.

## 2.11 CALTRANS RESPONSIBILITIES

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

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

It is imperative that Caltrans employees involved in project ranking or scoring, or process reviews have a completed Conflict of Interest Statement (form ADM-3043) on file.

### POLICY AND PROCEDURES

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

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

### PROGRAM MANAGEMENT

Each specific local assistance program provides funding which requires distribution, management, and oversight control to ensure that the funds are expended in accordance with the program requirements and that allocations and budget authority are not exceeded. Caltrans distributes both state and federal fund allocations to the MPOs, RTPAs, cities, counties and others as specified by law.

Once the distributions are established, Caltrans provides program guidance for their expenditure. Some programs may require annual or periodic project application and selection to establish eligibility lists. Caltrans also monitors project implementation to ensure that the projects are implemented in a timely manner to achieve program goals. The Local Assistance Program Guidelines describes each current program.

### CONFLICT OF INTEREST

49 CFR, Part 19.36 (b) (3) states that grantees and subgrantees will maintain a written code of standards of conduct, governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, or agent of the grantee, or subgrantee, shall participate in selection, or in award of administration of a contract supported by federal funds, if a conflict of interest, real or apparent, would be involved. Such a conflict arises when: (i) the employee, officer, or agent (ii) any member of his immediate family (iii) his or her partner (iv) an organization, which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

In response to the above requirement and other laws and regulations, the Caltrans has issued policy under Deputy Directive *DD-09-R3* titled Incompatible Activities and Conflict of Interest. This directive is to ensure that California Department of Transportation (Department) employees do not willfully engage in any employment or activities that are illegal, that are or give the appearance of being incompatible or in conflict with their duties as State employees, that discredit their profession, the

Department or the State, or that have an adverse effect on the confidence of the public in the integrity of government.

Conflict of Interest Form ADM-3043 is to be completed annually by all Caltrans headquarters and district employees that review, rank and rate project applications from local agencies for any federal or state funded programs. Forms must be signed by the employee and their respective supervisor. Signatures from the Acquisition Analyst and Contract Officer are not required for DLA staff who are not acting as a contract manager. Immediate supervisors shall keep copies of the signed ADM-3043. Additional information on conflict of interest is provided by the Division of Procurement on the intranet at: <http://admin.dot.ca.gov/pc/coi.shtml#1>. Also, instructions are included on the back of the ADM-3043 and an electronic version of the form is available on the Caltrans intranet at: <http://cefs.dot.ca.gov/forms/index.html>.

Compliance with this policy helps safeguard State and Federal funds and the public's interest. Non-compliance with this policy could result in the loss of delegated purchasing or contracting authority for the individual or the entire Department.

### PROJECT IMPLEMENTATION

Some major federal-aid project implementation steps delegated by the FHWA to Caltrans cannot be further delegated to the local agency level and remain Caltrans' responsibility. These are shown in Exhibit 2-B and include:

- Funding Eligibility Determinations
- Acceptance of Right of Way certification and airspace agreement
- Railroad Agreement approval
- Utility Agreement and relocation approval
- Environmental approval actions pursuant to SAFETEA-LU Sections 6004 and 6005
- Financial Plans for projects over \$100 million
- Low Risk ITS project development
- Interstate access determination
- Some Public Interest Findings
- Approval of preliminary plans for major and unusual structures
- Design exceptions (for NHS)
- Value engineering (for NHS)
- Authorization of utility or railroad force account work
- Hiring of consultants in a management role
- Noise determination for PS&E approval
- Supplemental Work item justification
- Approval of liquidated damage rates
- Approval of major changes (requiring additional federal funds) and extra work
- ER damage assessments and report approval

The individual chapters covering these topics should be consulted for details concerning the responsibilities. Where the FHWA has not delegated final approval, Caltrans

monitors local agency activities, reviews or prepares documents, and makes recommendations to FHWA.

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

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

### **OVERSIGHT**

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

### **MAINTENANCE REVIEWS**

Annually, Caltrans reviews project maintenance for selected agencies using federal-aid funds so that every agency is covered during a four-year cycle. Chapter 18 “Maintenance,” of the LAPM describes these maintenance review procedures in detail.

## **2.12 CITY, COUNTY AND OTHER LOCAL PUBLIC AGENCY RESPONSIBILITIES**

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

### **PROJECT IMPLEMENTATION**

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

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

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

- Getting the project into the FSTIP
- Preparing the Request for Authorization for each project phase

- Decision to hold field review for projects off the NHS
- Determining/Approving project DBE Availability Advisory percentage
- For ITS projects and other projects with ITS elements, make a preliminary classification of High-Risk, Low-Risk, or Exempt.
- Selecting consultant and approving consultant contracts
- Approving local design standards for projects off the NHS
- Approving design exceptions for projects “off” the NHS
- Preparing and Certifying PS&E (Caltrans must approve the local agencies’ PS&E procedures for most NHS projects and FHWA for High Profile)
- Qualifying/selecting right of way consultants
- Right of Way acquisitions and relocation
- Preparing and approving Quality Assurance Programs (non-NHS projects only)
- Advertising and awarding construction project
- Construction contract administration and inspection (Caltrans must approve the local agencies construction administration procedures for high cost, complex, corridor-type NHS projects)
- Construction contract acceptance on delegated projects
- Coordinating railroad agreements
- Contract compliance

The individual chapters covering these topics should be consulted for details concerning the responsibilities.

## 2.13 CALIFORNIA TRANSPORTATION COMMISSION

The California Transportation Commission (CTC) has programming and fund allocation responsibility for some federal-aid and state funded programs used for local assistance projects. It is the responsibility of the local agency to notify the DLAE to request a CTC vote where applicable.

### PROGRAMMING

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

### FUND ALLOCATION

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

## 2.14 METROPOLITAN PLANNING ORGANIZATIONS, REGIONAL TRANSPORTATION PLANNING AGENCIES AND COUNTY TRANSPORTATION COMMISSIONS

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

These organizations are responsible for providing each local agency with their application rules, procedures and timelines. They are also responsible for providing the

local agency with results of the decisions about its projects and the agency, CTC and federal approval dates.

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

Chapter 4 of the *Caltrans Project Development Procedures Manual* discusses the programming process in more detail.

## 2.15 OTHER PUBLIC AGENCIES AND ORGANIZATIONS

Other federal, state, regional and local entities may have an interest, role or jurisdiction in the development and implementation of a local project. Examples at the federal level include the Environmental Protection Agency, the Army Corps of Engineers, and the Fish and Wildlife Service. At the state level, examples include the Department of Fish and Game, Air Resources Board, and State Historic Preservation Officer. Regional agencies include the Air or Water Quality Control Boards and Flood Control Districts.

The State Resources Agency selects the projects to be funded by the CTC for the EEM program.

The role of these agencies will vary with the project scope, location and environmental impact. Coordination should begin early to prevent critical delays later in the project development.

Quasi-public or nonprofit organizations may apply for and receive programmed funds for some programs, notably EEM. These agencies must follow the same rules and regulations, which apply to any other local agency developing a state or federal-aid funded project. When such an agency does not have a full staff of administrative, engineering, contracting, or accounting personnel, Caltrans encourages it to work through a local agency that can provide these services and is familiar with the applicable rules.

## 2.16 REFERENCES

Joint Stewardship and Oversight Agreement:

<http://www.dot.ca.gov/hq/oppd/stewardship/>

SAFETEA-LU Section 1904

23 USC 106(c)

FHWA Major Projects website:

[http://www.fhwa.dot.gov/ipd/project\\_delivery/defined/fhwa\\_delivery\\_process.htm](http://www.fhwa.dot.gov/ipd/project_delivery/defined/fhwa_delivery_process.htm)

California Government Code 16304 stipulates that any federal and state local assistance funds encumbered for a project are typically available for disbursement for a period of seven (7) and five (5) years, respectively, from the beginning of the fiscal year(s) the funds are appropriated in the State Budget Act. A DLA prepared project Finance Letter (based on information provided by the project sponsor) is sent to the project sponsor and reflects various project fund reversion dates. It is imperative that a local agency request federal authorization only when they are ready to do the work and only for work that will be completed and invoiced within this time period. Federal authorization for the remaining project work should be requested at a future date.

### 3.6 UNDERFUNDED PROJECTS

When the federal funds programmed for a project in the FTIP/FSTIP are insufficient to reimburse a local agency at the maximum federal reimbursement rate (legal pro rata) permitted for a federal fund type, the project is defined as “federally underfunded.” From a federal perspective, underfunded projects result in more federal projects for a given amount of federal funds. The increased oversight/administration costs make this an inefficient way of utilizing federal funds.

Section 630.106 of Title 23 (Highways) of the United States Code of Federal Regulations (CFR) stipulates:

*(f)(1) The federal-aid share of eligible project costs shall be established at the time of project authorization in one of the following manners:*

- *Pro rata, with the authorization stating the federal share as a specified percentage; or*
- *Lump sum, with the authorization stating that federal funds are limited to a specified dollar amount not to exceed the legal pro rata.*

*(2) The pro rata or lump sum share may be adjusted before or shortly after contract award to reflect any substantive change in the bids received as compared to the State Transportation Department’s (STD’s) estimated cost of the project at the time of FHWA authorization, provided that federal funds are available.*

*(3) Federal participation is limited to the agreed federal share of eligible costs incurred by the state, not to exceed the maximum permitted by enabling legislation.*

*(g) The state may contribute more than the normal nonfederal share of Title 23, U.S.C. projects. In general, financing proposals that result in only minimal amounts of federal funds in projects should be avoided, unless they are based on sound project management decisions.*

Therefore, except as permitted by 23 CFR 630.106 (f)(2), once a federal fund source is placed under agreement (E-76) for a phase of work, the pro rata reimbursement rate for that federal fund type (apportionment) and phase of work is fixed for the life of the project. In other words, when a phase of work is placed under federal agreement (E-76), the project sponsor has agreed to deliver a scope of work for an agreed upon amount of federal funds. If project costs increase, the federal share of the eligible costs is fixed at the federal pro rata established at the time of the project was placed under agreement. For this reason, MPOs/RTPAs should strive to fund projects at the maximum federal reimbursable rate.

#### ADMINISTRATIVE RULES

For Delegated projects, Caltrans DLAE will consider underfunding on a project-by-project basis. However, if there is a potential for a Region to lapse funds to the “Use It or Lose It” provisions of AB1012, Caltrans will not permit the initial underfunding of projects for that Region.

Many federal “earmark” and “discretionary” federal funding programs (High Profile projects, Historic Bridge, and so forth.) release or allocate federal funds on an annual basis. For long-term or high cost projects, the total anticipated federal funds might not be available at the time of the initial federal authorization for the project phase of work. Therefore, for these types of funds, FHWA will permit adjustment to the federal pro rata as the federal funds become available.

#### FEDERAL REIMBURSEMENT OF UNDERFUNDED PROJECTS

At the time of Federal Authorization (E-76), the federal reimbursement rate for a project or phase of work is established by dividing the authorized federal funds by the federal participating costs of work, not to exceed the legal pro rata.

For progress invoices, the federal reimbursement rate is limited to the rate established in FMIS by the most current Federal Authorization to Proceed/Obligation of Funds (E-76) at the time of award. On the final invoice, the federal reimbursement rate may fluctuate to ensure that the local agency receives the total federal funds to which it is entitled not to exceed the legal pro rata or obligated federal funds.

### 3.7 LOCAL ADVANCE CONSTRUCTION PROCEDURES

When federal funds are not available for obligation due to an insufficient balance of funds or OA, a local agency may request in writing federal authorization to proceed with the project (or project phase) under advance construction procedures (see Exhibit 3-I, “Request for Local Advance Construction Authorization” in this chapter).

Under local advance construction procedures, following federal authorization to proceed, the local agency will use its own funds to perform work eligible for future federal reimbursement. The local agency must have sufficient local funds to pay for all project costs until such time as federal funds become available. An FTIP amendment may be required when the Advance Construction Authorization is converted to a real obligation of federal funds (see Exhibit 3-1 “Request for Local Advance Construction Authorization” in this chapter). The local agency must consider the risk that the federal funds may never become available.

**EXHIBIT 3-A REQUEST FOR AUTHORIZATION  
TO PROCEED WITH PRELIMINARY ENGINEERING**

[Place this form on Local Agency Letterhead]

To: (DLAE Name) District Local Assistance Engineer Caltrans, Office of Local Assistance (District Address)	Date: _____ FTIP/FSTIP ID: _____ Federal Project No: _____ EA: _____ PPNO (For STIP Projects): _____ High-Risk ITS (Phase 1 or 2): _____ Project Description: _____ _____
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Dear (DLAE Name):

In order to begin federally reimbursable preliminary engineering work for the above-referenced project, we request that you secure Federal Authorization to Proceed and Obligation of Funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- Completed Request for PE Authorization Data Sheet (Exhibit 3-E)
- Copy of FTIP/FSTIP Reference
- Completed Finance Letter (Exhibit 3-O)
- For High-Risk (formerly "Major") ITS Projects – Phase 2 Only: FHWA approved Systems Engineering Management Plan (SEMP) (Note that federal approval of the SEMP is contingent on prior federal approval of the Systems Engineering Review Form [SERF])
- Copy of Executed Cooperative Agreement (only for projects on State Highway System)
- Request for Capital Subvention Reimbursement Allocation (Exhibit 3-H) (only for projects on State Highway System)

Toll Credit Usage

- This project will use Toll Credit. It is fully funded.
- This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)

- Completed Field Review Form (Exhibit 7-B), or
- A Field Review Form will be submitted within four (4) months of the Federal Authorization date, otherwise, it is understood the authorization to proceed will be canceled automatically. It is further understood that a Program Supplement Agreement will NOT be prepared until after the Field Review Form is submitted.

Environmental Document

- Type of NEPA Document. Approval Date: \_\_\_\_\_
  - Categorical Exclusion (CE)
  - Findings of No Significant Impact (FONSI)
  - Record of Decision (ROD)
  - Revalidation
- This agency has not completed the environmental process. The NEPA Document will be submitted at a later date, prior to beginning of final design (PS&E).

Disadvantaged Business Enterprise (DBE)

- All work for this phase of the project will be performed by local agency staff.
- For consultant contracts an Underutilized Disadvantaged Business Enterprise (UDBE) goal will be established for each contract and the Local Agency Proposer UDBE Commitment (Consultant Contracts) (Exhibit 10-O1) will be submitted with the proposal. Within 15 days of contract execution, the Local Agency Proposer DBE Information (Consultant Contracts) (Exhibit 10-O2) shall be forwarded to the DLAE.

Pre-Award Audit

- Completed Audit Disposition (Exhibit 10-K), or
- Audit Disposition was not completed because neither federal-aid nor state funds will be used to fund a consultant contract, or
- Pre-award audit was not performed because the consultant contract is less than \$1 million and does not meet the criteria outlined in Exhibit 10-K requiring pre-award audit, or
- Audit Disposition is not being submitted at this time. It will be submitted to the DLAE prior to entering a contract with the consultant(s).

California Transportation Commission (CTC) Allocation

- A CTC allocation is not required, or
- A CTC allocation of \$ \_\_\_\_\_ (federal/state) funds for the PA/ED and/or PS&E component(s) of work was made at the \_\_\_\_\_ meeting of the CTC, or
- A CTC allocation of funds has been scheduled for the \_\_\_\_\_ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon FHWA issuance of the "Authorization to Proceed" and Agency submittal of the "Field Review" form (Exhibit 7-B), a "Program Supplement Agreement" will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are available for disbursement for limited period(s) of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act, to the applicable Fund Reversion date shown on the State approved project finance letter (unless an extension is granted by the Department of Finance). It is anticipated that this phase of work will be completed by (month, year).

Invoice Submittal

This Agency understands that only relocation work performed after federal "Authorization to Proceed" (E-76) is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed "Program Supplement Agreement" and/or State approval Finance Letter. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended. If there are no eligible expenses, then a written explanation will be provided for that six (6) month period along with the target amount and date for the next invoice submittal.

CERTIFICATION

I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administration and California Department of Transportation relative to the above-designated project.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated / encumbered as well as for all costs it incurred prior to receiving the FHWA issued "Authorization to Proceed." I further understand that all subsequent phases of the project will require a separate "Federal Authorization to Proceed."

**Request for Authorization To Proceed with Preliminary Engineering**

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For High-Risk (formerly “Major”) and Low-Risk (formerly “Minor”) ITS projects, I understand that our project shall be consistent with the Regional ITS Architecture, adhere to ITS Standards, and undergo Systems Engineering analysis. A SERF will be included in the Field Review Package. For High-Risk ITS projects, I understand that this Agency shall not proceed with component detailed design until after FHWA approval of the SEMP and receipt of “Authorization to Proceed.”

Please advise us as soon as the “Federal Authorization to Proceed” has been issued. You may direct any questions to:

\_\_\_\_ (Name of Local Agency Contact) at \_\_\_\_ (phone number and e-mail address) \_\_\_\_ .

\_\_\_\_\_  
*Signature of Local Agency Representative*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Agency*

**Distribution:** DLAE

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EXHIBIT 3-B REQUEST FOR AUTHORIZATION TO PROCEED WITH RIGHT OF WAY

[Place this form on Local Agency Letterhead]

To: (DLAE Name) District Local Assistance Engineer Caltrans, Office of Local Assistance (District Address) Date: FTIP/FSTIP ID: Federal Project No: EA: PPNO (For STIP Projects): Project Description:

Dear (DLAE Name):

In order to proceed with right of way phase of work for the above-referenced project, we request that you secure Federal Authorization to Proceed and obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- [ ] Completed Request for R/W Authorization Data Sheet (Exhibit 3-E)
[ ] Copy of FTIP/FSTIP Reference Sheet
[ ] Completed Finance Letter (Exhibit 3-O)
[ ] Copy of Executed Cooperative Agreement, if not previously submitted (only for projects on State Highway System)
[ ] Request for Capital Subvention Reimbursement Authority (Exhibit 3-H) (only for projects on State Highway System)

Toll Credit Usage

- [ ] This project will use Toll Credit. It is fully funded.
[ ] This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)

- [ ] Completed Field Review Form (Exhibit 7-B), or
[ ] The Field Review Form was submitted previously on \_\_\_\_\_.

Environmental Document

- [ ] Type of NEPA Document. Approval Date: \_\_\_\_\_
[ ] Categorical Exclusion (CE) Form
[ ] Findings of No Significant Impact (FONSI)
[ ] Record of Decision (ROD))
[ ] Revalidation

Disadvantaged Business Enterprise (DBE)

- [ ] All work for this phase of the project will be performed by local agency staff.
[ ] For consultant contracts an Underutilized Disadvantaged Business Enterprise (UDBE) goal will be established for each contract and the Local Agency Proposer UDBE Commitment (Consultant Contracts) (Exhibit 10-O1) will be submitted with the proposal. Within 15 days of contract execution, the Local Agency Proposer DBE Information (Consultant Contracts) (Exhibit 10-O2 ) shall be forwarded to the DLAE.

California Transportation Commission (CTC) Allocation

Check which of the following applies:

- A CTC allocation is not required, or
- A CTC allocation of funds for the right of way component of work was made at the \_\_\_\_\_ meeting of the CTC, or
- A CTC allocation of funds has been scheduled for the \_\_\_\_\_ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon FHWA issuance of the "Authorization to Proceed" (and agency submittal of the "Field Review" form [Exhibit 7-B] if not previously submitted), a "Program Supplement Agreement" and/or state approved "Finance Letter" will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are available for disbursement for limited period(s) of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act, to the applicable Fund Reversion date shown on the State approved project finance letter (unless an extension is granted by the Department of Finance). It is anticipated that this phase of work will be completed by \_\_\_\_\_ (month, year).

Invoice Submittal

This Agency understands that only work performed after federal "Authorization to Proceed" (E-76) is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed "Program Supplement Agreement" and/or state approval Finance Letter. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended. If there are no eligible expenses, then a written explanation will be provided for that six (6) month period along with the target amount and date for the next invoice submittal.

CERTIFICATION

I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administration and California Department of Transportation relative to the above-designated project.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated/encumbered as well as for all costs it incurred prior to receiving the Federal Highway Administration issued "Authorization to Proceed."

Please advise us as soon as the Authorization to Proceed has been issued. You may direct any questions to:

\_\_\_\_\_ (Name of Local Agency Contact) at \_\_\_\_\_ (phone number and e-mail address) .

\_\_\_\_\_  
*Signature of Local Agency Representative*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Agency*

**Distribution:** DLAE

**EXHIBIT 3-C REQUEST FOR AUTHORIZATION  
TO PROCEED WITH UTILITY RELOCATION**

*[Place this form on Local Agency Letterhead]*

To: (DLAE Name) District Local Assistance Engineer Caltrans, Office of Local Assistance (District Address)	Date: _____ FTIP/FSTIP ID: _____ Federal Project No: _____ EA: _____ PPNO (For STIP Projects): _____ Project Description: _____ _____
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Dear (DLAE Name):

In order to proceed with Utility Relocation phase of work for the above-referenced project, we request that you secure Federal Authorization to Proceed and obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- Completed Request for R/W Authorization Form (Exhibit 3-B)
- Request for Authorization Data Sheet (Exhibit 3-E)
- Copy of FTIP/FSTIP Reference Sheet
- Completed Finance Letter (Exhibit 3-O)
- Copy of Executed Cooperative Agreement, if not previously submitted (only for projects on State Highway System)
- Request for Capitol Subvention Reimbursement Authority (Exhibit 3-H) (only for projects on State Highway System)

Toll Credit Usage

- This project will use Toll Credit. It is fully funded.
- This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)

- Completed Field Review Form (Exhibit 7-B), or
- The Field Review Form was submitted previously on \_\_\_\_\_.

Environmental Document

- Type of NEPA Document. Approval Date: \_\_\_\_\_.
- Categorical Exclusion (CE) Form
- Findings of No Significant Impact (FONSI)
- Record of Decision (ROD)
- Revalidation

Disadvantaged Business Enterprise (DBE)

- All work for this phase of the project will be performed by local agency staff.
- For consultant contracts an Underutilized Disadvantaged Business Enterprise (UDBE) goal will be established for each contract and the Local Agency Proposer UDBE Commitment (Consultant Contracts) (Exhibit 10-O1) will be submitted with the proposal. Within 15 days of contract execution, the Local Agency Proposer DBE Information (Consultant Contracts) (Exhibit 10-O2) shall be forwarded to the DLAE.

Utility Relocation

- This Agency agrees to comply with 23 CFR 645.119 “Alternate Procedure” (as explained in Chapter 13, “Right of Way,” and Chapter 14, “Utility Relocations,” of the LAPM). This alternate procedure is provided to simplify the processing of utility relocations or adjustments under the provisions of 23 CFR 645. Under this procedure, the FHWA authorized the Department of Transportation (Caltrans) to act in relative position of the FHWA for review and approval of the arrangements, fees, estimates, plans, utility agreements, and other related matters required by such regulation as prerequisites for authorizing the utility owner to proceed with and complete the work.

It is understood that the scope of the Department’s approval authority under the Alternate Procedure includes all actions necessary to advance and complete all types of utility work under the provisions of such regulation, except Section 645.119 (B)(1) and 645.119 (b)(2). Two of such documents that need the Department’s approval are FHWA Specific Authorization and FHWA Approval of the Utility Agreement(s). See Chapter 14, “Utility Relocations,” of the LAPM for more information on the activities necessary for federal participation in utility relocations. The approval authority has been delegated to the Right of Way District Utility Coordinators.

California Transportation Commission (CTC) Allocation

Check which of the following applies:

- A CTC allocation is not required, or
- A CTC allocation of funds for the right of way component of work was made at the \_\_\_\_\_ meeting of the CTC, or
- A CTC allocation of funds has been scheduled for the \_\_\_\_\_ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon FHWA issuance of the “Authorization to Proceed” (and agency submittal of the “Field Review” form [Exhibit 7-B] if not previously submitted), a “Program Supplement Agreement” and/or state approved “Finance Letter” will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are available for disbursement for limited period(s) of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act, to the applicable Fund Reversion date shown on the State approved project finance letter (unless an extension is granted by the Department of Finance). It is anticipated that this phase of work will be completed by \_\_\_\_\_ (month, year).

Invoice Submittal

This Agency understands that only relocation work performed after federal “Authorization to Proceed” (E-76), approval of the Specific Authorization, and appropriate Utility Agreement is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed “Program Supplement Agreement” and/or state approval Finance Letter. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended. If there are no eligible expenses, then a written explanation will be provided for that six (6) month period along with the target amount and date for the next invoice submittal.

CERTIFICATION

I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and policies and procedures promulgated by the Federal Highway Administration and California Department of Transportation relative to the above-designated project.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated/encumbered, as well as, for all costs it incurred prior to receiving the FHWA issued Authorization to Proceed

Please advise us as soon as the Authorization to Proceed has been issued. You may direct any questions to:

\_\_\_\_\_ (Name of Local Agency Contact) at \_\_\_\_\_ (phone number and e-mail address) .

\_\_\_\_\_  
*Signature of Local Agency Representative*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Agency*

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EXHIBIT 3-D REQUEST FOR AUTHORIZATION TO PROCEED WITH CONSTRUCTION

[Place this form on Local Agency Letterhead]

To: (DLAE Name)
District Local Assistance Engineer
Caltrans, Office of Local Assistance
(District Address)

Date:
FTIP/FSTIP ID:
Federal Project No:
EA:
PPNO (For STIP Projects only):
Project Description:

Dear (DLAE Name):

In order to advertise, award and administer the construction contract for the above-referenced project, we request that you secure Federal Authorization to Proceed and obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- [ ] Completed Request for Construction Authorization Data Sheet (Exhibit 3-E)
[ ] Copy of FTIP/FSTIP Reference Sheet
[ ] Completed Finance Letter (Exhibit 3-O)
[ ] Copy of Executed Cooperative Agreement (only for projects on State Highway System)
[ ] Request for capital Subvention Reimbursement Authority (Exhibit 3-H) (only for projects on State Highway System)

Toll Credit Usage

- [ ] This project will use Toll Credit. It is fully funded.
[ ] This project will NOT use Toll Credit.

Field Review Form (Exhibit 7-B)

- [ ] Completed Field Review Form (Exhibit 7-B), or
[ ] The Field Review form previously was submitted on \_\_\_\_\_.

Environmental Document

- [ ] Type of NEPA Document. Approval Date: \_\_\_\_\_
[ ] Categorical Exclusion (CE) Forms
[ ] Findings of No Significant Impact (FONSI)
[ ] Record of Decision (ROD)
[ ] Revalidation

Disadvantaged Business Enterprise (DBE)

- [ ] All work for this phase of the project will be performed by local agency staff.
[ ] For construction contracts an Underutilized Disadvantaged Business Enterprise (UDBE) goal will be established for each contract and the Local Agency Bidder UDBE Commitment (Construction Contracts) (Exhibit 15-G1) will be submitted with each bid by the bidders. Within 15 days of contract execution, the Local Agency Bidder DBE Information (Construction Contracts) (Exhibit 15-G2) shall be forwarded to the DLAE.

Right of Way Certification (Exhibit 13-A or 13-B)

Right of Way Certification # \_\_\_\_\_ which was approved on \_\_\_\_\_ is:

- Attached, or
- Previously Submitted.

PS&E Package and PS&E Certification

- Completed PS&E package, PS&E Certification (Exhibit 12-C), and PS&E Checklist (Exhibit 12-D), or
- The PS&E package, PS&E Certification, and PS&E Checklist were submitted and accepted on \_\_\_\_\_.

Local Agency Construction Contract Administration Checklist

- Local Agency Construction Contract Administration Checklist (Exhibit 15-A), or
- The Local Agency Construction Administration Checklist was submitted previously and our procedures have not changed.

California Transportation Commission (CTC) Allocation

Check which of the following applies:

- A CTC allocation is not required, or
- A CTC allocation of funds for the construction component of work was made at the \_\_\_\_\_ meeting of the CTC, or
- A CTC allocation of funds has been scheduled for the \_\_\_\_\_ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon FHWA issuance of the "Authorization to Proceed" (and agency submittal of the "Field Review" form [Exhibit 7-B], if not previously submitted), a "Program Supplement Agreement" and/or state approved "Finance Letter" will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are available for disbursement for limited period(s) of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act, to the applicable Fund Reversion date shown on the State approved project finance letter (unless an extension is granted by the Department of Finance). It is anticipated that this phase of work will be completed by \_\_\_\_\_ (month, year).

Invoice Submittal

This Agency understands that project construction contracts advertised prior to federal authorization are NOT eligible for reimbursement. It is also understood that construction-engineering cost must be specifically included and authorized in the federal Authorization to Proceed with Construction to be eligible for reimbursement. If construction engineering (CE) is authorized after construction begins, only those construction-engineering costs incurred after the date the CE is authorized are eligible for reimbursement.

Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed "Program Supplement Agreement" and/or state approved Finance Letter. It is understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended. If there are no eligible expenses then a written explanation will be provided for that six (6) month period along with the target amount and date for the next invoice submittal.

CERTIFICATION

I certify that the facts and statements in this "Request for Authorization Package" are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administration and California Department of Transportation relative to the above-designated project.

I understand that upon submittal of this request and a completed "Field Review" form, the federal and/or state funds will be encumbered via a Program Supplement Agreement and /or state approved Finance Letter. This Agency will comply with the liquidation deadlines as explained in Government Code 16304.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated/encumbered and all costs it incurred prior to receiving the FHWA issued "Authorization to Proceed" for this phase of the project

Please advise us as soon as the "Authorization to Proceed" has been issued. You may direct any questions to:

\_\_\_\_ (Name of Local Agency Contact) at \_\_\_\_ (phone number and e-mail address) \_\_\_\_.

\_\_\_\_\_  
*Signature of Local Agency Representative*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Agency*

Distribution: DLAE

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**EXHIBIT 3-J REQUEST FOR TRANSFER OF FEDERAL FUNDS TO THE FEDERAL TRANSIT  
ADMINISTRATION (FTA)**

*[Place this form on Local Agency Letterhead]*

To: (DLAE Name)	Date: _____
District Local Assistance Engineer	FTIP/FSTIP ID(s): _____
CALTRANS, Office of Local Assistance	Project Description(s): _____
(District Address)	_____

Dear (DLAE Name):

We have received notification of pending grant application approval for this public transit project and request that you transfer these federal funds to the Federal Transit Administration for project administration. The amount(s) requested do not exceed the funds provided to this agency in the current approved Federal Statewide Transportation Improvement Program (FSTIP).

Request for FTA Transfer Documentation

Attached is information/documentation in support of this request to transfer federal funds to the FTA:

- Pending FTA Grant Number: \_\_\_\_\_
- Copy of Approved FSTIP pages
- Copy of Grant Application (Section 5307 projects only)
- Copy of Caltrans Notification Letter (Section 5311 & 5310 projects only)
- Please transfer the following federal funds to the FTA:

<u>Fund Type</u>	<u>Programmed FSTIP Funds</u>	<u>Fiscal Year Programmed</u>	<u>Federal Funds To be transferred</u>
_____	_____	_____	_____
_____	_____	_____	_____
		<b>Total</b>	_____

I understand that the invoices for payment of federal funds will be processed by FTA (Section 5307), or Caltrans (Sections 5311 and 5310 – refer to *Division of Mass Transportation*, Section 5311 “Handbook and Guide,” for invoicing procedures and format)

Prior to payment of State Transportation Improvement Program (STIP) match funds: 1) California Transportation Commission (CTC) must allocate the funds, 2) Master Administering Agency– State Agreement for State Funded Projects and project specific Program Supplement Agreement (PSA) must be executed, 3) Applicant Agency must prepare and sign a project specific Finance Letter, and 4) Applicant Agency must submit evidence that payment of federal funds has been invoiced/received. Invoice procedures and format must adhere to Chapter 5, “Accounting/Invoices,” of *Local Assistance Procedures Manual* (LAPM) (available at <http://www.dot.ca.gov/hq/LocalPrograms/>). \* **Please note that STIP match funds may ONLY be used for purposes eligible under Article XIX of the California State Constitution.**

Check which of following applies:

- This project does not qualify for STIP match funds.
- This project is programmed to receive STIP match funds. I have attached the completed:
  - 1) Request for STIP Fund Allocation
  - 2) Funding Allocation Checklist, and
  - 3) Finance Letter
- A request for allocation of STIP match funds will be made at a future date as permitted by Government Code Section 14529.17

Toll Credit Usage

- This project will use Toll Credit. It is fully funded.
- This project will NOT use Toll Credit.

CERTIFICATION

I certify that the facts and statements in this “Request for Transfer of Federal to the Federal Transit Administration” are accurate and correct. Following the transfer of funds to the FTA, this agency agrees to comply with the applicable terms and conditions set forth in Title 49, USC, Chapter 53 “Mass Transportation” and the policies and procedures promulgated the FTA relative to the above-designated project.

\_\_\_\_\_  
*Signature of Local Agency Representative*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Agency*

**Distribution:** Local Agency

**EXHIBIT 3-L LOCAL ASSISTANCE PROJECT PREFIXES**

## Standard Federal Program Prefixes

[ ]	STP	Surface Transportation Program
[ ]	CM	Congestion Mitigation & Air Quality Improvement (CMAQ) Program
[ ]	BR	Bridge Replacement
[ ]	BR	Bridge Rehabilitation
[ ]	ER	Emergency Relief
[ ]	HSIP	Highway Safety Improvement Program
[ ]	HRRR	High Risk Rural Roads
[ ]	SRTS	Safe Routes to School (Infrastructure or Non-infrastructure; Federal USC Sec. 1404)
[ ]	NBIS	National Bridge Inspection System

## STIP Funded Programs

[ ]	RPSTP	STIP Regional Improvement Program (Federalized)
[ ]	RP	STIP Regional Improvement Program (State-only)
[ ]	PPMxx	STIP Funded Planning Programming and Monitoring (S/O)
[ ]	FSPxx	Freeway Service Patrol (S/O)

xx – Represents second year of programmed fiscal year (e.g. FY 2004/05 = 05)

## Sub-Level Identifier

[ ]	L	Local Assistance Funds Management
[ ]	N	On National Highway System
[ ]	H	Safety, Hazard Elimination & Safety Program (HES) portion of STP
[ ]	G	100% Federal Funding for Safety
[ ]	E	STIP Programmed Transportation Enhancements/Activities (TE/TEA)
[ ]	ER	Regional TEA Program
[ ]	EC	CTC Conservation Lands TEA Program
[ ]	EE	CTC Statewide Transportation Enhancement (STE) Program
[ ]	HSR	Safe Routes to School (State-legislated program using federal funds)
[ ]	NI	Safe Routes to School (Federal funds; Non-infrastructure projects)
[ ]	S	On System (HBP Program)
[ ]	O	Off System (HBP Program)

## Discretionary Program Prefixes

[ ]	BDxxx	Bridge Discretionary
[ ]	BDSxxx	Bridge Discretionary, Seismic
[ ]	IBRCxxx	Innovative Bridge Research and Construction
[ ]	FBDxxx	Ferry Boat Discretionary
[ ]	FLHxxx	Federal Lands Highways
[ ]	IRxxx	Indian Roads
[ ]	PLHxxx	Public Lands Highways
[ ]	CASBxxx	California Scenic Byways
[ ]	RTxxx	Recreational Trails
[ ]	TCSPxxx	Transportation Community and System Preservation, Competitive
[ ]	TCSExxx	Transportation Community and System Preservation, Earmarked

[ ]	NCPDxxx	National Corridor Planning and Deployment
[ ]	CBIxxx	Coordinated Border Infrastructure
[ ]	ITSxxx	Intelligent Transportation Systems
[ ]	LTAPxx	Technical Deployment, Local Technical Assistance Program
[ ]	VPPLxxx	Value Pricing Pilot Program
[ ]	HPLU	SAFETEA-LU High Priority
[ ]	TILU	SAFETEA-LU Transportation Improvement
[ ]	PRNS	SAFETEA-LU Projects of Regional and National Significance
[ ]	NCIIP	SAFETEA-LU National Corridors Infrastructure Improvement Program

xx – Represents second year of FFY of allocation (e.g. FY 2004/05 = 05).

xxx– Represents sub-level Identifier & 2<sup>nd</sup> year of FFY of allocation.

- The following are shown, for each phase of work:
  - Total Costs
  - Participating Costs
  - Nonparticipating Costs
  - Federal Funds
  - Other Funds (local, state, etc.)
- The costs shown, by phase of work, are the same on the:
  - Final Invoice
  - Final Detailed Estimate (federal-funded projects)
  - Final Detailed Estimate Summary (federal-funded projects)
  - Final Report of Expenditures – report (state-funded projects)
- If there are Liquidated Damages, they are shown on both the Final Invoice and the Final Detail Estimate. If there were none, write “None”.
- A Change Order Summary is provided, whether there were change orders or not. If there were none, write “None”.
- Contractor Claims are listed. If there were no claims, write “None”.

## 5.7 FINAL PROJECT COSTS

The final project cost listed in the local agency’s Final Report of Expenditures will be analyzed by LPA to determine if the costs reported for each phase of work are eligible for federal reimbursement. Eligible amounts for each phase of work, as determined from the analysis are reconciled with the costs recorded in the Caltrans’ accounting system.

If it is determined that the funds paid to the local agency are more than the amount eligible for reimbursement, LPA will initiate an Accounts Receivable billing to the local agency for recovery of the overpayment. However, if it is determined that the amount paid is less than the amount eligible for reimbursement, LPA will send the additional amount to the local agency.

## 5.8 AUDIT OF LOCAL AGENCY EXPENDITURES

The local agency shall maintain written source document records that account for agency costs and payments made to consultants, vendors, and contractors. Contract records must be retained by the local agency for a minimum period of three years from the date of the final payment by the state. Refer to Title 49, Code of Federal Regulations (CFR), Section 18.42 for federal requirements for retention and access of records.

Local agency expenditures for all local assistance programs are subject to financial and compliance audits by the SCO and Caltran’s Office of External Audits (OEA). The OEA’s evaluation of a local agency’s system of controls will determine if an on-site audit of the local agency’s records (underlying the reported project) is necessary.

The auditors typically discuss any audit findings with the local agency before finalizing their report. The local agency should provide any clarifications or raise any objections to the audit findings at this meeting.

Local agencies are also subject to the audit requirements of the Federal Office of Management and Budget's Circular A-133. A single audit is required if an agency receives more than \$500,000 in federal funds from all sources in their fiscal year. Normally, project audits are not necessary if the expenditures for a project are covered by a single audit report accepted by the appropriate federal agency.

The Master Agreement for State Funded Projects requires local agencies to have a financial audit of project costs when the costs are in excess of \$500,000. The audit must be completed by December 30<sup>th</sup> following the fiscal year of project completion. This audit may be contracted for at the agency's expense or conducted by agency staff that meets the Independence Standard as outlined in the GAO government Auditing Standards (The Yellow Book). This publication can be found at: [www.gao.gov/govaud/ybk01.htm](http://www.gao.gov/govaud/ybk01.htm).

## 5.9 FINAL REPORT OF EXPENDITURES ON PROJECTS ADMINISTERED BY THE STATE

The final report of expenditures for state administered local assistance projects is prepared by LPA.

On some projects, the state performs only specific phases of work associated with a local assistance project. For example, design engineering, right of way acquisition, or striping may be performed by the local agency for a construction project administered by the state. In such instances, LPA is responsible for preparing a Final Report of Expenditures for the work performed by state staff. The local agency is responsible for preparing the Final Report of Expenditures for work it performed and for any expenditure it incurred.

## 5.10 AUDIT OF STATE EXPENDITURES

State expenditures for local assistance federal-aid major construction contracts (greater than \$500,000) are subject to the internal procedures established by Caltrans' Audits and Investigations as well as the Bureau of State Audits when they perform the annual Single Audit of Caltrans. Caltrans' internal procedures and controls for major contracts do not require a formal audit of each construction project. However, projects may be selected on a random basis for an audit of extra work paid by a force account method of payment (see LAPM, Chapter 12, "Plans, Specifications & Estimate").

**Exhibit 5-D SAMPLE RIGHT OF WAY INVOICE**

*(LETTERHEAD OF LOCAL AGENCY)*

**Date of Invoice** (For Progress Invoice  
Department of Transportation  
Accounting Service Center- MS 33  
Local Program Accounting Branch  
P.O. Box 942874  
Sacramento, CA 94274-0001  
Billing No:  
Invoice No:  
Federal-Aid Project No:  
Tax Identification No:  
Date Project Accepted by City/County:  
Project Location:  
Expenditure Authorization No.

(For Final Invoice) Name, District Director  
Attn: Name, District Local Assistance Engineer  
Department of Transportation  
**Street or P.O. Box**  
**CITY, CA ZIP CODE**  
  
**1,2..., or Final**  
**Local Agency's Invoice No.**  
**Prefix-Proj. No.(Fed. Agreement No.)**  
**Agency IRS ID Number**  
**Final Date or "Ongoing" if not Final**  
**Project Limits**

Reimbursement for Federal funds is claimed pursuant to Local Agency-State Agreement No. Number  
Program Supplement No., Number, executed on Date.

	<u>Phase 9 Capital</u>	<u>Phase 2 Incidental</u>
Federal Appropriations Code	33D	33D
Federal Authorization Date	5/12/99	5/12/99
Federal/State participating costs From	5/15/99	5/15/99
To	7/15/99	7/15/99
Total Indirect Costs To Date	-----	<b>\$4,147.00</b>
Total Direct Costs To Date	<b>\$1,133,907.00</b>	<b>\$243,642.00</b>
Less: Nonparticipating Costs	(20,750.00)	(64,356.00)
Federal Participating Costs to Date	<u>\$1,113,157.00</u>	<u>\$183,433.00</u>
Less: Participating Costs on Previous Invoice	<u>\$980,165.00</u>	<u>\$150,794.00</u>
Change in Participating Costs	\$132,992.00	\$32,639.00
Federal reimbursement ratio	88.53%	88.53%
State reimbursement ratio (if applicable)		
Amount of this claim	<u>\$117,737.81*</u>	<u>\$28,895.30*</u>

**TOTAL INVOICE AMOUNT** **\$146,633.11**

**INDIRECT COST CALCULATION**

Right of Way Indirect Costs:

	FY 1998-1999	FY 1999-2000
Direct Cost Base Expense	\$1,944.00	\$1,0740.49
Approved indirect cost rate	31%	33%
Subtotal **	\$602.64	\$3,544.36
Total Indirect Costs To Date for Preliminary Engineering <b><u>\$4,147.00</u></b> (this Amount is carried to the front of the invoice under the Right of Way Incidental column)		

1. I certify that to the best of my knowledge and belief the above data is correct; that adequate title to the necessary right of way has been acquired for the herein above described federal-aid project in the name of the **Local Agency name** for the amount of just compensation based on bona fide appraisals duly qualified as required by the right of way procedures of the Federal Highway Administration and other written justification now contained in the **Local Agency** files, in accordance with procedures as submitted and accepted by the Director.
2. I further state that this certification is made in my official capacity as **Title**, pursuant to Section 1.31 of Title 23 of the Code of Federal Regulations and Section 121 of Title 23, United States Code, for the purpose of securing, pursuant thereto, by the **Local Agency name**, federal-aid funds in connection with the above designated federal-aid highway project, and that neither I nor to the best of my knowledge, any officer, agent, or employee of the **City, County** authorized in any official capacity to perform services in connection with the appraisal or acquisition of any such right of way has any interest, or contemplates any benefit from any transaction which involves acquisition of property for right of way for such project, other than as herein disclosed.

\_\_\_\_\_  
Signature, Title and Unit of Local Agency Representative

\_\_\_\_\_  
Phone No.

For questions regarding this invoice, please contact:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Phone No.

- \* Please round down the figures to the lowest cent. Federal rules do not allow rounding up.
- \*\*
  - Indirect cost for this project equals the direct cost base expense (i.e., direct salaries & wages plus fringe benefits) for this project multiplied by the approved indirect cost rate.
  - Indirect cost reimbursement will not apply to direct costs, i.e., payment of construction contracts and right of way purchases, not included in the direct cost base.
  - An indirect rate must be approved by Caltrans every fiscal year to be used for only those costs incurred for that year.

Note: Rental income may be retained by local agencies, but must be used for Title 23 purposes.

**Distribution: (Original & 2 Copies) Local Program Accounting (progress invoices)**  
**District Local Assistance Engineer (final invoices)**

13. District SEP signs the CE Form.
14. District SEP (or designee) forwards the signed PES Form and signed CE Form to the DLAE, and updates LP2000 as follows: On Project Environmental Milestones Screen: (1) enter date completed PES Form was received by the DLAE and use comments field to note, a) if the LA submitted a complete and sufficient PES Form or if Caltrans had to assist with completing the PES Form during the field review, and b) reason for delay, if excessive, between Authorization to Proceed and receipt of PES Form, (2) enter date of last signature on PES Form and use comments field to note if multiple iterations were needed to produce complete/accurate form, internal delays (if applicable), and/or LA delays (if applicable), (3) enter date of letter, email, or documented telephone conversation or meeting (if applicable) transmitting the signed PES form to the LA that transmitted the fully signed PES Form, and use comments field to capture internal and external delays associated with completing the PES Form, (4) enter date CE is received in the district or date CE is prepared by Caltrans, and use comments field to capture external/internal delays associated with the development of the NEPA determination, (5) enter date District SEP signs the CE Form and use comments field to note any delays or changes in scope from what was described in PES Form, (6) use Environmental Document drop-down arrow to select the environmental document identified on the PES Form, Section E. Preliminary Environmental Document Classification (NEPA) (i.e., 6004 CE(c), 6004 CE(d) or 6005 CE.
15. DLAE signs the PES Form and the CE Form. The DLAE retains the original PES Form and the original CE Form for the project files. The DLAE sends a copy of the signed CE and a copy of the fully signed PES Form to the LA, and informs the LA that compliance with NEPA is complete and they may now begin final design.
16. LA begins final design.

## 6.6 STEP-BY-STEP PROCEDURES – CATEGORICAL EXCLUSION WITH TECHNICAL STUDIES

17. When PES indicates that **further technical study is required**, District SEP (or designee) prepares transmittal letter or email to the LA, or documents telephone conversation or meeting with LA (if applicable), outlining:
  - All technical studies/reports required.
  - A SER link for each of the technical studies.
  - The LA's responsibility for ensuring that all required technical reports are prepared in accordance with guidance set forth in the SER.
  - The LA's responsibility for ensuring that the conclusions of all technical reports are clearly stated and consistently summarized in the environmental document.
  - How the project-level conformity determination will be made. (See Step #31)
  - The LA's responsibility for preparing a summary/list of mitigation commitments (avoidance, minimization and mitigation measures) identified in each required technical report and providing said list to the DLAE along with each technical report.

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- The LA's responsibility to incorporate all of the mitigation commitments (avoidance, minimization and mitigation measures) included on the list into their PS&E and be able to demonstrate that they have been incorporated into the project design.
- The LA's responsibility to provide a copy of all permits, when available, to the DLAE.

The District SEP (or designee) forwards the signed PES Form and the transmittal letter to the DLAE, and updates LP2000 for tracking compliance and annual reporting, as follows: On Project Environmental Milestones Screen, (1) enter date completed PES Form was received by the DLAE, and use comments field to note, a) whether the LA submitted a complete and sufficient PES Form, or if Caltrans had to assist with completing the PES Form during the field review, and b) reason for delay, if excessive, between Authorization to Proceed and receipt of PES Form, (2) enter date of last signature on PES Form and use comments field to note multiple iterations needed to produce complete/accurate form (if applicable), internal delays (if applicable) and/or LA delays (if applicable), (3) enter date of letter, email, or documentation of telephone conversation or meeting (if applicable) transmitting signed PES Form to Local Agency, (4) enter date the CE is received in the district, or date a CE is prepared by Caltrans, and use comments field to capture external/internal delays associated with the development of the NEPA determination, (5) enter date District SEP signs the CE Form, and use comments field to note any delays and if changes in project scope from what was described in PES Form, (6) use Environmental Document drop-down arrow to select the environmental document identified on the PES Form, Section G. Preliminary Environmental Document Classification (NEPA) (i.e., 6004 CE(c), 6004 CE (d) or 6005 CE, (7) on Environmental Studies – Environmental Study Milestones Screen, use Study Type drop-down arrow to select all required study types identified in Section B of the PES Form.

18. DLAE reviews project description, project maps, and PES Form to determine if the project is technically sound (adequate and feasible) from an engineering perspective. DLAE and the District SEP (or designee) meet to discuss the following:
  - Is the project technically sound from an engineering perspective?
  - Can the city or county get the project done in the amount of time indicated on the PES Form (i.e., have they missed any survey windows, or are the issues more complex than they anticipated)?
  - Will the funding need to be moved out to adjust for the schedule?
  - Do the technical studies/reports identified in the PES Form indicate that the LA may need to budget more money for NEPA compliance?
  - Is the LA's preliminary design on track?
  - Do the project maps make sense? Are the maps correct? Is the project footprint map consistent with the project, as identified in the FSTIP? Are the engineering drawings consistent with the project, as identified in the FSTIP?
  - Is the project likely to include mitigation commitments and/or mitigation that would warrant environmental review of the PS&E and project during/after construction?

19. DLAE signs the PES Form. District SEP (or designee) sends a copy of the fully signed PES Form and transmittal letter, hardcopy or electronically (if preferred) to the LA, outlining the requirements of each required technical study and report.  
*(Note: If DLAE authorizes the District SEP (or designee) to perform this step, a copy of the letter or email shall be provided to the DLAE.)*
20. LA may request an Early Coordination Meeting with the DLAE, District SEP (or designee) and others as needed, to discuss the specific requirements of each required technical report, etc. The District SEP (or designee), District PQS, and applicable technical specialists should be invited to participate in the meeting as needed, based on the environmental issues and the complexity of the project, etc.
21. LA prepares scope of work/consultant contract (if necessary) in accordance with LAPM, Chapter 10, "Consultant Selection," and the requirements contained in the PES Form and retains environmental consultant to undertake required technical studies. *(Note: Environmental Consultant scope of work must reference the SER and the LAPM).* The District SEP (or designee) is available to review the environmental scope of work to ensure that it accurately reflects Caltrans requirements.
22. LA prepares a draft APE Map (if applicable) according to the guidance in the SER and preferably after consultation with District PQS, and obtains DLAE and District PQS signatures on the APE map prior to commencing with any Section 106 studies.
23. LA/Consultant completes required technical studies in accordance with guidance in SER. *(Note: The LA is responsible for performing a quality assurance and quality control review of all technical reports, prior to submittal to the DLAE, to ensure that the format and content of each technical report is consistent with guidance prescribed in the SER.)*
24. LA sends the completed technical report(s) to the DLAE.
25. DLAE date stamps the report on the date received and forwards the technical report(s) to the District SEP (or designee).
26. District SEP (or designee) requests (in writing) appropriate District technical specialists (i.e., PQS, biologists, air, noise, hazardous materials, etc.) review the technical report and determine whether the report is complete and sufficient in accordance with the format and content requirements outlined in the SER. The District SEP (or designee) updates LP2000 as follows: On Environmental Studies – Environmental Study Milestones Screen, (1) enter the date each study/technical report was received by the DLAE, (2) enter the date each study/technical report was received by the District SEP (or designee), (3) using the agency drop-down arrow, select Caltrans as the agency, and indicate the date that each technical report is sent to the District technical specialist for review.
27. District technical specialists review technical reports and determine whether technical reports are complete and ready for resource/regulatory agency review (if applicable). *(Note: This service does not relieve LA's responsibility for quality assurance and quality control.)* When District technical specialists determine that the technical reports are not complete, they shall document all noted deficiencies in writing and submit them to the District SEP (or designee). When District technical specialists determine that the technical reports are complete and ready for resource/regulatory review (if applicable), they inform the District SEP (or designee).

*(Note #1: Under NEPA Delegation, this can no longer be an “informal” or verbal process. All deficiencies must be documented in writing and project files must contain a documented record of deficiencies and demonstrate that any and all deficiencies have been corrected.) (Note #2: When there are no District technical specialists available to review a particular technical report, or when other priorities delay the review of technical reports in support of local assistance projects, the District SEP [or designee] shall inform the Environmental Branch Chief and request their assistance in resolving the issue.)*

***District SEP (or designee) considers: Are Technical Reports complete and sufficient? If “No,” GO TO STEP #28. If “Yes,” GO TO STEP #31.***

28. District SEP (or designee) prepares a transmittal letter, email, or documentation of telephone conversation or meeting (if applicable) with LA summarizing all comments received from District technical specialists and provides a copy to the DLAE.
29. DLAE sends transmittal letter, outlining any deficiencies to the LA.
30. LA modifies the technical reports in accordance with the comments and resubmits the report(s) to the DLAE, beginning at Step #24.
31. When all technical reports are determined to be complete and sufficient, District SEP may in the case of Section 7 BAs, initiate informal/formal consultation with appropriate resource and regulatory agencies. ***(Note: For 6005 CEs, as soon as the Air Quality staff determine that the Air Quality Report is complete and sufficient, the District SEP [or designee] sends a request for Air Quality Conformity Determination to FHWA).*** District SEP (or designee) updates LP2000 as follows: On Environmental Studies – Environmental Study Milestones Screen, (1) using the “Agency” drop-down arrow, select the agency that the particular technical study/report was sent to for action, and (2) indicate the “Date Sent to Agency” *(Note: This will be the date on the District SEP’s letter to the LA requesting consultation).* When the same technical study will be sent to multiple agencies (i.e., BA to USFWS and NMFS), list Study Type (BA) twice in the Study Type column and then under Agency, select USFWS for one and NMFS for the second.
32. When resource and regulatory agency action is complete, the District SEP (or designee) updates LP2000 as follows: On the Environmental Studies-Environmental Study Milestone Screen, 1) using the “Agency” drop-down arrow, select the agency that the particular technical report was sent to for actions, 2) enter the date of resource or regulatory agency letter, documenting their final correct opinion/concurrence/agreement, etc., (3) use the Delay drop-down arrow to indicate “Yes” or “No.” Enter “Yes” if USFWS or NMFS exceeded 135 days in issuing a Biological Opinion; if USFWS or NMFS exceeded thirty (30) days in issuing a Concurrence Letter; if the SHPO exceeds thirty (30) days in issuing concurrence on the HPSR or Finding of Effect (FOE) ( if PA requires SHPO review); or if excessive delays occurred during any other agency review, (4) use the comments field to document number of iterations needed between Caltrans and LA to produce a complete and sufficient report and/or number of iterations needed between Caltrans and resource and regulatory agency to produce an acceptable report.

The District SEP (or designee) also completes the CE Checklist and determines whether conclusions of the technical studies and the results of consultation indicate that the action qualifies for the CE.

*Does project meet criteria for the CE? If “No,” continue with STEP #33. If “Yes,” GO TO STEP #35.*

33. When the CE Checklist indicates that the action does not meet the criteria for a CE, the District SEP (or designee) prepares a transmittal letter, email, or documentation of telephone conversation or meeting (if applicable) with the LA explaining why the action does not meet the criteria for a CE and recommends preparation of an EA or an EIS, as appropriate. The District SEP forwards a copy of the letter, email, or documentation of telephone conversation with LA to the DLAE and updates LP2000 accordingly.
34. SEP (or designee) sends the letter, email, or documentation of telephone conversation to the LA.
35. District SEP (or designee) verifies, 1) that there are no scope changes, or 2) that technical studies address areas where all project scope changes will occur. District SEP signs CE Form.
36. District SEP (or designee) prepares a transmittal letter, email, or documentation of telephone conversation or meeting (if applicable) informing the LA that:
  - NEPA compliance is complete.
  - LA may commence with final design.
  - LA is responsible for incorporating all minimization, avoidance and mitigation measures, and the conditions of all permits agreements and approvals into final design.
  - LA is responsible for fully implementing all minimization, avoidance and mitigation measures, and the conditions of all permits during project construction.
  - A copy of all mitigation commitments and permits shall be sent to the DLAE prior to advertisement for construction.District SEP forwards the signed CE and transmittal, (letter, email, or documentation of telephone conversation or meeting), to the DLAE, and updates LP2000.
37. DLAE re-verifies that project is in the FSTIP and that there are no changes in project scope description, footprint; signs the CE Form; SEP (or designee) sends the signed CE Form and transmittal (letter, email, or documentation of telephone conversation or meeting), to the LA informing them that they may begin final design.
38. LA inserts the date the DLAE signed the CE/CE Determination Form in the LA/State Comments field when completing the Request for Authorization for the next phase of the project (see Chapter 3 “Project Authorization,” in the LAPM). LA begins final design. Prior to advertisement for construction, LA sends the DLAE a copy of all permits (i.e., Coastal, 401, 404, 1602 Series, Sec 10, State or Federal Encroachment and/or Right of Entry).
39. Upon receipt of list of mitigation commitments and permits, the District SEP (or designee) updates LP2000 Environmental-Permits Screen and Mitigation Commitments Screens in accordance with instructions provided in July 20, 2007 DLA memo, Subject: Tracking Local Assistance NEPA Compliance Milestones.

## **6.7 STEP-BY-STEP PROCEDURES – ROUTINE ENVIRONMENTAL ASSESSMENT (EA)**

The requirement to prepare an EA may come about through one or more of the following situations:

or prepares list of deficiencies, then provides comments to the District SEP (or designee). *Note: The NEPA Quality Control Reviewer must have the following qualifications: (1) at least two years of experience leading the development of, or performing consultant oversight for transportation environmental documents in California, (2) demonstrated experience in preparing complex environmental documents or supervisory experience in a unit that reviews EISs, and (3) Certificate of Completion in the Department's NEPA Compliance Training.*

13. District SEP requests District EOC review. If Individual Section 4(f) Evaluation is required, District SEP also requests HQ EC and Legal review the draft Individual Section 4(f) Evaluation, if applicable. Once reviewed and accepted by HQ EC, Legal and District Environmental Branch Chief/ Environmental Office Chief recommends to DDD (Environmental) that title page is ready for signature. *Note: Under the Pilot Program the DDD for Environmental is authorized to approve Individual Section 4(f) Evaluations. A stand-alone Individual Section 4(f) Evaluation and an Individual Section 4(f) Evaluation that is included with a Routine EA must be submitted to the appropriate HQ EC and Legal Office for review. No Individual Section 4(f) Evaluation may be approved until it has been reviewed and accepted by the HQ EC and a Legal review has been completed (for draft evaluation) or legal sufficiency determined (for final evaluation) by the appropriate Legal Office. The Department will coordinate with the FHWA prior to determining that any action constitutes a constructive use of land from a publicly owned park, public recreation area, wildlife refuge, waterfowl refuge, or historic site (MOU 8.1.5).*

***Is Draft EA complete and sufficient? If "No," GO TO STEP #14. If "Yes," GO TO STEP #17.***

14. District SEP (or designee) prepares transmittal letter or email to the LA, or documents telephone conversation or meeting (if applicable) with LA, summarizing all comments received from District technical specialists.
15. SEP (or designee) sends transmittal letter or, email outlining any deficiencies to the LA, files copy of the letter, email or documented telephone conversation or meeting with LA in the project file, and provides the DLAE with a copy.
16. LA modifies technical reports and/or Draft EA, in accordance with Caltrans comments, and resubmits report(s) and Draft EA to the DLAE beginning at Step #6. Steps #6 through #7 are repeated until the District determines that the document is completed and sufficient.
17. District SEP signs and transmits letters to resource and regulatory agency initiating formal consultation and recommends to DD (or DDD-Environmental or EOC, if designated) that title page is ready for signature.  
*Note: Copies of the letters requesting formal consultation with resource and regulatory agencies and a copy of the letter requesting AQ Conformity Determination from FHWA shall be retained by District SEP (or designee) in order to complete the required fields in LP2000. Copies of response letters from resource and regulatory agencies are also transmitted to the DLAE and the District SEP (or designee).*
18. DD (or DDD-Environmental or EOC, if designated) signs Draft EA cover sheet and returns to District SEP (or designee).
19. District SEP (or designee) prepares transmittal letter or email to the LA, or documents telephone conversation or meeting with LA (if applicable) confirming availability of the signed Draft EA cover sheet.

20. SEP (or designee) sends transmittal letter or email to the LA and files copy of the letter, email or documentation of telephone conversation or meeting, if applicable, with the LA regarding availability of the signed Draft EA in the project file.
21. LA prepares Notice of Availability (NOA) of EA and sends NOA and a copy of the EA to the State and area clearinghouses. If Joint IS/EA, the submissions required by CEQA fulfill the NEPA requirement.
22. LA prepares and places Notice of Public Hearing or Notice of Opportunity for Public Hearing in local newspaper. *Note: 23 CFR 771.119(e) requires that the EA be available for 15 days in advance of the public hearing.*
23. PUBLIC AVAILABILITY – 30 DAYS.

***Did Public Availability indicate that the proposed action will have a significant environmental effect? If “No,” GO TO STEP #24. If “Yes,” GO TO STEP #43. An EIS will need to be prepared.***

24. LA prepares Final EA in accordance with appropriate Caltrans Annotated Outline, provided at: <http://www.dot.ca.gov/ser/forms.htm>, and LA completes the Environmental Document Review Checklist, provided at: [http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/ED\\_Checklist.doc](http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/ED_Checklist.doc). cross-referencing items on the checklist with the corresponding page numbers found in the Draft EA as necessary to respond to public comments received.
25. LA performs Quality Control review of the Final EA in accordance with Caltrans standards provided at: [http://www.dot.ca.gov/hq/env/nepa\\_pilot/pdf/policies/NEPAdelegationQCProgram-2July07.pdf](http://www.dot.ca.gov/hq/env/nepa_pilot/pdf/policies/NEPAdelegationQCProgram-2July07.pdf), and completes and signs the External Certifications (Environmental Document Quality Control Review Certification) form provided at: [http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/External\\_QC\\_Certification.doc](http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/External_QC_Certification.doc).
26. LA sends Final EA, Environmental Document Review Checklist, Notice of Public Hearing, and summary of comments received to the DLAE.
27. DLAE forwards packet to the District SEP (or designee).
28. District SEP sends a request for AQ Conformity Determination to FHWA and the District SEP (or designee) initiates 5-step Quality Control Review process by sending Final EA to appropriate District technical specialists and requesting a Quality Control Review. *Note: The conformity determination cannot be completed until there is a public comment period on the analysis. Most of the time the public circulation of the environmental document serves as the public circulation for the conformity analysis.*
29. District technical specialists review technical report(s) and respective sections of Final EA for technical accuracy and consistency between technical report and EA; sign the Internal Certifications (Environmental Document Quality Control Review Certification) form, and forward the signed form or (if applicable) list of deficiencies to the District SEP (or designee).
30. District SEP (or designee) performs Peer Review of Final EA and technical report(s) to ensure clarity, consistency and readability; signs the Internal Certifications (Environmental Document Quality Control Review Certification) form, or prepares list of deficiencies, and requests NEPA Quality Control Reviewer review of Final EA.
31. NEPA Quality Control Reviewer reviews technical reports and Final EA for compliance with FHWA’s NEPA standards, requirements and policies; signs the Internal Certifications (Environmental Document Quality Control Review Certification) form or (if applicable) prepares list of deficiencies, and forwards to the District SEP (or designee).

32. District SEP drafts FONSI and requests EOC review of Final EA and FONSI.
- Is Final EA complete and sufficient, and is a FONSI appropriate? If “No,” GO TO STEP #33. If “Yes,” GO TO STEP #37***
33. District SEP (or designee) prepares transmittal letter or email to the LA, or documents telephone conversation or meeting with LA, if applicable, outlining deficiencies, or reasons why a FONSI is not appropriate, and forwards a copy to the DLAE.
34. SEP (or designee) sends transmittal letter, or email outlining deficiencies to the LA, files the letter email or documented telephone conversation or meeting with the LA (if applicable), in the project file and provides the DLAE with a copy.
35. LA revises Final EA accordingly and resubmits to the District SEP (or designee) via the DLA, or if an EIS must be prepared, proceed to Section 6.9.
36. District SEP reviews the revised Final EA. If still deficient GO TO Step # 33. Steps 33 through 36 are repeated until the District determines that the document is complete and sufficient. Once sufficient, District SEP drafts the FONSI.
37. District SEP request legal review if an Individual Section 4(f) Evaluation is required either stand-alone or part of ED. Once Legal has determined that the Individual Section 4(f) Evaluation is legally sufficient, the District SEP recommends to the DD (or DDD or EOC, if designated) that the FONSI is ready for signature.
38. The DD (or DDD-Environmental or EOC, if designated) signs FONSI and returns the signed FONSI to the District SEP (or designee).
39. District SEP (or designee) forwards signed FONSI to the DLAE and updates LP2000 as follows: On Environmental Studies – Environmental Study Milestones Screen (1) enter the date of resource or regulatory agency letter, documenting their final opinion/concurrence/agreement, etc., (2) use the Delay drop-down arrow to indicate “Yes” or “No.” *Note: “Yes” should be used if USFWS or NMFS exceeded 135 days in issuing a Biological Opinion; if USFWS or NMFS exceeded 30 days in issuing a Concurrence Letter; if there are delays in signatures on project MOA or project PA under Section 106 (if applicable); or if excessive delays occurred during any other agency review,* (3) use the comments field to document number of iterations needed (between Caltrans and LA) to produce a complete and sufficient report and/or number of iterations needed (between Caltrans and resource and regulatory agency) to produce an acceptable report.
40. DLAE sends signed FONSI to the LA and notifies LA that they may begin final design.
41. LA sends the NOA of the FONSI to the affected units of federal, state and local government, and distributes Final ED to anyone that commented.
42. LA begins final design and provides the DLAE with each of the following:
- a list of all Mitigation Commitments
  - a copy of all environmental permits, agreements or approvals (i.e., Coastal, 401, 404, 1602 Series, Sec 10, State or Federal Encroachment and/or Right of Entry)
43. District SEP (or designee) updates Environmental-PERMITs Screen and Mitigation Commitments Screen in LP2000 in accordance with instruction provided in July 20, 2007, DLA memo, Subject: Tracking Local Assistance NEPA Compliance Milestones.

## 6.8 STEP-BY-STEP PROCEDURES – COMPLEX ENVIRONMENTAL ASSESSMENT (EA)

Complex EAs are projects that involve one or more of the following

- multiple location alternatives
- debate related to purpose and need
- strong public controversy
- issues of logical termini or independent utility
- individual Section 4(f) determinations
- complex Endangered Species Act issues
- numerous cumulative impacts
- high mitigation costs

The requirement to prepare an EA in general may come about through one or more of the following situations:

- Based on information gathered during the PES, where it is clear that the proposed project will not qualify for a CE or where unusual circumstances are likely. The LA identifies the potential for significance under Sections A of the PES Form and recommends the development of an EA (under Section E of the PES Form). The DLAE and District SEP determine that an EA is the appropriate NEPA Class of Action, with e-mail concurrence of the HQ EC, and sign the PES Form.
- During or upon completion of technical studies when it becomes apparent that the proposed project will not qualify for a CE or that unusual circumstances exist, the decision to prepare an EA is made by the District SEP in collaboration with the DLAE, and with e-mail concurrence of the HQ EC, and must be clearly documented for the project file. A meeting should be conducted with the LA to discuss why the project is not a CE and to advise the LA on the requirements for an EA. The decision to follow the Complex EA process will be made by the District SEP as soon as sufficient information is available.

**The Complex Environmental Assessment (EA) process is shown in Flowchart 6-3, “Complex Environmental Assessment (EA) Process Flowchart,” (page 6-47). The numbers on the flowchart correlate with the step-by-step procedures within this section.**

1. LA receives the signed PES Form recommending a complex EA as the NEPA Class of Action.
2. LA prepares the Scope of Work/Consultant Contract (if necessary) in accordance with the LAPM, Chapter 10 “Consultant Selection,” and the requirements identified in the PES Form and policy and guidance set forth in the SER.
3. LA identifies alternatives and measures to minimize the potential for adverse environmental impacts.
4. LA completes technical studies and reports, prepares the administrative Draft EA, and completes the Environmental Document Review Checklist, provided at [http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/ED\\_Checklist.doc](http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/ED_Checklist.doc), cross-referencing items on the checklist with the corresponding page numbers found in the administrative Draft EA.

12. The District NEPA Quality Control Reviewer reviews the administrative Draft EA and either signs the Internal Certifications (Environmental Document Quality Control Review Certification) form or prepares a list of deficiencies and forwards to the District SEP overseeing local assistance environmental documents.
13. The EOC performs District Quality Control Review of administrative Draft EA in accordance with Caltrans NEPA Delegation Quality Control Program standards and considers whether the administrative Draft EA is ready for HQ review.

***Is administrative Draft EA ready for HQ review? If “No,” GO TO STEP #14. If “Yes,” GO TO STEP #17.***

14. When administrative Draft and/or technical reports are deficient, District SEP (or designee) prepares transmittal letter or email to the LA, or documents telephone conversation or meeting with the LA (if applicable) outlining all deficiencies, and requests that the administrative Draft EA be revised as necessary based on the District/NEPA Quality Control Reviewer’s comments. Comments received from all five (5) levels of review will form the basis of revisions to the administrative Draft EA.
15. SEP (or designee) sends transmittal letter or email to the LA and files a copy of the letter, email, or documented telephone conversation or meeting (if applicable) with the LA in the project file, and provides a copy to the DLAE.
16. LA revises administrative Draft EA per District and NEPA Quality Control Reviewer’s comments and resubmits at Step #6.
17. When administrative Draft EA and technical reports are complete and sufficient, the District SEP submits the following to the HQ EC and requests a Quality Assurance Review of the administrative Draft EA:
  - Transmittal Memo signed by the District/Region SEP requesting review
  - Five (5) copies of the administrative Draft EA or CD
  - One (1) copy of each technical study (or on CD, if requested)
  - One (1) copy of LA completed Environmental Document Review Checklist
  - One (1) copy of LA completed and signed External Certifications (Environmental Document Quality Control Review Certification) form
  - One (1) copy of completed and signed Internal Certification (Environmental Document Quality Control Review Certification) form

The Legal Office will review EAs, as time is available, at the request of the District/Region. If an Individual Section 4(f) Evaluation is required, District SEP also requests HQ EC and Legal review the draft Individual Section 4(f) Evaluation. Once reviewed and accepted by HQ EC, Legal and the District EOC recommend to DDD-Environmental that the title page is ready for signature.

18. HQ EC performs a QA Review of the environmental document to determine if the administrative Draft EA is substantively complete and ready for interdisciplinary quality assurance review.

Review period is thirty (30) days. In making this determination, the HQ EC will confirm that the administrative environmental document follows the annotated outline and includes the following:

- Correct title page
- All chapters and necessary resource topics are present and complete
- All appendices are present and complete

- All required correspondence relative to procedural and regulatory requirements
- Complete, clear, legible and logical exhibits and figures

HQ EC will lead an interdisciplinary team of HQ technical specialists to review the document. Technical specialists will review pertinent portions of the document for accuracy to ensure that regulatory requirements are appropriately addressed. The project technical studies will be used in support of the review.

The HQ EC will review the entire environmental document and perform a NEPA Quality Assurance Review.

***Did HQ EC find the administrative Draft EA complete? If “No,” GO TO STEP #19. If “Yes,” GO TO STEP #22.***

19. When the HQ EC finds the administrative Draft EA incomplete, the HQ EC will consolidate and transmit comments on the administrative Draft EA to the District SEP (or designee), who in turn drafts a transmittal memo to the LA outlining HQ EC quality assurance comments and requesting the LA make the necessary revisions to the administrative Draft EA.

20. LA revises administrative Draft EA in response to HQ EC comments and resubmits revised Draft to District SEP (or designee).

*Note: District/Region and HQ EC staff are available to assist LA with (1) clarification regarding comments, (2) resolution of issues identified in the comments, and (3) in determining adequate response to comments, as needed. A meeting or workshop may be convened by the HQ EC or the District/Region/DLAE to facilitate this process.*

21. District SEP (or designee) reviews the revised administrative Draft EA and revises the Internal Certifications (Environmental Document Quality Control Review Certification) form, as appropriate, to reflect that all comments have been appropriately addressed and submits the following materials to HQ EC for HQ Pre-Approval Review:

- Transmittal Memo signed by the District/Region SEP stating that the document has been revised pursuant to HQ EC comments and requesting pre-approval review.
- One (1) copy of the revised environmental document
- One (1) copy of revised environmental document with track changes
- One (1) copy of comments with a response key
- One (1) copy of the completed Environmental Document Review Checklist, as revised
- One (1) copy of the signed Internal Certifications (Environmental Document Quality Control Review Certification) form as revised

22. HQ EC reviews the revised administrative Draft EA to ensure that all comments have been adequately addressed and the administrative Draft EA is ready for signature. The review period is ten (10) days. HQ EC must concur that its comments have been addressed. At this point, the HQ EC will take one of the following actions:

- Find that minor changes are needed and coordinate directly with the document preparer to make the changes. GO TO STEP #19

- Determine that substantive issues remain and inform the District SEP in writing of the deficiencies and instruct them to resubmit the document upon subsequent revision. GO TO STEP #19
  - Conclude that the environmental document is adequate and ready for circulation. GO TO STEP #24
23. HQ EC recommends that the revised administrative Draft EA is ready for signature.
  24. District EOC and the HQ EC will recommend to the DD (DDD- Environmental or EOC, if designated) that the title page is ready for signature.
  25. DD (DDD-Environmental or EOC, if designated) signs the Draft EA cover sheet and returns the signed cover sheet to the District SEP (or designee). *Note: The DD may delegate signature authority to the DDD for Environmental or the EOC managing the environmental assessment unit that reviewed the document.*
  26. District SEP (or designee) prepares and sends a letter or email to the LA, or contacts the LA via telephone to inform them that the Draft EA cover sheet has been signed and that they may begin public circulation.
  27. SEP (or designee) provides a copy of the signed Draft EA cover sheet to the DLAE and includes a copy of the signed Draft EA cover sheet and transmittal in the project file.
  28. LA prepares the NOA of the EA and sends NOA and a copy of the Draft EA to the State and area wide clearinghouses. If Joint IS/EA, the submissions required by CEQA fulfill the NEPA requirement.
  29. LA prepares and places Notice of Public Hearing or Notice of Opportunity for Public Hearing in local newspaper. *Note: 23 CFR 771.119(e) requires that the EA be available for fifteen (15) days in advance of the public hearing.*
  30. PUBLIC AVAILABILITY – 30 DAYS

***Did Public Availability indicate that the proposal will have a significant environmental effect? If “No,” GO TO STEP #31. If “Yes,” discuss the need to prepare an EIS with DLAE and District SEP.***

31. LA prepares administrative Final EA in accordance with Caltrans standards provided at: [http://www.dot.ca.gov/hq/env/nepa\\_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf](http://www.dot.ca.gov/hq/env/nepa_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf).  
Completes and signs the External Certifications (Environmental Document Quality Control Review Certification) form provided at:  
[http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/external\\_qc\\_certification.doc](http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/external_qc_certification.doc)
33. LA drafts FONSI recommendation.
33. LA sends the administrative Final EA, Notice of Public Hearing, Summary of Comments received, and original signed External Certifications (Environmental Document Quality Control Review Certification) form to the DLAE.
34. DLAE date stamps and forwards administrative Final EA packet to the District SEP (or designee).
35. District SEP (or designee) initiates 5-step Quality Control Review of administrative Final EA by distributing the administrative Final EA to appropriate District technical specialists, and requesting Quality Control Review of the administrative Final EA,

in accordance with Caltrans NEPA Delegation Quality Control Program standards provided at:

[http://www.dot.ca.gov/hq/env/nepa\\_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf](http://www.dot.ca.gov/hq/env/nepa_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf)

District SEP updates LP2000 as follows: On the Environmental Assessments (EA) Screen, next to Public Circulation, enter date DD or designee signs Draft EA cover sheet, (2) use Comments Field to document internal/external delays/concerns, substantial controversy, requests for public hearing (*Note: EA must be available for a minimum of fifteen (15) days in advance of the public hearing*), and (3) enter date District (DLAE or District SEP [or designee]) received the administrative Final EA.

36. District technical specialists conduct Quality Control Review of administrative Final EA and either sign the Internal Certifications (Environmental Document Quality Control Review Certification) form provided at: [http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal\\_QC\\_Certification.doc](http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal_QC_Certification.doc), or (if applicable) provide list of deficiencies to the District SEP (or designee).
37. District SEP (or designee) performs Peer Review of administrative Final EA and either prepares a list of deficiencies or signs the Internal Certifications (Environmental Document Quality Control Review Certification) form, and requests District NEPA Quality Control Review.
38. NEPA Quality Control Reviewer reviews the administrative Final EA for compliance with FHWA's laws, regulations, Executive Orders and policy and NEPA standards, signs the Internal Certifications (Environmental Document Quality Control Review Certification) form provided at: [http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal\\_QC\\_Certification.doc](http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal_QC_Certification.doc) and forwards the signed Internal Certifications (Environmental Document Quality Control Review Certification) form, or a list of deficiencies (if applicable) to the District EOC .
39. District EOC reviews the administrative Final EA and determines whether the administrative Final EA is ready for HQ review.

***Is administrative Final EA ready for HQ review? If "No," GO TO STEP #40. If "Yes," GO TO STEP #44.***

40. District SEP (or designee) prepares a letter to the LA, or notifies the LA via email, telephone or meeting, regarding deficiencies in the Draft EA.
41. SEP (or designee) provides a copy of the letter, email, or documented telephone conversation outlining deficiencies to the DLAE and includes a copy of letter, email or telephone conversation in the project file.
42. LA revises the administrative Final EA accordingly and resubmits to the District SEP (or designee) at Step #43.
43. District SEP reviews the revised administrative Final EA and determines whether the revised administrative Final EA is ready for HQ review. If "Yes," District SEP forwards the revised administrative Final EA to HQ EC and requests Quality Assurance Review. If "No," District SEP (or designee) notifies LA of deficiencies. Steps #40, #41, #42 and #43 are repeated until document is ready for review.
44. HQ EC performs Quality Assurance Review (30 days)

***Is administrative Final EA ready for signature? If "No," notify District SEP (or designee) and GO TO STEP #45. If "Yes," GO TO STEP #49.***

45. HQ EC (or designee) notifies the LA of deficiencies.

- all proposed avoidance, minimization and mitigation measures are properly identified, characterized and are reasonable and practicable to implement
  - evidence of coordination with any federal, State and local agencies necessary to comply with federal regulatory requirements
  - compliance with FHWA Environmental Impact and Related Procedures (23 CFR 771) and FHWA environmental policies and applicable guidance
  - compliance with other federal laws and regulations, such as Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, Section 404 of the Clean Water Act, Executive Order 11990-Protection of Wetlands, Executive Order 11988-Floodplain Management, and Section 4(f) of the Department of Transportation Act
21. District SEP requests Environmental Branch Chief perform District Quality Control Review of administrative Draft EIS.
  22. Environmental Branch Chief performs District Quality Control Review in accordance with Caltrans NEPA Delegation Quality Control Program standards provided at: [http://www.dot.ca.gov/hq/env/nepa\\_pilot/pdf/policies/NEPA\\_Delegation\\_QC\\_Program-2July07.pdf](http://www.dot.ca.gov/hq/env/nepa_pilot/pdf/policies/NEPA_Delegation_QC_Program-2July07.pdf). Signs the Internal Certifications (Environmental Document Quality Control Review Certification) form provided at: [http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal\\_QC\\_Certification.doc](http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal_QC_Certification.doc), or (if applicable) prepares list of deficiencies (if applicable) and forwards signed form or list of deficiencies to the District SEP.
  23. District SEP reviews Internal Certifications (Environmental Document Quality Control Review Certification) form and considers all comments received during District Quality Control Review.

***Is administrative Draft EIS complete and sufficient from the District's perspective? If "No," GO TO STEP #24. If "Yes," GO TO STEP #26.***

24. When administrative Draft EIS and/or technical reports are deficient, the District SEP (or designee) prepares a transmittal letter or email to the LA, or contacts the LA via telephone to inform them of all deficiencies and requests that the administrative Draft EIS be revised as necessary, based on the District Quality Control Review. Comments received from all five levels of review will form the basis of revisions to the administrative environmental document. The District SEP sends the letter, or email, to the LA, provides a copy to the DLAE and updates appropriate fields in LP2000.
25. The LA revises the administrative Draft EIS in accordance with comments received and resubmits the draft from STEP #14.
26. When the administrative Draft EIS and technical reports are complete and sufficient, the District SEP notifies HQ EC and the Legal Office that an administrative Draft EIS will be submitted for their review in one week. To initiate HQ EC review, District SEP submits the following to the HQ EC and requests a Quality Assurance Review of administrative Draft EIS:
  - Transmittal Memo signed by the District SEP, requesting review
  - Five (5) copies of the administrative Draft EIS (on CD, if requested)
  - Two (2) copies of each technical study or technical study on CD
  - Two (2) copy of LA completed Environmental Document Review Checklist
  - One (1) copy of LA completed and signed External Quality Control Certification Sheet

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- One (1) copy of completed and signed Internal Quality Control Certification Sheet

To initiate Legal Division review, the District SEP submits the following to HQ Legal and requests a legal review on the administrative Draft EIS.

- Transmittal Memo signed by the District SEP, requesting review
  - One (1) copy of the administrative Draft EIS
  - One (1) electronic copy of the administrative Draft EIS
  - One (1) electronic copy of each technical study
  - One (1) copy of the LA completed Environmental Document Review Checklist
  - One (1) copy of the completed and signed Internal Certification Form
  - One (1) copy of the LA completed and signed External Certification Form
27. HQ EC performs a quality assurance review of the administrative Draft EIS to determine if the administrative Draft EIS is substantively complete and ready for interdisciplinary quality assurance review. The review period is thirty (30) days. In making this determination, the HQ EC will confirm that the administrative environmental document follows the annotated outline and includes the following:

- Correct title page
- All chapters and necessary resource topics are present and complete
- All appendices are present and complete
- All required correspondence relative to procedural and regulatory requirements
- Complete, clear, legible and logical exhibits and figures

HQ EC will then lead an interdisciplinary team of HQ technical specialists to review the administrative Draft EIS. HQ technical specialists will review pertinent portions of the administrative Draft EIS for accuracy to ensure that regulatory requirements are appropriately addressed. The project technical studies will be used in support of the review. HQ EC will review the entire administrative Draft EIS, perform the NEPA Quality Assurance Review in accordance with Caltrans NEPA Delegation Quality Control Program standards provided at:

[http://www.dot.ca.gov/hq/env/nepa\\_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf](http://www.dot.ca.gov/hq/env/nepa_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf). Signs the Internal Certifications (Environmental Document Quality Control Review Certification) form provided at:

[http://www.dot.ca.gov/ser/voll/sec6/ch38nepa/Internal\\_QC\\_Certification.doc](http://www.dot.ca.gov/ser/voll/sec6/ch38nepa/Internal_QC_Certification.doc)

or (if applicable) prepares list of deficiencies. HQ EC will also request HQ Legal review of the administrative Draft EIS.

The responsible Legal Office performs a legal review of the administrative Draft EIS, concurrently and independently of HQ review, to determine if significant environmental issues are being appropriately addressed. The Legal Office will provide its legal review comments to the District SEP with a copy to HQ EC.

Comments from the Legal Office are independent from HQ EC comments.

***Did HQ EC and Legal find the administrative Draft EIS complete? If “Yes,” HQ EC will recommend to the District SEP that the administrative Draft EIS title page is ready for signature. If “No,” GO TO STEP #28.***

28. When HQ EC and/or HQ Legal find administrative Draft EIS incomplete, HQ EC will consolidate all comments received from the interdisciplinary team and transmit comments on administrative Draft EIS to the District SEP for local assistance. A copy of HQ EC comments will be provided to the responsible Legal Office. The Legal Office will also transmit its comments to the District SEP for local assistance with a copy to HQ EC. Comments from Legal are independent from HQ EC comments.
29. District SEP (or designee) for local assistance prepares a letter or email to the LA, or contacts the LA via telephone to inform them of HQ EC and HQ Legal's comments and requests LA make the necessary revisions to the administrative Draft EIS. District SEP (or designee) provides the DLAE with a copy of the letter, or email, and updates LP2000.

*Note: HQ Legal comments remain internal to Caltrans. Only a summary of HQ Legal comments shall be provided to the LA. District and HQ EC staff should assist the LA with (1) clarification regarding comments, (2) resolution of issues identified in the comments, and (3) in determining adequate response to comments, as needed. A meeting or workshop may be convened by the HQ EC or the District/Region/DLAE to facilitate this process.*

30. LA revises administrative Draft EIS in response to all comments received and resubmits revised administrative Draft EIS to the DLAE/District SEP.
31. District SEP (or designee) reviews revised administrative Draft EIS and revises Internal Certifications (Environmental Document Quality Control Review Certification) form, as appropriate, to reflect that all comments have been appropriately addressed.

***Is revised administrative Draft EIS responsive to HQ comments and ready for HQ EC pre-approval review? If "No," GO TO STEP #29. Steps #29 through #31 are repeated until all comments are adequately addressed. If "Yes," GO TO STEP #32.***

32. District SEP submits the following materials to the HQ EC and requests HQ Pre-Approval Review:
  - Transmittal Memo signed by the District/SEP stating that the administrative Draft EIS has been revised pursuant to HQ EC comments and requesting pre-approval review
  - One (1) copy of the revised ED
  - One (1) copy of revised ED with track changes
  - One (1) copy of comments with a response key
  - One (1) copy of the completed Environmental Document Review Checklist, as revised
  - One (1) copy of the completed and signed Internal Certifications (Environmental Quality Control Review Certification) form, as revised

District SEP also submits the following materials to the Legal Office:

- Transmittal memo signed by the District SEP stating that the document has been revised pursuant to the legal review and requested Pre-Approval Review
- One (1) copy of the revised ED
- One (1) copy of the revised ED with track changes
- One (1) copy of the comments with a response key
- One (1) copy of the completed Environmental Document Checklist, as revised

- One (1) copy of the signed Internal Certifications (Environmental Document Quality Control Review Certification) form, as revised
33. HQ EC performs Pre-Approval Review of revised administrative Draft EIS to ensure that all comments have been adequately addressed and that administrative Draft EIS is ready for signature. Review period is ten (10) working days. (*Note: Ten (10) working day review period is a goal. Actual review time may vary depending upon complexity of issues and current workload.*)
34. HQ Legal performs Pre-Approval Review of the revised administrative Draft EIS concurrently and independently of HQ EC, to ensure all comments have been adequately addressed and that administrative Draft EIS is ready for signature. Review period is ten (10) working days. (*Note: Ten (10) working day review period is a goal. Actual review time may vary depending upon complexity of issues and current workload.*)

Both HQ EC and Legal must concur that their comments have been addressed. At this point, HQ EC will take one of the following actions:

- Find that minor changes are needed and coordinate directly with the document preparer to make the changes.
- Determine that substantive issues remain and inform the District in writing of the deficiencies and instruct them to resubmit the document upon subsequent revision.
- Conclude that the ED is adequate and ready for circulation.

No approval action may be taken until both HQ EC quality assurance and legal review are satisfied.

***Did HQ EC and Legal find revised administrative Draft EIS complete and ready for signature? If “No,” HQ EC prepares a memorandum for the District detailing deficiencies requiring correction. GO TO STEP #29. Steps #29 through #34 will be repeated until document is ready for signature. If “Yes,” Go to Step #35.***

35. HQ EC recommends in writing to the District SEP that administrative Draft EIS is ready for signature. An Administrative Draft EIS may not be signed until the ready for signature recommendation is received by District.
36. When HQ EC recommends that revised administrative Draft EIS is ready for signature, the District Environmental Branch Chief and HQ EC jointly recommend to the DD that title page should be signed.
37. DD signs Draft EIS title page and returns the signed Title Sheet to the District SEP.
38. District SEP (or designee) prepares a letter or email to the LA transmitting the signed Draft EIS title page and informing the LA that they may begin public circulation.
39. District SEP updates LP2000 as follows: On the EIS Screen, next to Draft HQ Quality Control/Quality Assurance, (1) enter the date of final signature (Chief, Environmental Branch) on Environmental Document Quality Control Review Certification Form, (2) use Comments Field to document delays/concerns associated with internal reviews; (3) next to Draft Legal Sufficiency, enters date of Legal’s letter of sufficiency, and (4) use comments field to document delays/concerns associated with Legal’s review of administrative Draft EIS.
40. District SEP (or designee) transmits the letter, or email, with signed Draft EIS title page to the LA and provides a copy to the DLAE.

41. Following receipt of the signed Draft EIS title page and notification to begin public circulation, the LA prepares the NOA of Draft EIS and sends the NOA and a copy of the administrative Draft EIS to the State and area wide clearinghouses. If Joint EIS/EIR, the submissions required by CEQA fulfill the NEPA requirement.
42. LA prepares and places the Notice of Public Hearing or Notice of Opportunity for Public Hearing in local newspaper. (*Note: 23 CFR 771.123(h) requires that the draft be available for a minimum of 15 days prior to the public hearing.*)
43. PUBLIC AVAILABILITY – 45 DAYS.
44. LA responds to public comments, revises the EIS (as needed), prepares the administrative Final EIS consistent with Caltrans Annotated Outline in the SER at: [http://www.dot.ca.gov/ser/downloads/templates/eir\\_eis.doc](http://www.dot.ca.gov/ser/downloads/templates/eir_eis.doc), and completes the Environmental Document Review Checklist, provided at [http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/ED\\_Checklist.doc](http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/ED_Checklist.doc)
45. LA performs Quality Control review of all technical reports and administrative Final EIS in accordance with Caltrans standards provided at: [http://www.dot.ca.gov/hq/env/nepa\\_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf](http://www.dot.ca.gov/hq/env/nepa_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf)  
LA completes and signs the External Certifications (Environmental Document Quality Control Review Certification) form provided at: [http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/External\\_QC\\_Certification.doc](http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/External_QC_Certification.doc)  
LA submits the following completed and original signed documents to the DLAE:
  - One (1) hardcopy and CD of the administrative Final EIS
  - Notice of Public Hearing
  - Summary of comments received
  - Original signed External Certifications (Environmental Document Quality Control Review Certification) form
46. DLAE re-verifies that project is in the FSTIP and forwards packet to the District SEP (or designee).
47. District SEP updates LP2000 as follows: On EIS Screen, next to Public Circulation, enter date DD or designee signed cover of administrative Draft EIS, and use comment field to record beginning and ending date of public availability/comment (not less than 45 days), any internal/external delays concerns, and any substantial controversies over the project. Next to Public Hearing, enter date Public Hearing is conducted (if applicable) (*Note: EIS must be available for a minimum of fifteen (15) days in advance of the public hearing*). Use comments field to document whether there is a substantial controversy over the project and the nature of the controversy.
48. District SEP sends a request for Air Quality Conformity Determination to the FHWA and the District SEP initiates and coordinates the 5-step Quality Control Review process of the administrative Final EIS in accordance with Caltrans NEPA Delegation Quality Control Program standards provided at: [http://www.dot.ca.gov/hq/env/nepa\\_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf](http://www.dot.ca.gov/hq/env/nepa_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf)  
*(Note: The conformity determination cannot be completed until there is a public comment period on the analysis. Most of the time the public circulation of the environmental document serves as the public circulation for the conformity analysis.)*

49. District technical specialists conduct Quality Control Review of technical report(s) and respective sections of the administrative Final EIS in accordance with Caltrans NEPA Delegation Quality Control Program standards provided at: [http://www.dot.ca.gov/hq/env/nepa\\_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf](http://www.dot.ca.gov/hq/env/nepa_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf), sign the Internal Certifications (Environmental Document Quality Control Review Certification) form provided at: [http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal\\_QC\\_Certification.doc](http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal_QC_Certification.doc), and forward the signed form or list of deficiencies to the District SEP (if applicable).
50. District SEP performs Peer Review of administrative Final EIS in accordance with Caltrans NEPA Delegation Quality Control Program standards provided at: [http://www.dot.ca.gov/hq/env/nepa\\_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf](http://www.dot.ca.gov/hq/env/nepa_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf), and signs the Internal Certifications (Environmental Document Quality Control Review Certification) form provided at: [http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal\\_QC\\_Certification.doc](http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal_QC_Certification.doc), or (if applicable) prepares list of deficiencies, and requests NEPA Quality Control Review of administrative Final EIS and technical studies.
51. NEPA Quality Control Reviewer reviews administrative Final EIS in accordance with Caltrans NEPA Delegation Quality Control Program standards provided at: [http://www.dot.ca.gov/hq/env/nepa\\_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf](http://www.dot.ca.gov/hq/env/nepa_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf), and signs the Internal Certifications (Environmental Document Quality Control Review Certification) form provided at: [http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal\\_QC\\_Certification.doc](http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal_QC_Certification.doc), or (if applicable) prepares list of deficiencies and forwards signed form or list of deficiencies to the District SEP (or designee).
52. District SEP requests the District EOC for local assistance to perform the District Quality Control Review of administrative Final EIS.
53. Environmental Branch Chief performs District Quality Control Review in accordance with Caltrans NEPA Delegation Quality Control Program standards provided at: [http://www.dot.ca.gov/hq/env/nepa\\_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf](http://www.dot.ca.gov/hq/env/nepa_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf), signs the Internal Certifications (Environmental Document Quality Control Review Certification) form provided at: [http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal\\_QC\\_Certification.doc](http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal_QC_Certification.doc), or (if applicable) prepares list of deficiencies and forwards signed form or list of deficiencies to the District SEP (or designee.)
54. District SEP reviews Internal Certifications (Environmental Document Quality Control Review Certification) form and considers all comments received during District Quality Control Review.

***Is administrative Final EIS complete and sufficient from the District's perspective? If "No," GO TO STEP #55. If "Yes," GO TO STEP #57.***

55. When administrative Final EIS and/or technical reports are deficient, the District SEP prepares a letter to the LA informing them of all deficiencies and requests that the administrative Final EIS be revised as necessary, based on the District Quality Control Review. Comments received from all five (5) levels of review will form the basis of revisions to the administrative Final EIS document.
56. LA revises the administrative Final EIS and resubmits document from Step #45.

57. District SEP notifies the HQ EC and Legal Office that the administrative Final EIS will be submitted for their review and determination of legal sufficiency, respectively, in one week.

To initiate HQ review, District SEP submits the following to the HQ EC and requests a Quality Assurance Review of the administrative Final EIS: *(DLAE shall be copied on all correspondence between the District, HQ EC and Legal)*.

- Transmittal Memo signed by the District SEP requesting review of Final EIS
- Five (5) hardcopies of the Final EIS and one (1) CD
- One (1) hardcopy of revised technical reports and one (1) CD
- One (1) copy of LA completed Environmental Document Review Checklist (for Final)
- One (1) copy of LA completed and signed External Certifications (Environmental Document Quality Control Review Certification) form
- One (1) copy of completed and signed Internal Certifications (Environmental Document Quality Control Review Certification) form

District SEP will also request the Legal Office to conduct a Legal Sufficiency Review of the administrative Final EIS. The HQ EC Review and the Legal Sufficiency Review typically occur in parallel.

To initiate Legal Sufficiency Review, District SEP submits the following to the Legal Office and requests determination of legal sufficiency:

- Transmittal Memo signed by the District SEP, requesting review
- One (1) copy of the administrative Draft EIS
- One (1) electronic copy of the administrative Draft EIS
- One (1) electronic copy of each technical study
- One (1) copy of the LA completed Environmental Document Review Checklist
- One (1) copy of the completed and signed Internal Certifications (Environmental Document Quality Control Review Certification) Form
- One (1) copy of the LA completed and signed External Certifications (Environmental Document Quality Control Review Certification Form

58. HQ EC performs a Quality Assurance Review of the administrative Final EIS to determine if the document is substantively complete and ready for interdisciplinary quality assurance review.

The review period is thirty (30) days. In making this determination, the HQ EC will confirm that the Final EIS follows the annotated outline and includes the following:

- Correct title page
- All chapters and necessary resource topics are present and complete
- All appendices are present and complete
- All required correspondence relative to procedural and regulatory requirements
- Complete, clear, legible and logical exhibits and figures

HQ EC will then lead an interdisciplinary team of HQ technical specialists to review the administrative Final EIS. HQ technical specialists will review pertinent portions of the administrative Final EIS for accuracy and to ensure that regulatory

requirements are appropriately addressed. The project technical studies will be used in support of the review. The HQ EC will review the entire administrative Final EIS, performing the NEPA Quality Assurance Review in accordance with Caltrans NEPA Delegation Quality Control Program standards provided at:

[http://www.dot.ca.gov/hq/env/nepa\\_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf](http://www.dot.ca.gov/hq/env/nepa_pilot/pdf/policies/NEPADelegationQCProgram-2July07.pdf). Signs the Internal Certifications (Environmental Document Quality Control Review Certification) form provided at:

[http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal\\_QC\\_Certification.doc](http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/Internal_QC_Certification.doc), or (if applicable) prepares list of deficiencies.

The Legal Office performs a Legal Sufficiency Review of the revised administrative EIS. The Legal Office will provide its Legal Sufficiency Review comments to the District SEP with a copy to the HQ EC. Comments from the Legal Sufficiency Review are independent from HQ EC comments.

***Did HQ EC and Legal find the administrative Final EIS complete? If “Yes,” HQ EC will recommend to the District SEP that the Final EIS title page is ready for signature. The title page may not be signed until the ready-for-signature recommendation is received by the District/Region. If “No,” GO TO STEP #59.***

59. If HQ EC and/or HQ Legal find administrative Final EIS incomplete, the HQ EC will transmit comments on the environmental document to the District SEP with a copy to the DLAE and to the responsible Legal Office. Legal Office will transmit its Legal Sufficiency Review comments to the District SEP and DLAE if applicable, with a copy to the HQ EC.
60. District SEP (or designee) prepares memo summarizing HQ EC and Legal’s comments and requests LA make the necessary revisions to the administrative Final EIS.

*Note: Legal’s comments remain internal to Caltrans. Only summarized version is sent to the LA. The District staff and HQ EC should assist LA with (1) clarification regarding comments, (2) resolution of issues identified in the comments, and (3) in determining adequate response to comments, as needed. A meeting or workshop may be convened by the HQ EC or the District/Region/DLAE to facilitate this process.*

61. District EOC signs the letter.
62. District SEP (or designee) sends the letter to the LA, provides a copy to the DLAE, includes a copy in the project file, and updates appropriate fields in LP2000.
63. LA revises administrative Final EIS in response to all HQ comments and resubmits revised administrative Final EIS to the District SEP (or designee).
64. District SEP (or designee) reviews the revised administrative Final EIS and revises the Internal Certifications (Environmental Document Quality Control Review Certification) form, as appropriate, to reflect that all comments have been appropriately addressed.

***Is revised administrative Final EIS responsive to HQ EC and Legal comments? If “No,” GO TO STEP #60. Steps #60 through #64 shall be repeated until document is adequate. If “Yes,” GO TO STEP #65.***

65. To initiate HQ EC Pre-Approval Review, District SEP submits the following materials to HQ EC and requests HQ Pre-Approval Review.
  - Transmittal Memo signed by the District SEP stating that the administrative Final EIS has been revised pursuant to HQ EC comments and requested pre-approval review
  - One (1) copy of the revised administrative Final EIS

- One (1) copy of revised administrative Final EIS with track changes
- One (1) copy of comments with a response key
- One (1) copy of the completed Environmental Document Review Checklist, as revised
- One (1) copy of the signed Quality Review Certification Sheet (Final)

To initiate Pre-Approval Legal Sufficiency Review, the District SEP submits the following materials to the Legal Office:

- Transmittal memo signed by the District SEP stating that the document has been revised pursuant to the legal review and requested pre-approval review
  - One (1) copy of the revised environmental document
  - One (1) copy of the revised environmental with track changes
  - One (1) copy of the comments with a response key
  - One (1) copy of the completed Environmental Document Checklist, as revised
  - One (1) copy of the signed Internal Certifications (Environmental Document Quality Control Review Certification) Form, as revised
66. HQ EC and Legal Office review revised administrative Final EIS to ensure that all comments have been adequately addressed and that administrative Final EIS is ready for signature. Review period is ten (10) days. Both HQ EC and Legal Office must concur that their comments have been addressed. At this point, the HQ EC will take one of the following actions:
- Find that minor changes are needed and coordinate directly with the document preparer to make the changes
  - Determine that substantive issues remain and inform the District in writing of the deficiencies and instruct them to resubmit the document upon subsequent revision
  - Conclude that the environmental document is adequate and ready for circulation
- No approval action may be taken until both HQ EC quality assurance and Legal Office review or legal sufficiency are satisfied.
- The Legal Office will provide Pre-Approval Legal Sufficiency comments to the District SEP with a copy to the HQ EC.

***Is the revised administrative Final EIS ready for signature? If “No,” GO TO STEP #59. Steps #59 through #66 are repeated until HQ determines document is ready for signature. If “Yes,” GO TO STEP #67.***

67. When HQ EC and Legal Office find revised administrative Final EIS complete, the HQ EC and DDD (Environmental) jointly recommend (in writing) to the DD that the Final EIS title page is ready for signature.
68. DD signs the Final EIS title page and returns the signed Final EIS title sheet to the District SEP.
69. District SEP (or designee) forwards the signed Final EIS title page to the DLAE, and updates LP2000 as follows: On the EIS Screen, next to Final EIS, enter date stamp received by either the DLAE or District SEP (or designee); use comments field to identify preferred alternative, document number of iterations needed to produce an acceptable Final EIS; document delays at LA; document delays at Caltrans; indicate

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### FORMAL FIELD REVIEW

A formal field review can be accomplished by:

- A site (field) inspection, or
- An office meeting or both.

All parties involved in the project development decisions should be invited to a formal field review. The DLAE should take the lead in the field reviews, take Minutes of the Field Review and circulate the notes to all affected parties afterward.

### INFORMAL FIELD REVIEW

Informal field reviews can be accomplished by:

- Small group meetings
- Interagency correspondence
- Phone discussions
- Individual research and data gathering

Exception: Emergency Relief (ER) projects use the FHWA Damage Assessment Form (DAF) in lieu of any other field review form. An on-site field assessment is required for all these projects.

### REQUIRED REVIEW

Caltrans will determine if a field review is required for all projects on the National Highway System (NHS). Generally, a field review will only be required for significant NHS projects. A project will be considered to be significant if:

- The total cost is over \$10 million, or
- It involves an unusual structure (see definitions in Section 2.4 of this manual), or
- It involves multiple projects on a corridor involving more than one agency, or
- Any other complicating factors require a field review.

All required reviews would be formal. In consultation with the local agency, the Caltrans DLAE determines how the formal field review will be accomplished.

Exceptions to the above are as follows:

- A site visit, or “early coordination meeting” may be required, on the grounds of environmental sensitivity for protected resources, controversy, or consequences (impacts) of the proposed action (see Chapter 6, “Environmental Procedures”). This meeting may be part of the formal or informal field review discussed in this chapter or held separately.
- For seismic safety retrofit projects, a field review is mandatory as described in Section 7.8 of the *Local Assistance Program Guidelines* (LAPG)

EXHIBIT 7-B FIELD REVIEW FORM

Local Agency \_\_\_\_\_ Field Review Date \_\_\_\_\_  
 Project Number \_\_\_\_\_ Locator \_\_\_\_\_  
 (Dst/Co/Rte/PM/Agncy) \_\_\_\_\_  
 Project Name \_\_\_\_\_ Bridge No.(s) \_\_\_\_\_

1. PROJECT LIMITS (see attached list for various locations) \_\_\_\_\_  
 \_\_\_\_\_ Net Length \_\_\_\_\_ (mile)

2. WORK DESCRIPTION \_\_\_\_\_

ITS project or ITS element: Yes \_\_\_\_\_ No \_\_\_\_\_  
 If yes, choose: High-Risk (formerly "Major") ITS \_\_\_\_\_, Low-Risk (formerly "Minor") ITS \_\_\_\_\_, Exempt ITS \_\_\_\_\_

3. PROGRAMMING DATA FTIP (MPO/RTPA) \_\_\_\_\_ FY \_\_\_\_\_ Page \_\_\_\_\_  
 Amendment No. \_\_\_\_\_ FTIP PPNO \_\_\_\_\_ FHWA/FTA Approval Date \_\_\_\_\_  
 Federal Funds \$ \_\_\_\_\_ Phases PE \_\_\_\_\_ R/W \_\_\_\_\_ Const \_\_\_\_\_  
 Air Basin: \_\_\_\_\_ (CMAQ only)

4. FUNCTIONAL CLASSIFICATION:  
 URBAN \_\_\_\_\_ RURAL \_\_\_\_\_  
 Principal Arterial: \_\_\_\_\_ Principal Arterial: \_\_\_\_\_  
 Minor Arterial: \_\_\_\_\_ Minor Arterial: \_\_\_\_\_  
 Collector: \_\_\_\_\_ Major Collector: \_\_\_\_\_  
 Local: \_\_\_\_\_ Minor Collector: \_\_\_\_\_  
 Rural Local: \_\_\_\_\_

5. STEWARDSHIP CATEGORY  
 High Profile (Stewardship): Yes \_\_\_ No \_\_\_

Delegated (Stewardship): Yes \_\_\_ No \_\_\_ (a) DLAE oversight: Yes \_\_\_ No \_\_\_  
 (b) District Construction Yes \_\_\_ No \_\_\_  
 ITS High-Risk project or element requiring FHWA oversight per stewardship: Yes \_\_\_ No \_\_\_

6. CALTRANS ENCROACHMENT PERMIT Is it required? Yes \_\_\_\_\_ No \_\_\_\_\_

7. COST ESTIMATE BREAKDOWN \$1,000's Fed. Participation  
 (Including Structures)

PE	Environmental Process	_____	Yes	_____	No	_____
	Design	_____	Yes	_____	No	_____
	ITS System Manager or Integrator	_____	Yes	_____	No	_____
CONST	Const. Contract	_____	Yes	_____	No	_____
	Const. Engineering	_____	Yes	_____	No	_____
R/W	Preliminary R/W Work	_____	Yes	_____	No	_____
	Acquisition:		Yes	_____	No	_____
	(No. of Parcels _____)	_____	Yes	_____	No	_____
	(Easements _____)	_____	Yes	_____	No	_____
	(Right of Entry _____)	_____	Yes	_____	No	_____
	RAP (No. Families )	_____	Yes	_____	No	_____
	RAP (No. Bus. _____)	_____	Yes	_____	No	_____
	Utilities (Exclude if included in contract items)	_____	Yes	_____	No	_____
	<b>TOTAL COST</b>	\$ _____				

7a. Value Engineering Analysis Required? Yes \_\_\_\_\_ No \_\_\_\_\_  
 (Yes, if total project costs are \$25M or more on the Federal-aid System, or \$20M or more for bridges)

8. PROPOSED FUNDING

		Total Cost		Cost Share	
Grand Total		\$ _____			
Federal Program #1 _____		\$ _____	Fed.	\$ _____	Reimb. Ratio _____
(Name/App. Code) #2 _____		\$ _____	Fed.	\$ _____	Reimb. Ratio _____
Matching Funds Breakdown	Local:			\$ _____	_____%
	State:			\$ _____	_____%
	Other:			\$ _____	_____%

State Highway Funds? Yes \_\_\_\_\_ Source \_\_\_\_\_ No \_\_\_\_\_  
 State CMAQ/RSTP Match Eligible Yes \_\_\_\_\_ No \_\_\_\_\_ Partial \_\_\_\_\_  
 Is the Project Underfunded? (Fed \$ < Allowed Reimb.) Yes \_\_\_\_\_ No \_\_\_\_\_

9. PROJECT ADMINISTRATION

		Agency	Consultant	State
PE	Environ Process	_____	_____	_____
	Design	_____	_____	_____
	System Man./Integ.	_____	_____	_____
R/W	All Work	_____	_____	_____
CONST ENGR	Contract	_____	_____	_____
CONSTRUCTION	Contract	_____	_____	_____
MAINTENANCE		_____	_____	_____

Will Caltrans be requested to review PS&E? Yes \_\_\_\_\_ No \_\_\_\_\_

10. SCHEDULES: PROPOSED ADVERTISEMENT DATE \_\_\_\_\_  
 Other critical dates: \_\_\_\_\_

11. PROJECT MANAGER'S CONCURRENCE

Local Entity Representative: \_\_\_\_\_ Date: \_\_\_\_\_

Signature & Title: \_\_\_\_\_ Phone No. \_\_\_\_\_

Is field review required? Yes \_\_\_\_\_ No \_\_\_\_\_

Caltrans (District) Representative: \_\_\_\_\_ Date: \_\_\_\_\_  
 (if attended Field Review)

Signature & Title: \_\_\_\_\_

FHWA Representative: \_\_\_\_\_ Date: \_\_\_\_\_  
 (if attended Field Review)

Signature & Title: \_\_\_\_\_

12. LIST OF ATTACHMENTS (Include all appropriate attachments if field review is required. See the “[ ]” notation for minimum required attachments for non-NHS projects)

- \_\_\_\_\_ Field Review Attendance Roster or Contacts Roster
- \_\_\_\_\_ Vicinity Map (Required for Construction Type Projects)

IF APPLICABLE ( Complete as required depending on type of work involved)

- |   |   |
|---|---|
| _____ Roadway Data Sheets [Req'd for Roadway projects]                                      | _____ Signal Warrants   |
| _____ Typical Roadway Geometric Section(s) [Req'd for Roadway projects]                     | _____ Collision Diagram   |
| _____ Major Structure Data Sheet [Req'd for HBP]  | _____ CMAQ/RSTP State STIP Match  |
| _____ Railroad Grade Crossing Data Sheet  | _____ Systems Engineering Review Form (SERF)  |
| _____ Sketch of Each Proposed Alternate Improvement   | _____ Req'd for High-Risk (formerly “Major”) and Low-Risk (formerly “Minor”) ITS projects |
| _____ TE Application Document   |   |
| _____ Existing federal, state, and local ADA deficiencies not included on other Attachments |   |

13. DLAE FIELD REVIEW NOTES:

A. MINUTES OF FIELD REVIEWS

B. ISSUES OR UNUSUAL ASPECTS OF PROJECT

(Attachment to Field Review Form)

**Distribution:** Original with attachments – Local Agency  
Copy with attachments (2 copies if HBP) - DLAE

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**ROADWAY DATA**

1. TRAFFIC DATA

Current ADT \_\_\_\_\_ Year 20\_\_ Future ADT \_\_\_\_\_ Year 20\_\_ DHV \_\_\_\_\_ Trucks \_\_\_%  
 Terrain (Check One) \_\_\_\_\_ Flat \_\_\_\_\_ Rolling \_\_\_\_\_ Mountainous  
 Design Speed \_\_\_\_\_  
 Proposed Speed Zone \_\_\_\_\_ Yes \_\_\_\_\_ mph \_\_\_\_\_ No

2. GEOMETRIC INFORMATION

ROADWAY SECTION

Facility	Year Constr.	Min. Curve Radius	Thru Traffic Lanes			Shoulders		Median Width
			No. of Lanes	Total Width	Type	Each Width Lt/Rt	Type	
Exist.								
Prop.								
Min. Stds. selected:								
AASHTO _____								
3R _____								
Local _____								
	N/E Contig. Sect.							
	S/W Contig. Sect.							

Remarks (If design standard exception is being sought, cite standard and explain fully how it varies):

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

3. DEFICIENCIES OF EXISTING FACILITY (Mark appropriate one(s))

\_\_\_\_\_ Pavement Surface \_\_\_\_\_ Drainage  
 \_\_\_\_\_ Alignment \_\_\_\_\_ Bridge  
 \_\_\_\_\_ Crossfall \_\_\_\_\_ Safety (Attach collision diagram or other documentation)  
 \_\_\_\_\_ Pavement Structure \_\_\_\_\_ Federal Americans w/ Disabilities Act (ADA), State or Local accessibility requirements  
 \_\_\_\_\_ Other (describe below)

Remarks \_\_\_\_\_  
 \_\_\_\_\_

4. TRAFFIC SIGNALS \_\_\_\_\_ Yes \_\_\_\_\_ New (attach warrants) \_\_\_\_\_ Modified \_\_\_\_\_ No

5. MAJOR STRUCTURES Structure No.(s) \_\_\_\_\_ (attach structure data sheet)  
 \_\_\_\_\_

6. OTHER TRANSPORTATION FACILITIES (Name)

\_\_\_\_\_ None  
 \_\_\_\_\_ Railroad \_\_\_\_\_ (attach railroad data sheet)  
 \_\_\_\_\_ Airports \_\_\_\_\_ (attach airport data sheet)  
 \_\_\_\_\_ Transit \_\_\_\_\_  
 \_\_\_\_\_ Bicycle \_\_\_\_\_

7. AGENCIES AFFECTED

Utilities [mark appropriate one(s)]     Telephone     Electrical     Gas  
   Water             Irrigation  
   Other             Sanitary

Major Utility Adjustment: \_\_\_\_\_  
  \_\_\_\_\_

High Risk Facilities: \_\_\_\_\_  
  \_\_\_\_\_

Other: \_\_\_\_\_  
  \_\_\_\_\_

Remarks: \_\_\_\_\_  
  \_\_\_\_\_

## CHAPTER 9 CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE

### 9.1 INTRODUCTION

This chapter provides guidance for the local agency in complying with the Civil Rights requirements (Title VI, Accessibility, Equal Employment Opportunity [EEO] Contractor Compliance) and Disadvantaged Business Enterprise (DBE) requirements for federal-aid transportation projects. Each of these areas is addressed in more detail in the following sections. The information contained in this section has been extracted from other documents and should not be considered as a replacement or substitute for the laws, rules and regulations, agreements, circulars, and other guidance available.

The Division of Local Assistance (DLA) web site at:

<http://www.dot.ca.gov/hq/LocalPrograms/> provides additional information and resources that complements guidance in this chapter.

### 9.2 NONDISCRIMINATION: TITLE VI OF THE CIVIL RIGHTS ACT

Nondiscrimination provisions apply to all programs and activities of federal-aid recipients, sub-recipients, and contractors, regardless of tier (49 Code of Federal Regulations (CFR), Part 21). The obligation not to discriminate is based on the objective of Congress not to have funds, which were collected in a nondiscriminatory manner used in ways that subsidize, promote, or perpetuate discrimination based on race, color, national origin, sex, age, or physical or mental disability, sexual orientation or retaliation.

The reach of Title VI in the areas of Environmental Justice and the needs of Limited English Proficient populations has expanded jurisdiction, clients, and complexity. Environmental Justice (EJ) Executive Order 12898, amplifies Title VI by identifying and addressing, as appropriate, disproportionately high and adverse human health, or environmental effects of federal-aid projects on minority populations and low-income populations. The order is also intended to promote nondiscrimination in federal programs substantially affecting human health and the environment, and to provide minority communities and low-income communities access to public information and an opportunity for public participation in matters relating to human health or the environment.

Limited English Proficiency (LEP), Executive Order 13166, clarifies national origin discrimination as it affects persons with limited proficiency in English. The order requires federal-aid recipients to take reasonable steps to ensure that LEP persons have meaningful access to programs, services, and information free of charge.

Language barriers prohibit LEP persons from:

- Obtaining services and information relating to transportation services, programs, and projects.
- Taking advantage of the transit system, which could affect their jobs and social opportunities.

- Understanding the benefits to which they are entitled when their home or business property is acquired through eminent domain.

## IMPLEMENTING TITLE VI

The DLA is responsible for developing policies and procedures in order for local agencies to implement Title VI. DLA has included checks and balances throughout its processes including legal review of major agreements and documents.

**Title VI Assurances:** Local agencies sign this assurance as part of their Master Agreement with Caltrans (see Exhibit 4-C “Master Agreement-Sample,” Chapter 4 of the *Local Assistance Procedures Manual* [LAPM]). The Program Supplement Agreement for each project includes the local agency’s reaffirmation of the Nondiscrimination Assurances contained in the Master Agreement.

**Environmental:** Presidential Executive Order 12898 (EJ) is considered during the preliminary environmental investigation process and completion of the Preliminary Environmental Study (PES) Form. See Exhibits 6-A “Preliminary Environmental Study (PES) Form,” and B “Instructions for Completing the Preliminary Environmental Study (PES) Form,” Chapter 6 of the LAPM or refer to this web site:

[http://www.dot.ca.gov/hq/LocalPrograms/lam/prog\\_p/p06envrp.pdf](http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/p06envrp.pdf)

If a project requires that a Relocation Impact Study and/or Community Impact Assessment be conducted, the local agency follows the guidance set forth in the *Standard Environmental Reference* (SER). The SER is an on-line electronic reference that sets forth document content and format, as required by law or regulation and recommended format, if not specified by law or regulation. Chapter 25 of the SER addresses Environmental Justice (EJ) and LEP requirements:

<http://i80.dot.ca.gov/ser/voll/sec3/community/ch25ej/chap25ej.htm>

**Public Hearings and Public Involvement Meetings:** The attendance and concerns of LEP persons, persons with disabilities, minority populations, and low income populations at public involvement meetings and hearings must be carefully documented to comply with Title VI of the Civil Rights Act of 1964, including statistics of participants by race and gender. Public hearing announcements must be made available in languages understood by the affected population. Public hearings should be held at locations that are both geographically and structurally accessible. Interpreters should be made available for LEP persons and for the hearing impaired (see Chapter 8, “Public Hearings,” of the LAPM.).

**Local Agency Contact with LEP Persons:** Each local agency receiving federal-aid funds shall perform an annual assessment to determine if modifications are needed to their program and activities to ensure full access by LEP persons. See LEP Plan at the following Caltrans Title VI website:

[http://www.dot.ca.gov/hq/bep/title\\_vi/LEP/index.htm](http://www.dot.ca.gov/hq/bep/title_vi/LEP/index.htm)

**Right of Way:** On federal-aid projects, all Right of Way (R/W) activities are conducted in accordance with the *Caltrans Right of Way Manual*, unless the local agency has adopted its own procedures, which Caltrans has approved. The *Caltrans Right of Way Manual* requires that the public be provided with Title VI information and complaint procedures within each of the following R/W functions: Appraisals, Acquisition, Relocation Assistance Program (RAP) and Property Management (see Chapter 13, “Right of Way,” of the LAPM).

**Construction:** Federal-aid construction contracts must include provisions, which require compliance with Title VI. The specific contract provision language is included in the Federal Highway Administration (FHWA) Form 1273 that is physically inserted in the federal-aid construction contract (see Chapter 12, “Plans, Specifications and Estimate,” of the LAPM).

**Additional Resources for Title VI Implementation:** You may access additional information on implementing Title VI (including Potential Title VI Issues, Self Monitoring, Good Practices and Mitigation Measures) in the electronic version of the Caltrans Title VI Guide Book:

[http://www.dot.ca.gov/hq/bep/title\\_vi/t6\\_guidelines\\_choice.htm](http://www.dot.ca.gov/hq/bep/title_vi/t6_guidelines_choice.htm).

Title VI brochures in ten languages are available on the DLA web site under Title VI:

[http://www.dot.ca.gov/hq/LocalPrograms/DBE\\_CRLC/DBE\\_CRLC.html#TitleVI](http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC/DBE_CRLC.html#TitleVI)

## MONITORING TITLE VI

There are a number of actions that have been developed for the local agencies in meeting federal requirements. Attendance at public meetings by the District Local Assistance Engineer (DLAE) and receiving copies of the meeting minutes during the planning stages of local agency projects help to ensure nondiscrimination and EJ are properly being addressed at these early stages of a project.

To ensure continued compliance by the local agencies, checklists along with a review of the Plans, Specifications & Estimate (PS&E) and attendance at public meetings are some of the tools that are used initially, and then used later to facilitate the DLA in performing process reviews and other quality assurance functions. The local agency checklists and PS&Es are reviewed by the DLAE upon receipt to ensure compliance with Title VI as well as other federal and state regulations.

**Plans, Specifications & Estimate (PS&E) Checklist:** This checklist ensures that the federal and state contract requirements are being implemented. Specifically, it confirms the implementation of the mandatory requirements of FHWA Form 1273, EEO Certification, DBE provisions, and applicable wage rates, etc. The local agency submits the checklist to the DLAE along with the request for authorization to proceed with construction for federal-aid construction contracts.

Local agency PES, technical reports, Environmental Assessment (EA) and Environmental Impact Statements (EIS) provide for data collection and analysis on the demographics of neighborhoods and communities. The DLAEs and Caltrans Environmental Specialists review the environmental documents to ensure that no disproportionate adverse impacts occur on minority and low-income neighborhoods or communities.

Both the DLAE and the Caltrans District Right of Way staff monitor R/W activities on local projects (see Chapter 12, “Plans, Specifications & Estimate,” of the LAPM.) to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

**Local Agency Construction Contract Administration Checklist:** This checklist confirms that DBE and Labor/EEO compliance requirements are performed and documented in the project files. This checklist documents that the local agency will meet all of these requirements prior to the award of the construction contract (see Chapter 15, “Advertise and Award Project,” of the LAPM).

**Resident Engineer’s Construction Administration Checklist:** This checklist is completed by the local agency Resident Engineer. The purpose of the checklist is to assist the local agencies in administering federal-aid highway construction projects. This checklist documents that the data is similar to the Local Agency Construction Contract Administration Checklist. It also provides a record that the EEO/Wage Rate/False Statements Posters are being posted at specific locations, that employee interviews will be conducted in accordance with the Labor Compliance/EEO Interview form, and that DBE requirements are met. The local agency submits the checklist along with the award package shortly after award of the construction contract (see Chapter 15, “Advertise and Award Project,” of the LAPM).

## TITLE VI COMPLAINTS

The procedures in this section have been established to receive and resolve alleged civil rights discrimination complaints concerning a local agency project or projects constructed with federal-aid funds. Caltrans will investigate and submit a report of findings to FHWA within 60 days of receipt of the complaint. The complainant will be informed by the Caltrans Discrimination Complaint Investigation Unit (DCIU) staff of his/her right to appeal the Caltrans findings to FHWA California Division. An appeal will be accepted by FHWA up to 180 days FROM THE DATE OF RECEIPT OF THE DECISION.

Caltrans will include a summary report of its findings on all Title VI complaints in its annual Title VI update report to FHWA.

## 9.3 ACCESSIBILITY

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

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

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

49 CFR, Part 27 requires nondiscrimination on basis of disability in programs and activities receiving or benefiting from federal financial assistance.

The State of California has also adopted regulations –Title 24 of the California Government Code, specifying that all buildings, structures, sidewalks, curbs, and related facilities constructed in California by the use of State, county or municipal funds, or the funds of any political subdivision of the State, shall be accessible to and usable by persons with disabilities.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

### **XIII Local Assistance Procedures Manual**

The RECIPIENT will advertise, award and administer DOT-assisted contracts in accordance with the most current published *Local Assistance Procedures Manual* (LAPM).

### **XIV Transit Vehicle Manufacturers (§ 26.49)**

If FTA-assisted contracts will include transit vehicle procurements, RECIPIENT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements; to certify that it has complied with the requirements of 49 CFR, Part 26, Section 49.

### **XV Bidders List (§26.11(c))**

The RECIPIENT will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of the firm.

### **XVI Reporting to the DLAE**

RECIPIENT will promptly submit a copy of Local Agency Proposer UDBE Commitment (Consultant Contracts), (Exhibit 10-O1) or Local Agency Bidder UDBE Commitment (Construction Contracts) (Exhibit 15-G1) of the LAPM to the DLAE at the time of award of the consultant or construction contracts.

RECIPIENT will promptly submit a copy of Local Agency Proposer DBE Information (Consultant Contracts) (Exhibit 10-O2) or Local Agency Bidder DBE Information (Construction Contracts) (Exhibit 15-G2) or of the LAPM to the DLAE at the time of execution of consultant or construction contract.

RECIPIENT will promptly submit a copy of the Final Utilization of DBE participation to the DLAE using Exhibit 17-F Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors of the LAPM immediately upon completion of the contract for each consultant or construction contract.

**XVII Certification (§26.83(a))**

RECIPIENT ensures that only DBE firms currently certified by the California Unified Certification Program will participate as DBEs on DOT-assisted contracts.

**XVIII Confidentiality**

RECIPIENT will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information consistent with federal, state, and local laws.

By \_\_\_\_\_  
(Signature)

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

\_\_\_\_\_  
(Print Name and Title) ADMINISTERING AGENCY  
(Authorized Governing Body Representative)

Phone Number: \_\_\_\_\_

This California Department of Transportation's Disadvantaged Business Enterprise Program Implementation Agreement is accepted by:

\_\_\_\_\_  
[Signature of DLAE]

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

\_\_\_\_\_  
[Print Name of DLAE]

**Distribution:** (1) Original – DLAE  
(2) Signed copy by the DLAE – Local Agency

(Updated: March 4, 2009)

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**Case 1: Contracts less than \$1 million**

For consultant contracts under \$1 million, a pre-award audit is not required unless the consultant has been previously identified as a “high-risk” as described in 49 CFR, Part 18 Section 12.

49 CFR, Part 18 Section 12 states that a grantee or subgrantee may be considered “high-risk,” if an awarding agency determines that a grantee or subgrantee:

- Has a history of unsatisfactory performance, or
- Is not financially stable, or
- Has a management system which does not meet the management standards set forth in this part, or
- Has not conformed to terms and conditions of previous awards, or
- Is otherwise, not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high-risk condition and shall be included in the award.

For further clarification of the term “high-risk” contact Caltrans Audits and Investigations.

**Case 2: Contracts \$1 million or more**

Consultant contracts \$1 million or more require a pre-award audit. The pre-award audit examines the consultant’s accounting, estimating, administrative systems, proposed costs, financial condition, and the proposed contract language. The audit is as broad in scope as necessary to meet the objectives found in Exhibit 10-M “Standard Audit Program Procedures” in this chapter.

An audit is also required under the following situations:

- Accumulative amendments that increase the total amount of the contract to \$1 million or more regardless of the number of amendments.
- Any single amendment \$1 million or more.
- Any subcontract \$1 million or more.

Procedures to perform the pre-award audit will depend on who the local agency selects to perform the audit. The local agency may perform the pre-award audit with their own personnel; employ a Certified Public Accountant (CPA) to perform the pre-award audit; or request Caltrans to perform the pre-award audit.

**CALTRANS PERFORMS PRE-AWARD AUDIT**

For situations where a local agency selects Caltrans to perform the audit, the local agency must transmit a *Pre-award Audit Request Letter and Checklist* (see Exhibit 10-A in this chapter) to Caltrans Audits and Investigations with copies of the proposed consultant contract and cost proposal (also a copy to the DLAE). The consultant’s cost proposal for the prime and all proposed subcontractors must contain a breakdown of all components of cost to include: labor base, rate, other direct costs, overhead, and fee. For “Sample Cost Proposals,” see Exhibit 10-H in this chapter. The agency must advise the consultant that an audit needs to be performed and that cooperation with the auditors is expected.

Thirty working calendar days from the date of receipt of a complete and acceptable package (which includes the request, draft contract, and a cost proposal for the consultant and subcontractors, each with a cost breakdown) should be allowed as a guideline. After receipt of the pre-award audit report from Caltrans Audits and Investigations, with the resolution of outstanding issues by the local agency, the “Audit Disposition” (Exhibit 10-K in this chapter) shall be completed by the local agency and sent to Caltrans Audits and Investigations with a copy to the DLAE. Section 4.3 of the *Caltrans Service Contracts Manual* provides additional details about the audit process and is available at: <http://admin.dot.ca.gov/pc/pdfshell.shtml>

#### **LOCAL AGENCY/ HIRED CERTIFIED PUBLIC ACCOUNTANT PERFORMS PRE-AWARD AUDIT**

The local agency shall notify Caltrans Audits and Investigations of their decision to perform the pre-award audit using its own forces, or by contracting with a Certified Public Accounting firm. The notification will be in writing, using the sample “Pre-award Audit Notification Letter” (Exhibit 10-L in this chapter). As a part of this notification process, the local agency shall also submit pre-award audit procedures.

Caltrans Audits and Investigations may perform a review of such procedures and express an opinion on them as needed. Caltrans shall retain the right to audit, or review the work of the local agency or designee at any time.

The audit must be completed before the consultant contract is executed. Failure to do this will result in loss of funds for the consultant services. **The audit must be performed in accordance with generally accepted government auditing standards required by the United States General Accounting Office at: [www.gao.gov/govaud/ybk01.htm](http://www.gao.gov/govaud/ybk01.htm).**

The local agency shall follow the information in the “Accounting and Auditing Guidelines for Contracts with Caltrans” (Exhibit 10-N in this chapter) to assure that the audit objectives are clear as to the basic elements of an accounting system. In addition, *Standard Audit Program Procedures* shall be used as the minimum procedures to be performed for the pre-award audit.

Negotiation may begin with the consultant while the audit is being performed. The contract shall not be executed until the audit report has been completed and the following are found to be satisfactory by the auditor: consultant’s accounting system, rates charged, knowledge of FHWA’s cost eligibility, and documentation requirements. The local agency shall be proactive to resolve any audit comments before execution of the consultant contract.

The “Request for Authorization to Proceed with Preliminary Engineering” (Exhibit 3-A, of the LAPM) includes boxes that indicate compliance with the pre-award audit requirement when there is federal-aid and or state participation.

The “Audit Disposition” ( Exhibit 10-K in this chapter) must be signed by the local agency financial officer and submitted to the DLAE at completion of the pre-award audit. A courtesy copy of pre-award audits conducted by the local agency shall be mailed to:

Department of Transportation  
Caltrans Office Audits and Investigations  
P.O. Box 942874  
Sacramento, CA 94272-0001

**FIGURE 10-1 SEGMENTING CONSULTANT WORK**

	Well-structured Projects With Simple Right of Way Requirements	Well-structured Projects With Complex Right of Way Requirements	More Difficult Projects	Very Complex Projects
<b>Preliminary Engineering</b>				
<b>Environmental Analysis</b>				
<b>Plans, Specifications &amp; Estimates</b>				
<b>Right of Way Activities</b>				
<b>Utility Relocation</b>				
<b>Construction Engineering</b>				

### VALUE ENGINEERING ANALYSIS

For projects on the federal-aid system with a total project cost of \$25 million or more and a bridge project with a total project cost of \$20 million or more, federal requirements included in “SAFETEA-LU” Section 1904 “Stewardship and Oversight” mandate that a “value engineering analysis” be performed on these projects. For more information on this subject, please see Chapter 12 “Plans, Specifications & Estimate,” Section 12.5 “Value Engineering Analysis” of this manual.

For bridge projects, the multi-discipline team shall also include bridge substructure requirements based on construction material and be evaluated as follows:

- On engineering and economic bases taking into consideration acceptable designs for bridges.
- Using analysis of life-cycle and duration of project construction.

### SPECIFY PRODUCTS TO BE DELIVERED

The Contract Administrator identifies the products and services to be delivered as a result of consultant contract work. These vary depending upon the type of projects and the phase of project development being addressed.

### SCOPE OF CONSULTANT WORK

The scope of work, which the contract must include, is a detailed description of the products or services the consultant is to provide. From a detailed scope of work, consultants respond to a project advertisement; determine personnel and time requirements; and develop a technical proposal. Therefore, the scope of work must be clear, concise, complete, and describe the deliverables and deadlines.

### DBE PARTICIPATION

The provisions of 49 CFR, Part 26 require that a local agency receiving federal-aid funds comply with the DBE program, and that DBE firms have the opportunity to participate in the projects (see Chapter 9, “Civil Rights and Disadvantaged Business Enterprises,” of the LAPM). Such steps include the setting of goals to ensure DBE firms are considered by the proposing consultants. When feasible, organize the project schedule and task requirements to encourage participation in the contract by DBE firms. Local agencies should be fully aware of all of the subcontracting opportunities in their consultant contracts. Below are some examples of subcontracting opportunities for various types of contracts:

- For the design of a bridge (surveys, geotechnical, hydraulics, hydrology, seismic studies, cost estimating, traffic control, as-builts, etc.).
- For the seismic retrofit of an existing bridge (surveys, geotechnical, forensic studies, seismic studies, cost estimating, as-builts, etc.).
- For the design of roadways (surveys, hydrology, geotechnical, cost estimating, traffic control, as-builts, etc.).

The consultant shall ensure that certified DBE firms have the opportunity to participate in the performance of the contract and shall take all necessary and reasonable steps for such assurance.

An Underutilized DBE (UDBE) goal should be established for each contract if there are subcontracting opportunities and available UDBE firms. The consultant must meet the goal by using UDBEs, or document a good faith effort to meet the contract goal. Good faith efforts shall be documented and verified (Chapter 15, Exhibit 15-H “UDBE Information-Good Faith Efforts,” form of the LAPM). If a UDBE subconsultant is unable to perform and the goal is not otherwise met, the consultant must make a good faith effort to replace him/her with another UDBE subconsultant to the extent needed to meet the UDBE goal. For more detailed information see Exhibit 10-I, “Notice to Proposers Disadvantaged Business Enterprises Information.” For sample contract clauses with and without specified UDBE goals see Exhibit 10-J, “Standard Agreement for Subcontractor/DBE Participation.”

### **REPORTING DBE PARTICIPATION**

DBE language must be included in the RFQ or RFP, if the proposed contract will include federal-aid funds. The “Notice to Proposers Disadvantaged Business Enterprise Information” (Exhibit 10-I, of the LAPM) is to be included in all consultant contracts with federal-aid funds. In addition, certain DBE contract clauses must be included in the consultant contract.

### **REPORTING UDBE COMMITMENTS AND DBE INFORMATION**

#### **For contracts with UDBE goals:**

The “Local Agency Proposer UDBE Commitment (Consultant Contracts) (Exhibit 10-O1) must be included in the proposal package and provided by each proposer. The completed form must be submitted to the DLAE at the time of award.

This form must include the names, addresses, and phone numbers of UDBE firms that will participate with a complete description of work or supplies to be provided by each, and the dollar value of each UDBE transaction. When 100 percent of a contract item of work is not to be performed or furnished by the UDBE, a description of the exact portion of work to be performed or furnished by that UDBE should be included in the UDBE commitment, including the planned location of that work. A proposer certified as a DBE and is owned by an African American, Asian-Pacific America, Native American, or a Woman should describe the work it has committed to be performed with its own forces, as well as any other work that it has committed to be performed by UDBE subcontractors, suppliers, and trucking companies.

The proposer shall provide written confirmation from each UDBE participating in the contract. A copy of a UDBE’s quote will serve as written confirmation that the UDBE is participating in the contract. If a UDBE is participating as a joint venture partner, the proposer shall submit a copy of the joint venture agreement.

The “Local Agency Proposer DBE Information (Consultant Contracts)” (Exhibit 10-O1) shall also be included in the proposal package and provided by each proposer. The purpose of this form is to capture DBE participation in accordance with 49 CFR, Part 26. On contracts with a UDBE goal, this form captures certified DBEs that are owned by Hispanic American and Subcontinent Asian American males (include persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka). This DBE participation will be counted towards the race neutral portion of the local agency’s AADPL.

For contracts with no UDBE contract goal, Exhibit 10-O2 shall be included in the proposal package and provided by each proposer. The purpose of including this form is to capture all DBE participation, including UDBE participation that was acquired through normal contracting procedures (i.e., no goal was placed on the contract).

**Reporting DBE (including UDBE) Final Utilization (Contracts with or without goals)**

Upon completion of the contract, regardless of whether UDBE or other DBE participation is obtained, a summary of the UDBE and DBE final utilization shall be prepared, certified correct, and submitted on the form “Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors” (Exhibit 17-F, of the LAPM) or equivalent by the contractor to the local agency showing total dollars paid to each subcontractor and supplier whether UDBE, DBE, or non-DBE. Exhibit 17-F is reviewed by the local agency and certified as complete and accurate.

The local agency must send the original, plus one copy of the completed Exhibit 17-F with the final invoice to the DLAE within thirty (30) days after completion of the contract.

**ESTIMATED COST OF CONSULTANT WORK**

An independent cost estimate is needed for consultant contracts (required for contracts over \$100,000) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance, so the local agency’s negotiating team has a detailed cost analysis of the project to evaluate the reasonableness of the consultant’s cost proposal. The estimate, which is specifically for the use of the local agency’s negotiating team, is to be kept confidential.

A good cost estimate can be prepared only if the scope of work is defined clearly. The scope of work must include a list of the products or services which the consultant is required to deliver, and a time schedule of when they must be delivered.

It should be stressed that all work to be derived from the consultant services (i.e., preliminary design, environmental, final design) must be clearly identified in the solicitation of consultant services (i.e., RFQ, RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible.

The cost estimate must include a breakdown of:

- Direct labor costs
- Indirect costs
- General and administrative costs
- Other direct costs such as equipment and materials
- Subcontractor costs
- Net fee or profit

each other during the debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

### **INTERVIEW TOP-RANKED CONSULTANTS**

Each consultant to be interviewed is given a copy of the draft of the proposed contract, defining the detailed project requirements and others. This should be sent with the initial notification of the interview.

Between the time of the notification of the shortlist and interviews, the local agency may answer any questions concerning the project segment to be contracted out, if not done earlier during the solicitation. In addition, the local agency may conduct additional reference checks for each consultant to be interviewed. Consultants should submit their questions and receive their answers in writing. It is important that all consultants on the shortlist receive the questions and answers and are given the same information.

The committee should evaluate reference checks and other information that is gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks and other information may be discussed with the consultant at the interview.

Interviews are to be structured and conducted in a formal manner. Each consultant shall be allowed the opportunity to make a presentation if desired; however, a time limit should be specified. Interview questions are prepared in advance.

Two types of questions may be asked:

- Questions that are to be asked of all competing consultants.
- Questions relating to each specific consultant, based upon the reference checks, and the strengths and weaknesses identified during evaluation of the “SOQ.”

The agency can request competing consultants to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process.

Additional information requested should be kept at a minimum, that is only information required to select the most qualified consultant for the contract. The selection committee or local agency shall not gather additional information concerning the consultants after the interviews are completed.

### **DEVELOP FINAL RANKING AND NOTIFY CONSULTANTS OF RESULTS**

The selection committee discusses and documents the strengths and weaknesses of each proposal and develops a final ranking of the most qualified consultants. All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not selected as the most qualified. Therefore, the selection committee should keep notes why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected should be objective. Consultants should not be compared with each other or provided with information about other consultants during the debriefing.

Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

## CONDUCT SCOPING MEETING

The Contract Administrator meets with the first-ranked consultant's project manager to review the project, and to ensure that the consultant has a complete understanding of the work that is required. The consultant is shown as much material as is available regarding the project. Any technical questions regarding the project are answered for the consultant.

## REQUEST COST PROPOSAL

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

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

## NEGOTIATE CONTRACT WITH TOP-RANKED CONSULTANT

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

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, etc. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. A pre-award audit of the consultant's operations may be required (see Section 10.1 "General," in this chapter). If so, cost negotiations may not conclude until after the audit report is received. Discussions on other aspects of the contract may occur concurrently with the preparation of the audit. The items typically negotiated include:

- Work plan
- Schedule
- Products to be delivered
- Classification, wage rates, and experience level of personnel to be assigned
- Cost items, payments and fee

Lists of qualified consultants (prequalified lists) established through the RFQ process must be reestablished at least once every 24 months, to give new consultants the opportunity to qualify. Any extension of the prequalified list beyond 24 months, must be justified in writing by the local agency and shall not exceed an additional 12 months. Consultant contracts for Architect/Engineer services shall be limited to five years unless they are project specific and the scope of the project work will exceed the five year limit.

## CLOSEOUT PROJECTS

Local agencies are encouraged to close out consultant contracts quickly. If the contract was for preparation of PS&E, environmental, preliminary material testing and/or material reports, or preliminary surveys, such closeouts should be delayed within the requirements of the “Timely Use of Fund” policy until after physical construction of the project is completed, and all construction claims are settled. Delaying the closeout until project completion ensures the consultant’s availability, if problems arise, or if the need for a change occurs relative to the consultant’s work.

After making final payment of consultant invoices, the local agency is to follow the requirements in this chapter and in Chapter 5, “Accounting/Invoices,” of the LAPM to request final reimbursement.

## PERFORMANCE EVALUATION

The Contract Administrator evaluates the consultant’s performance after the consultant’s final report has been submitted, and the Contract Administrator has conducted a detailed evaluation with the consultant’s project manager. See Exhibit 10-S, “Consultant Performance Evaluation” form of a suggested format for use by the local agency.

## PROJECT RECORDS

For audit purposes, project records and documentation shall be kept for three (3) years after payment of the final federal and/or state voucher. Among the records to be retained as follows:

- Copies of RFPs and RFQs
- Documentation of DBE participation
- Solicitation/advertisement records
- Identification of selection committee members
- Evaluation and ranking records
- Independent cost estimate
- Record of negotiations
- Pre-award audit when applicable
- Executed consultant contracts and amendments
- Construction oversight/progress meetings
- Progress and final payments
- Performance evaluation
- Consultant contract checklists
- Accounting records documenting compliance with state and federal administrative requirements

## 10.8 MISCELLANEOUS CONSIDERATIONS

### RETAINING A CONSULTANT AS AN AGENCY ENGINEER

A local agency may retain qualified consultants on its staff in professional capacities such as agency consultant engineers, architects, or public agency officials such as City Engineer (or equivalent). The agency consultants can be an individual or a firm providing professional and/or management services.

Eligibility for federal and/or state reimbursement for local agency engineering (or equivalent) services requires the following:

- Compliance with the selection procedures specified in this chapter.
- Existence of a contract between the local agency and the consultant specifying the local agency engineering services to be performed.
- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer.
- Completion by the consultant designated as an agency engineer of the conflict of interest for public agency officials “Form 700” as required by state law
- For a state funded or federal-aid project, completion of an “Exhibit 10-T Panel Member Conflict of Interest and Confidentiality Statement” form by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered.
- For a state funded or federal-aid project, a local agency consultant in a management role shall not:
  - Participate in, or exercise authority over the A&E selection process, if that consultant’s firm is one of the proposing firms, or sub-consultant to a proposing firm.
  - Participate in, or exercise authority over management of work performed by the consultant’s firm, or to a consultant’s firm of which the local agency consultant firm is a sub-consultant. This would include, but not limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables; and approving invoices.
  - Apply for or receive reimbursement of federal-aid funds for the local agency’s federal-aid project if either of the foregoing has occurred. However reimbursement for the construction contract portion of the project will still be allowed provided all other federal-aid requirements have been met.
- For a state funded or federal-aid project, completion of a “Exhibit 10-U Consultant in Management Position Conflict of Interest and Confidentiality Statement” form by all consultant engineering staff in management positions that exercise authority over the A&E Selection Panel pertaining to the specific selection process and the firms being considered.
- A completed “Exhibit 10-U Consultant in Management Position Conflict of Interest and Confidentiality Statement” form shall be submitted to the District Local Assistance Engineer (DLAE) by the local agency concurrently with submitting the request for the funding authorization of an Architect Engineer contract which will contain federal or state funds.
- Selection of consultants for management positions shall be by the use of qualification based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates and awarded within the last five (5) years and if extended, only annually by contract amendments approved by the local agency Board of Supervisors, City Council etc.

If engineering services for a project are within the scope of the services described in the retained consultant's agreement, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for federal and/or state reimbursement for these services require a new consultant agreement to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the Request for Proposal (RFP), or Request for Qualifications (RFQ) shall not be considered in the selection of consultants for the resulting project specific work.

When engineering or architectural consultants are procured with the federal-aid funds, the local agency (subgrantee) shall fully comply with the following:

- Subparagraphs of 49 CFR §18.36(b)(2) "...maintain a contract administration system...."; and (3) "...maintain a written code of standards.... No employee, officer or agent of the ...subgrantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved...."
- Subparagraph of 23 CFR §172.9(d) "Consultant in management roles," which requires that if a local agency has or intends to have a consultant in a management role (except as the designated public official, City Engineer or equivalent, as provided for under the terms of the local agency contract), the local agency shall receive approval from Caltrans. In addition, any federal-aid projects designated as High Profile projects, may also need approval from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.)

## CONSTRUCTION ENGINEERING SERVICES

Under federal-aid regulations and state policy, the primary responsibility for general supervision of construction must remain with the local agency. The local agency must also ensure that the work is performed in accordance with the approved plans and specifications, by employing or retaining as a consultant a registered engineer for construction engineering services on the project.

All activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is responsible in-charge. These activities may include construction surveys, foundation investigations, measurement and computation of quantities, testing of construction materials, checking of shop drawings, preparation of estimates, reports, and other inspection activities necessary to ensure that the construction is being performed in accordance with the plans and specifications. The construction engineering consultant's agreement defines the relative authorities and responsibilities of the full-time employee of the local agency in charge of the project and the consultant's construction engineering staff.

If a technical inspection consultant is to provide professional assistance to the local agency, a formal consultant contract must be executed which follows this chapter's requirements. The agreement shall provide for reviews at appropriate stages during performance of the work to determine if any changes or other actions are warranted. These reviews are to be made by the local agency.

## 10.9 REFERENCES

- 23 CFR, Section 172
- 23 CFR §172.5
- 23 CFR §172.9(d)
- 23 CFR §26, Appendix A
- 41 CFR §1-9.1
- 48 CFR §31
- 49 CFR §18.12
- 49 CFR §18.36
- 49 CFR §18.36(b)(2)
- 49 CFR 26, Appendix A
- 41 USC 403(11)
- OMB Circular A-110
- *Standard Environmental Reference (SER)*
- *Government Code* Sections 4525 through 4529.5
- *California Labor Code*, Section 1775
- *Caltrans Service Contracts Manual*

## EXHIBIT 10-K AUDIT DISPOSITION

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

Agency Name: \_\_\_\_\_

Federal Project Number: \_\_\_\_\_

To document the disposition of the required pre-award (pre-negotiation) audit prescribed in 23 CFR 172, this form shall be completed for each consultant contract with participating state or federal-aid highway funds of \$1 million or more and each contract under \$1 million, where the consultant was previously identified as a "high-risk" recipient as described in 49 CFR Part 18.12.

**(Check appropriate box)**

## Caltrans Performs Pre-award Audit

- Caltrans' Audits and Investigations performed the pre-award audit and informed the local agency of its findings. The local agency resolved any outstanding issues and found the consultant satisfactory.

## Local Agency (or hired CPA) Performs Pre-award Audit

- Pre-award audit completed. Consultant found satisfactory.
- A courtesy copy of the completed pre-award audit was mailed to Caltrans' Audits and Investigations on (date).

\_\_\_\_\_  
Signature of local agency financial/auditing officer

Title: \_\_\_\_\_

**Distribution:** 1) (Caltrans Audits and Investigations original), DLAE, local agency project files  
2) Project Files

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**EXHIBIT 10-T PANEL MEMBER CONFLICT OF INTEREST AND CONFIDENTIALITY STATEMENT**

RFP/RFQ PROCUREMENT NUMBERS: \_\_\_\_\_

PROJECT NAME:  
\_\_\_\_\_

APPLICABILITY: Applicable to local agency consultant procurements which will contain Federal or State funds in the consultant contract.

- I am an employee of the local agency that is responsible for this procurement.
- I am an employee of a consultant under contract to the local agency that is responsible for this procurement but I am not in a management position with the local agency.
- I have a personal, financial, or business interest in past employment activity or a personal relationship regarding the firms (including sub-consultants) that are the subject of this evaluation. A brief description is provided on the back of this form.
- I certify that I have no current contractual relationship with any of the firms (including subconsultants) that are the subject of this evaluation.
- I certify that I have no personal or financial interest and no present or past employment activity or personal relationship or prior contractual relationship which would be incompatible with my participation in this solicitation process and I am fully able to give full, fair and impartial consideration to all proposals/bids as an appointee to the related evaluation.
- I certify that I have read **49 CFR 18.36(b)(3)** below and I agree not to participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. **Note:** Caltrans is the Grantee and the local agency is the sub-grantee.

**49CFR 18.36(b)(3)**

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

- I fully understand and agree to immediately disqualify myself as soon as I am aware of a conflict of interest that may compromise my fair and impartial consideration of the proposals/bids.
  
- I certify that I will hold in the strictest confidence all bids, proposals, correspondence, memoranda, working papers, or any other media which has any bearing on, or disclose any aspect of, any respondent or potential respondent to the RFP/RFQ above. I will not discuss the evaluation process with anyone no involved in the evaluation process until its completion.
  
- I fully understand that it is unlawful for a person to utilize any organization name or auxiliary organization information, which is not a matter of public record, for personal gain.
  
- I fully understand that any violation of the above is a basis for disciplinary action, up to and including termination and/or referral to the appropriate authorities for further investigation.
  
- I am aware that the following firms and sub-consultants/sub-contractors have submitted proposals in response to the above referenced solicitation:

List firms including sub-consultants/sub-contractors:

- 1. \_\_\_\_\_
  
- 2. \_\_\_\_\_
  
- 3. \_\_\_\_\_
  
- 4. \_\_\_\_\_
  
- etc. \_\_\_\_\_

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

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dept./Local Agency: \_\_\_\_\_

Employer: \_\_\_\_\_

**CONTRACT ADMINISTRATOR’S REVIEW**

I have reviewed the foregoing “Conflict of Interest and Confidentiality Statement” and have determined, according to the information provided, that this individual:

does not have a conflict of interest and can participate in the “Selection Panel”

does have a conflict of interest and cannot participate in the “Selection Panel”

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

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dept./Local Agency: \_\_\_\_\_

Employer: \_\_\_\_\_

**Distribution:** Original – Local Agency Consultant File

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**EXHIBIT 10-U CONSULTANT IN MANAGEMENT POSITION CONFLICT OF INTEREST AND  
CONFIDENTIALITY STATEMENT**

RFP/RFQ PROCUREMENT NUMBERS: \_\_\_\_\_

PROJECT NAME:  
\_\_\_\_\_

APPLICABILITY: Applicable to local agency consultants in management positions that exercise authority over the Architect & Engineering Selection Panel from which the local agency has or plans to have one or more consultant contracts containing Federal or State funds.

- I am an employee of a consultant under contract to the local agency that is responsible for the procuring and administering of one or more consultant contracts containing either Federal or State funds.
- I am in a management position with the local agency, my title is listed below and I have attached my duty statement.
- The procedures followed to procure and execute the contract, between the local agency and the consulting firm of which I am employed, comply with all Federal and State requirements. Also this contract has a specific beginning and ending date.
- I hereby certify as follows:
1. I will not directly or indirectly participate in, manage, or oversee any consultant selection procurement process in which the consulting firm of which I am employed is competing as a consultant or sub-consultant.
  2. I will not directly or indirectly influence any employee, staff member, or other individual participating in any consultant selection procurement process in which the consulting firm of which I am employed is as a consultant or sub-consultant.
  3. I will not directly or indirectly participate in, manage, or oversee any local agency contract that is with the consulting firm of which I am employed, regardless of whether the involvement of my employer in the contract is as a consultant or sub-consultant. Among other things, this includes my not being involved in managing the work; and not approving changes in the schedule, scope, deliverables or invoices.
  4. I understand that if I am involved in any local agency contract that is with the consulting firm of which I am employed, in violation of 1. or 2. above, that local agency contract will no longer be eligible for Federal or State reimbursement because of my involvement.
- I certify that I have read **49 CFR 18.36(b)(3)** below and I agree not to participate in selection, or in the award or administration of a contract supported by Federal or State funds if a conflict of interest, real or apparent, would be involved. **Note:** Caltrans is the Grantee and the local agency is the sub-grantee.

**49CFR 18.36(b)(3)**

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

I fully understand that it is unlawful for a person to utilize any organization name (i.e. local agency) or auxiliary organization information, which is not a matter of public record, for personal gain.

I fully understand that any violation of the above could be a basis for ineligibility of reimbursement of State and/or Federal project funds.

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

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dept./Local Agency: \_\_\_\_\_

Employer: \_\_\_\_\_

**REVIEW BY SUPERVISOR OF CONSULTANT IN MANAGEMENT POSITION**

I have reviewed the foregoing "Conflict of Interest and Confidentiality Statement" and will ensure:

that the foregoing named local agency consultant who is under contract and in a management position with our local agency, abides by the foregoing terms and conditions.

that should the foregoing named local agency consultant, who is under contract and in a management position with our local agency, violate any of the foregoing terms and conditions,

the Caltrans DLAE will be notified and such violation will be considered a breach of ethics and could be a basis for ineligibility of State and/or Federal project funds.

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

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dept./Local Agency: \_\_\_\_\_

Employer: \_\_\_\_\_

**REVIEWED/CONCURRENCE BY DISTRICT LOCAL ASSISTANCE ENGINEER**

I have reviewed the foregoing "Conflict of Interest and Confidentiality Statement" and Supervisor's statement.

- Based upon the foregoing, I concur that the consultant, who is under contract and in a management position with the local agency, does not appear to present a conflict of interest. The local agency and the consultant should be considered eligible for Federal and State reimbursement.
- Based upon the foregoing, I do not concur as I believe that the consultant, who is under contract and in a management position with the local agency, does appear to present a conflict of interest.
- The consultant's time is not considered eligible for either Federal or State reimbursement.
- The local agency is not considered eligible for either Federal or State reimbursement.

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

(DLAE) Signed: \_\_\_\_\_

Name: \_\_\_\_\_

**Distribution:** 1) Copy to: DLAE for each Federal/State funded project  
2) Copy to be returned to Local Agency by DLAE with signature

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Bridge Length -- The greater dimension of a structure measured along the center of the roadway between backs of abutment backwalls or between ends of bridge floors.

Bridge Roadway Width -- The clear width of structure measured at right angles to the center of the roadway between the bottom of curbs or, if curbs are not used, between the inner faces of parapet or railing.

This definition is the minimum acceptable to the FHWA and is generally more restrictive than the state's definition, which is included as follows for reference.

The Office of Structures Maintenance and Investigation assigns an official bridge number and name to all "Bridges" meeting the following minimum criteria:

- Structures of more than length, measured parallel to the roadway centerline (facilities which come within the limits of the bridge classification only because of their skew, shall not be carried as bridges).
- Other structures where periodic inspection with written reports are desired. This includes items such as very large retaining walls, large culverts not qualifying as bridges, and special structures.

### Bridge Design Procedures

All local bridges on and off the NHS shall be designed in accordance with the current edition of the Caltrans *Bridge Design Specifications* manual available at this website:

<http://www.dot.ca.gov/hq/esc/techpubs/>

In addition to the twelve geometric controlling criteria discussed in the Caltrans *Bridge Design Specifications* manual, the FHWA has designated "bridge structural capacity" as the thirteenth controlling criteria with a primary importance for safety in the selection of design standards. Deviations from standards relating to "bridge structural capacity" are not permitted.

It is desirable that a minimum appraisal rating (code) of 6 be attained for bridges, as defined by Item 68 in the Appraisal Section of the U.S. DOT/FHWA publication entitled *Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges*, or justification provided, as to why the minimum appraisal rating (code) of 6 was not attained.

The following Caltrans publications are also available to assist local agencies in designing their bridges:

- *Bridge Design Practice Manual*
- *Bridge Design Details*
- *Bridge Design Aids*
- *Bridge Memo to Designers*

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### Clear Width Design

For continuity and safety, the curb-to-curb corridor width should be continued across a bridge. Additional shoulder width should be also considered for pedestrian and bicyclist safety on the bridge. This additional shoulder width for safety is particularly important on urban collectors and arterials.

### Seismic Design

The *Caltrans Bridge Design Specifications* manual reflects the requirements of the current edition of *AASHTO Standard Specifications for Highway Bridges*, modified by Caltrans to incorporate California seismic design as well as other requirements.

In addition to the above-referenced Caltrans bridge manuals and publications, the following design references are also available to those involved in seismic and retrofit design:

- *Seismic Design References* - Excerpts for the Caltrans Division of Structures Technical manuals compiling seismic design requirements
- *Memo to Designers 20-4, – Earthquake Retrofit Guidelines for Bridges*
- Various publications of design notes and research results by the University of California at Berkeley, San Diego and others. This information is used extensively in current practice and enables the industry to keep up with the very latest research results.
- Various computer programs have been developed by Caltrans personnel to assist in the analysis required in retrofit design. These programs are available to local agencies and consultants involved in retrofit design:
  - a) Beams304      b) Col604n      c) WFrame      d) Frame407
  - e) Nfoot          f) Col702r      g) XSection

The references discussed above which are not available from Caltrans' Publication Distribution Unit, are available from the Caltrans Structure Local Assistance Office at (916) 227-8038.

### Railroad Bridges

Design loadings and geometrics for bridges carrying railroads and clearances for highway bridges spanning railroads shall conform to the *Caltrans Bridge Design Specifications*.

### Bridge Railing

Bridge railing shall be designed in accordance with the current edition of *AASHTO's Guide Specifications for Bridge Railings*.

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

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

A public interest finding fully justifying the use of force account work on a local federal-aid project must be prepared by the local agency. The documentation should include:

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

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

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

- Personnel
  - Time sheets
  - Salaries and payrolls
  - Foreman's reports
- Materials
  - Invoices for materials and supplies, and for any special services
  - Cost of producing materials supplied by the local agency
- Equipment

- Time and cost for using equipment owned by the local agency
- Time and rates for using rented equipment

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

### EMERGENCY WORK

In an emergency situation competitive bidding may be waived on any of the federal-aid programs, and the work may be performed by either force account or negotiated contract. For projects that are exempt from FHWA oversight, the waiver shall be approved by the DLAE. An emergency is a situation that requires emergency repair work, as provided under Emergency Relief (ER) Program (see Chapter 11 “Disaster Assistance” in the *Local Assistance Program Guidelines*), or when a major element or segment of a highway system has failed and the situation is such that competitive bidding is not possible or is impractical. Competitive bidding under such circumstance may not be possible or may be impractical because immediate action is necessary to:

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

As an example: a local agency has a bridge programmed for replacement, using Highway Bridge Program (HBP) funds and has begun preliminary engineering on the bridge replacement project, a major storm does damage to the bridge before the local agency completes the design of the bridge, such that repairing the bridge is not practical. At this point, for projects that are exempt from FHWA oversight, the local agency can contact their DLAE to be granted a waiver (“Authorization to Proceed”), so as to begin negotiations with contractor(s) to replace the bridge using HBP funds and using the plans that have been completed to date.

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

## 12.5 VALUE ENGINEERING ANALYSIS

### SAFETEA-LU

Federal requirements included in “SAFETEA-LU” Section 1904 “Stewardship and Oversight,” mandate that a “Value Engineering (VE) analysis” be performed on projects on the Interstate and National Highway System (NHS) with a total project cost of \$25 million or more. Value engineering analysis also needs to be performed on bridge projects with a total project cost of \$20 million or more. The VE analysis consists of a systematic process of review and analysis of the project during the concept and design phases, by a multi-disciplined team of persons not involved in the project.

The local agency administering the project has been delegated the responsibility to ensure that VE analysis is performed under Caltrans delegation authority. For each project, the local agency shall indicate in the appropriate checkbox on the PS&E Checklist whether VE analysis was performed.

Number of Federal Trainees

<u>\$ Value</u>	<u>No. Trainees</u>	<u>\$ Value</u>	<u>No. Trainees</u>
Under \$200,000	0	\$3,000,000	7
400,000	1	4,000,000	8
700,000	2	5,000,000	9
1,000,000	3	6,500,000	10
1,500,000	4	8,000,000	11
2,000,000	5	10,000,000	12
2,500,000	6		

Over \$10,000,000 add 1 trainee per  
\$5,000,000

**FEDERAL WAGE RATES**

The payment of predetermined minimum wages on federal-aid contracts is derived from the Davis-Bacon Act of 1931 and is prescribed by 23 USC 113. These wage rates must be physically inserted in the special provision of the final contract on all federal-aid highway construction projects exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempted. Note: federal wage rates are applicable to all Recovery Act (ARRA) funded projects even if they are located on local roads or rural minor collectors.

The federal minimum wage rates are available directly from Department of Labor Home Page under [www.gpo.gov/davisbacon](http://www.gpo.gov/davisbacon). Click on "Browse all determination by State" then click on "California". For local agencies in California to be in conformance with the federal "10-day rule," local agencies are to access the "Federal Wage Rates" ten days prior to bid opening to see if updated federal wage rates have been posted. If the updated wage rates have been posted, local agencies are required to issue an addendum to insert the updated wage rates in their final contract package.

Federal wage rates are not required to be physically included in the contract advertising package provided they are referenced to an Internet web site address where they can be found. However, it must be emphasized that if an Internet web site address is used in the advertising package, the final contract package signed by the local agency and the contractor must physically contain the federal wage rates as revised by addendums, if any addendums were issued.

Local agencies that do not have Internet access, please contact your District Local Assistance Engineer to receive federal wage rates.

**RELATIONS WITH RAILROAD**

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

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

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

### **CHANGED CONDITION CLAUSES**

Standardized changed condition clauses are required to be included in all contracts. The Caltrans' standard specifications and the *Standard Specifications for Public Works Construction (Green Book)* contain standard changed condition clauses. If a local agency chooses to use a different standard specifications book, the federal regulations shall still apply.

The regulation requires the use of three different clauses:

### **DIFFERING SITE CONDITIONS CLAUSE**

This clause provides for the adjustment of the contract terms if the contractor encounters:

- Subsurface or latent physical conditions that differ materially from those indicated in the contract, or
- Unknown physical conditions of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent to the work

### **SUSPENSIONS OF WORK ORDERED BY THE ENGINEER**

This clause provides for the adjustment of the contract terms if the performance of all or a portion of the work is suspended or delayed by the resident engineer, in writing, for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry). The contractor is required to submit a request for adjustment, in writing, to the resident engineer within 7 calendar days of receipt of the notice to resume work. Recovery of profit on costs resulting from suspensions of work is not allowed.

This clause does not preclude the recognition of constructive suspensions or delays resulting from the contracting agency's actions, without written notification. The local agencies may address constructive delays and suspensions, as they chose, in their standard specifications and contract administration procedures.

Suspensions must be for unreasonable periods and do not include brief, customary suspensions for reasons inherent to highway construction (i.e., material sampling and testing; approval of shop drawings, material sources, etc.; and other reasonable and customary suspensions necessary for the supervision of construction by the contracting agency). In addition, an adjustment under this clause is not allowed if the work is

Some concepts for developing price adjustment clauses include:

- Price adjustment does not need to be a standard specification unless shown in the bid- proposal.
- There should be upper and lower limits on adjusted compensation.
- Both upward and downward adjustments should be calculated.
- Only by a significant change in the index should trigger a price adjustment.
- Basis of payment should clearly indicate coverage of the price adjustment clause.
- Contractor should not have an option to accept or reject price adjustment compensation and the compensation should be automatically incorporated in the progress and partial payment computations.
- Compensation should not be based on actual invoiced receipts.
- Upward price adjustments should not be allowed after the contract time has expired.

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

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

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

### **PROJECT LABOR AGREEMENTS**

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

Pursuant to the Executive Order, PLAs may be used on federal-aid construction project contracts by local public agencies provided that the agency presents evidence that the use of such an agreement on the relevant project will:

- (i) advance the government's interest in reducing construction costs and achieving economy and efficiency, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters as appropriate; and
- (j) (ii) be consistent with law.

If an agency would like to use a PLA on a federal-aid construction contract, the agency should submit a request for approval to their District Local Assistance Engineer (DLAE) including the draft PLA and written justification describing why the project advances the interest of the government. The draft PLA must be submitted and approval received prior to construction authorization. The use of a PLA may be approved if the local agency has made a reasonable showing that the use of a PLA on the project will advance the interests of the government. In determining whether the use of a PLA is in the interest of the government, a local agency may consider many factors. Those factors include, but are not limited to:

- the size and complexity of the project;
- the importance of the project and need to adhere to a certain timeline;
- the risk of labor unrest on the project and the circumstances that are present that may lead to a heightened risk of labor disruption, such as the history of labor unrest in the area, the anticipated working conditions of the project relating to the environment or work schedules, and the expiration of one or more collective bargaining agreements that could lead to jurisdictional disputes;
- the impacts of a labor disruption to the users, the operation of the facility, and the region;
- the costs of a delay should a labor disruption occur; and
- the available labor pool relative to the particular skills required to complete the project.

A showing of any one or more of these factors may be adequate to justify the use of a PLA in a particular project. This list is not exclusive—other factors may reasonably permit a local agency to conclude that the use of PLA is appropriate for a given project.

In order to be valid, the draft PLA must:

- bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;
- allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
- contain guarantees against strikes, lockouts, and similar job disruptions;
- set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the PLA;
- provide other mechanisms for labor-management cooperation on matters of mutual and concern, including productivity, quality of work, safety, and health; and
- fully conform to all statutes, regulations, and executive orders.

Upon receipt of the request for approval, the draft PLA and the written justification; the request will be reviewed, using the established criteria, by Caltrans and then forwarded to FHWA for their review and approval.

Executive Orders 13502 is available online at the following Webster:

<http://www.whitehouse.gov/the-press-office/executive-order-use-project-labor-agreements-federal-construction-projects>

## 12.11 OPTIONAL CONTRACT PROVISIONS

### ADDITIVE OR DEDUCTIVE BID ITEMS

Local agencies may use “additive or deductive bid items” on federal-aid projects provided they use one of the following methods, with one exception, specified in California Public Contract Code, Section 20103.8. That one exception is the method described in subparagraph 20103.8(d) which cannot be used on federal-aid projects because it does not provide for a public opening of bids with full disclosure nor a predetermined method of identifying the lowest bidder.

**“20103.8.** A local agency may require a bid for a public works **contract** to include prices for items that may be added to, or deducted from, the scope of work in the **contract** for which the bid is being submitted. Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of a specification, only the method provided by **subdivision (a)** will be used:

(a) The lowest bid shall be the lowest bid price on the base **contract** without consideration of the prices on the additive or deductive items.

(b) The lowest bid shall be the lowest total of the bid prices on the base **contract** and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(c) The lowest bid shall be the lowest total of the bid prices on the base **contract** and those additive or deductive items that when taken in order from a specifically identified list of those items in the solicitation, and added to, or subtracted from, the base **contract**, are less than, or equal to, a funding amount publicly disclosed by the local agency before the first bid is opened.

(d) Deleted as it is not to be used.

A responsible bidder who submitted the lowest bid before the first bid is opened as determined by this section shall be awarded the **contract**, if it is awarded. This section does not preclude the local agency from adding to or deducting from the **contract** any of the additive or deductive items after the lowest responsible bidder has been determined.

(e) Nothing in this section shall preclude the prequalification of subcontractors.”

### ALTERNATE BIDS

Alternate bidding is a method used to minimize the overall cost of any federal-aid projects through increased competition. By considering alternate design schemes and construction methods, it is possible to attract the greatest number of bidders and realize the lowest possible bid prices.

Alternate bidding procedures should be used when more than one alternate is judged equal over the design period and there is a reasonable possibility that the least costly design approach will depend on the competitive circumstances. The potential for using alternates will normally be developed through design studies and value engineering analysis during project development. Moreover, there may be standard plan alternates developed for repetitive design items (i.e., drainage items, bridge structures, sound walls and pavement details, etc.).

The bidding documents and contract plans should clearly indicate the design criteria and the type of alternate designs or contractor options that will be acceptable. The contractor should be permitted to bid any designated alternate that is consistent with its expertise and equipment.

### **INCENTIVE/DISINCENTIVE (I/D) PROVISIONS**

FHWA's long-standing policy prohibiting bonus payments on federal-aid projects, as formerly stated in 23 CFR 635.118, was rescinded on June 13, 1984. The decision was based on the findings of National Experimental and Evaluation Program (NEEP) 24. The NEEP-24 demonstrated that the use of early completion incentive payments could be used beneficially and without abuses.

A clear distinction should be made between the intent of I/D provisions and the purpose of liquidated damages. Although they have similar mechanisms, the function of each is different. The primary function of liquidated damages is to recover costs associated with the contractor's failure to complete the project on time. On the other hand, an I/D provision is intended to motivate the contractor to complete the work on or ahead of schedule without jeopardizing quality of work. An I/D provision for early completion is defined as a contract provision, which compensates the contractor for each day that identified critical work is completed ahead of schedule and assesses a deduction for each day that completion of the critical work is delayed. The use of I/D provisions is primarily intended for critical projects where it is essential that traffic inconvenience and delays be held to a minimum. It must be emphasized that I/D provisions should not be used routinely.

A discussion of factors to consider when selecting and developing I/D projects is available in FHWA's *Contract Administration Core Curriculum* (2006) at the following website:

[www.fhwa.dot.gov/infrastructure/progadmin/contracts/coretoc.htm](http://www.fhwa.dot.gov/infrastructure/progadmin/contracts/coretoc.htm)

Conceptual guidelines have also been developed to be used for project selection criteria and can be found in the Caltrans memorandum "Delegation of Authority for Use of A+B Bidding and Incentive/Disincentive (I/D) Provisions" at the following website:

[www.dot.ca.gov/hq/oppd/pdpmb/pdpmbidx.htm](http://www.dot.ca.gov/hq/oppd/pdpmb/pdpmbidx.htm)

### **QUALITY - PRICE ADJUSTMENT CLAUSES**

Price adjustment clauses and schedules are an important and effective component of quality assurance specifications. "Quality Assurance" specifications generally include statistically based acceptance plans, require contractor process control testing, and have provisions for pay adjustments based on the degree of compliance with specified requirements. Incentives and disincentives should rationally relate to the gain or loss in service life or performance of the product. Quality assurance specifications and programs

may lead to better contractor control of the quality of the product, however, they do not diminish the need for effective construction inspection

The FHWA has traditionally endorsed the use of incentive provisions up to five percent of the unit bid price for improved quality provided they are based on readily measured physical properties that reflect improved performance. Incentives greater than five percent on NHS projects are considered on a case-by-case basis following an analysis of performance data. For non-NHS projects, consideration for incentives greater than 5 percent is delegated to the local agency.

A detailed discussion of the criteria (such as: typical critical physical properties, acceptance plans and pay schedules) to consider when developing price adjustment provisions are provided in FHWA's *Contract Administration Core Curriculum*.

### INNOVATIVE CONTRACTING PRACTICES

Neither the FHWA nor Caltrans have any intention of mandating the use of any of the innovative contracting practices cited below on local agencies. However, the FHWA is trying to develop a process nationwide through which states, local agencies and the industry can bring forth innovative contracting practices that they believe could result in worthwhile improvements to our traditional ways of doing business. It is FHWA's intent to try all promising concepts proposed that fall within the flexibility of the federal-aid program requirements

A discussion on the "Cost-Plus-Time Bidding" (A+B method), "Lane Rental" and "Design/Build" innovative contracting techniques is provided in the FHWA's *Contract Administration Core Curriculum*. Conceptual guidelines have also been developed to be used for project selection criteria and can be found in the Caltrans memorandum "Delegation of Authority for Use of A+B Bidding and Incentive/Disincentive (I/D) Provisions" at the following website: [www.dot.ca.gov/hq/oppd/pdpmb/pdpmbidx.htm](http://www.dot.ca.gov/hq/oppd/pdpmb/pdpmbidx.htm)

## 12.12 MATERIALS AND EQUIPMENT

### PUBLICLY OWNED EQUIPMENT

On all federal-aid construction projects, publicly owned equipment should not normally compete with privately owned equipment on a project going out for bid. The local agency may approve the use of publicly owned equipment when justified by a public interest finding. Federal participation is permitted provided:

- The PS&E submittal provides for the proposed use
- The specifications indicate equipment availability, rates and delivery point
- The specifications include the provision that the contractor shall have the option of providing or renting all or part of the equipment

Public agencies shall not benefit from the rental of its own equipment and rental rates must be competitive. The rates for work performed by force account work should be based on an agreed unit price or actual cost. The equipment need not be included in the estimate; however, the estimate should include a schedule of rates charged for use of publicly owned equipment.

### **CONTRACTOR-PURCHASES FOR LOCAL OWNERSHIP**

On all federal-aid construction projects, equipment purchased by the local agency or by a contractor with ownership transferred to the local agency for construction engineering (CE) is not totally eligible for federal participation. Only that portion of the amortized equipment cost (over its useful life) attributable to the time the equipment is used on a federal-aid project is accounted for as CE and eligible.

Equipment is defined as tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

### **CONVICT PRODUCED MATERIALS**

Materials produced by convict labor after July 1, 1991 may be used on any federal-aid projects if:

- Such materials have been produced by convicts on parole, supervised release, or probation from prison
- Such material has been produced in a qualified prison facility and the amount produced during any 12-month period does not exceed the amount produced during the 12-month period ending July 1, 1987

These materials are not given preferential treatment and are subject to the same requirements as materials from other sources. The contractor furnishes all materials through normal contracting procedures and selects either public or private sources of materials. Prison Industries may not bid directly on projects but may serve as a material supplier to contractors.

### **LOCAL PREFERENCES**

On all federal-aid construction projects, materials produced within the state or local area shall not be favored over comparable materials produced outside of the state or local area. Also, in-state material sources cannot be given preference over foreign materials or actions taken against materials of foreign origin unless permitted by federal law. State or local preference provisions are not allowed on federal-aid project contracts.

### **WARRANTY CLAUSES**

For projects off the NHS, local agencies may include warranty provisions in construction contracts in accordance with procedures they have developed for their nonfederal projects.

For projects on the NHS, local agencies may include warranty provisions in construction contracts in accordance with the following conditions:

- Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for federal participation shall not be covered.

- UDBE Information - Good Faith Efforts (Exhibit 15-H)  
If applicable .....
- Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractor  
(Exhibit 17-F) or *Equivalent Provisions* .....
- Bidders’s List (49 CFR, Part 26.11) List data for all firms that bid as prime, or bid, or quote  
subcontracts for this contract (optional Exhibit 12-G).....

**F. Buy America Specification** (Check appropriate box and indicate page number if requirement applies. See Section 12.9 of the *Local Assistance Procedures Manual* for requirement.)

- Caltrans SSP 5-1- Buy America Requirements (Exhibit 12-E, Attachment M)
- Equivalent provisions are included .....
- Buy America specifications are not included in contract.
- Waiver for the following has been approved by FHWA: \_\_\_\_\_ Date \_\_\_\_\_.

**G. Federal Trainees** (Check appropriate box and indicate page number if requirement applies)

- The project has less than 100 working days. A Federal Trainee goal and special provisions are not required.
- Analysis of the Engineers Estimate has the dollar value under \$200,000. A Federal Trainee goal and special provisions are not required.
- Caltrans SSP – Federal Requirement Training Special Provisions  
(Exhibit 12-E, Attachment B, FR-14 through FR-16) are included. (The Trainee goal is \_\_\_\_\_.) \_\_\_\_\_
- Equivalent provisions are included (The Trainee goal is \_\_\_\_\_.).....

**H. Federal Wage Rates** (Check appropriate box and indicate page number if Federal Wages Rates are included)

- Federal Wages Rates are physically incorporated into this contract advertising package .....  
**Note: By checking the above box, the local agency is indicating that they are aware of the federal-aid “10-day rule” requirement.**
- Federal Wage Rates are not physically incorporated in the contract advertising package but are referenced to an Internet web site address on page number \_\_\_\_\_ of the Special Provisions where the applicable Federal Wage Rates can be found. Revisions to the applicable Federal Wage Rates, up to 10 days before bid opening, shall be identified by the issuance of an addendum with the corresponding Internet web site address of where the revisions can be found. The final contract documents signed by the local agency and the contractor, will physically include the Federal Wage Rates, or Federal wage Rates as revised by addendums, if any such addendums have been issued.
- This project is not located on a Federal-aid Route. Federal Wage Rates are not required. (Note: Federal Wage Rates are applicable to all Recovery Act (ARRA) funded projects even if they are located on local roads or rural minor collector.)

**I. Relations with Railroad** (Check appropriate box and indicate page number if special provisions are included)

- The required provisions are included .....
- This project does not involve the use of railroad properties or adjustments to railroad facilities .....

**J. American Recovery and Reinvestment Act (Recovery Act) Funds (Check appropriate box and indicate page number if special provisions are included)**

- This is a Recovery Act funded project and the required Recovery Act provisions (Exhibit 12-E, Attachment L) are included .....
- This project does not involve ARRA Funds .....

**XIII. RESTRICTED CONTRACT PROVISIONS (CHECK APPROPRIATE BOX)**

**A. Indian Preferences (Check appropriate box and provide required information)**

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

**B. Bonding and Prequalification (Check box if requirement met)**

- Bonding or prequalification, if required, will not be used to restrict competition, prevent submission of a bid by, or prohibit consideration of a bid submitted by any responsible contractor, whether a resident or nonresident of the State of California.

**C. Price Adjustment Clauses (Check appropriate box)**

- Price adjustment clauses are not included.
- Price adjustment clauses are included. The federal conditions restricting the use of these clauses have been met and are documented in the project files

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

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

**E. Proprietary Items**

- Proprietary Items are not included.
- Proprietary Items are included. A Public Interest Finding justifying the use has been approved and documented in the project files.

**XIV. MATERIALS & EQUIPMENT (Check appropriate box)**

**A. Publicly Owned Equipment (for use by Contractor). (Check appropriate box)**

**X. PROJECT PLANS AND SPECIFICATIONS**

Project plans and specifications shall be signed and stamped on behalf of the local agency by the person in responsible charge and who is a registered professional engineer licensed to practice in the State of California. A traffic control plan shall be included in the PS&E for all federal-aid highway construction projects. Check boxes to indicate requirements are met. Failure to check both boxes will result in denial of the Request for Authorization.

Erosion control plans may be required, see Section 12.7 Plans, in the LAPM. If required, check box.

Project plans and specifications may be required to meet the Americans with Disabilities Act (ADA) requirements under federal 28 CFR, Part 35 or Part 36. Whenever applicable, project plans will need to comply with the federal 28 CFR, Part 35 or Part 36, and the *California and Local Building Codes* within the project limits. In accordance with 28 CFR Sec. 35.151, curbs ramps must meet current ADA standards if the project includes streets that are to be newly constructed or altered (includes repaving). For ADA requirements, see Chapter 11 "Design Standards," and Section 12.7 of this chapter. If ADA requirements apply and will be complied with, check box.

**XI. STANDARD SPECIFICATIONS**

For projects off the State Highway System, the local agency may use *Caltrans Standard Specifications, the Standard Specifications for Public Works Construction*, or subject to the conditions described in Chapter 11, "Locally Approved Standard Specifications." Check appropriate box.

**XII. REQUIRED FEDERAL CONTRACT PROVISIONS (SEE ATTACHMENTS A thru N, THIS EXHIBIT)****A. GENERAL FEDERAL REQUIREMENTS**

General provisions must be included to reference FHWA Form 1273, Performance of Previous Contract, Noncollusion Provision and Participation by Minority Business Enterprises in Subcontracting. Caltrans SSP - Section 14. "Federal Requirements for Federal-aid Construction Projects" (Attachment A, pages FR-1 & FR-2) or equivalent provisions shall be used.

Check appropriate box (i.e., Caltrans SSP or equivalent) and indicate page number.

**B. FHWA FORM 1273****1. Incorporation of FHWA Form 1273 into Contract**

FHWA Form 1273- Required Contract Provisions, Federal-aid Construction Contracts, (Exclusive of Appalachian Contracts)(Attachment B, pages FR-3 thru FR-14) shall be made a part of, and physically incorporated into all contracts as well as appropriate subcontracts and purchase orders. The provisions contained in FHWA Form-1273 are generally applicable to all federal-aid construction projects. Except as described below, the form may not be modified.

Check the appropriate box (i.e., unmodified or modified) and indicate page number.

**2. Modification of FHWA Form 1273**

If the provisions contained in FHWA Form 1273 will be modified, fill in the required project information before completing Sections 2.a. thru 2.d.

**a. Section IV. Payment of Predetermined Wages**

This section applies to all federal-aid highway construction projects exceeding \$2,000 dollars and to all related subcontracts, except for projects not located on the Federal-aid System (roadways classified as local roads or rural minor collectors), which are exempted. If exempted, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

**b. Section V. Statements and Payrolls**

This section applies to all federal-aid highway construction projects exceeding \$2,000 dollars and to all related subcontracts, except for projects not located on the Federal-aid System (roadways classified as local roads or rural minor collectors), which are exempted. If exempted, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

**c. Section VI. Record of Materials, Supplies, and Labor**

This section applies to all federal-aid projects in excess of \$1 million only on the NHS. Certain projects are excluded on the NHS. If not applicable, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

**d. Section VII. Subletting or Assigning the Contract**

This section applies to all federal-aid projects. This section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply, if the local agency chooses 50 percent as the minimum percentage of work, excluding any identified specialty items, as specified in the *Caltrans Standard Specifications* or the Greenbook Specifications. A special provision must be included specifying which percentage is to be used.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

**C. CERTIFICATION/DISCLOSURE FORMS**

The following certification/disclosure forms shall be included in all federal-aid projects. Except for the Disclosure of Lobbying form and instructions, equivalent provisions may be used.

*Equal Employment Opportunity Certification* (Attachment C)

*Noncollusion Affidavit* (Attachment D)

*Debarment and Suspension Certification* (Attachment E)

*Nonlobbying Certification for Federal-aid Contracts* (Attachment F)

**A. INDIAN PREFERENCES**

Generally, local agencies may not use local hiring practices. However, SAFETEA-LU permits an Indian employment preference provision for projects on or near Indian reservations or Indian lands. Check the appropriate box.

**B. BONDING AND PREQUALIFICATION**

Bonding and prequalification procedures are not required for federal-aid projects. However, any procedures or requirements for bonding, insurance, prequalification, qualification, or licensing of contractors shall not be used which may operate to restrict competition, prevent submission of a bid by or prohibit consideration of a bid submitted by any responsible contractor, whether a resident or nonresident of California. Check appropriate boxes, and if bonding and/or prequalification are used, check the last box to indicate the requirement will be met.

**C. PRICE ADJUSTMENT CLAUSES**

Price adjustment clauses may be implemented if certain conditions are met. If these clauses are used, the local agency must provide documentation of the required conditions in the project files. Check the appropriate box.

**D. WARRANTY CLAUSES**

Warranty clauses may be implemented if the conditions described in Section 12.12 of Chapter 12 are met. The local agency must provide documentation of the required conditions in the project files. Check the appropriate box.

**E. PROPRIETARY ITEMS**

The use of proprietary items is restricted as described in Section 12.12 in Chapter 12. If the use does not meet these restrictions, a Public Interest Finding justifying the use must be approved by the local agency and documented in the project files. Check the appropriate box.

**XIV. MATERIALS AND EQUIPMENT**

Unless otherwise noted, see Section 12.12 of Chapter 12 for details.

**A. PUBLICLY OWNED EQUIPMENT (FOR USE BY CONTRACTOR)**

The use of publicly owned equipment on a project going to bid must be justified with a Public Interest Finding. The local agency may approve the use provided it meets conditions described in Chapter 12. Check the appropriate box.

**B. EQUIPMENT PURCHASES FOR LOCAL OWNERSHIP**

The cost of equipment purchased by the local agency or by the contractor with ownership transferred to the local agency for construction engineering is limited. Check the appropriate box.

**C. Convict Produced Materials**

Materials produced by convict labor may be used on any federal-aid project if they meet certain conditions. Check appropriate box.

#### **D. Local Agency Furnished Materials**

The use of local agency furnished materials not acquired on the basis of competitive bidding must be supported by a Public Interest Finding justifying the use (see Section 12.13 of Chapter 12). The justification must be approved by the local agency and documented in the project files. If these materials are included, check the appropriate box indicating the method of acquisition.

#### **XV. PRELIMINARY ESTIMATE**

An estimate of the contract items of work must be prepared in a format which describes the items of work, unit amount, quantity, unit price, amount, a subtotal, contingencies and a total. (Exhibit 12-A “Preliminary Estimate of Cost,” or equivalent). The estimate must be broken down into items sufficient in detail to meet the stated requirements. Check boxes if these requirements are met.

If the project is funded with more than one type of federal-aid it must be segregated by fund types (see Chapter 3, “Project Authorization,” of the LAPM). Check box if this requirement is met.

#### **XVI. MAJOR PROJECTS WITH TOTAL COSTS EXPECTED TO EXCEED \$100 MILLION OR \$500 MILLION**

The federal SAFETEA-LU requires that a local agency receiving an amount of federal financial assistance for “major” projects with an estimated total cost exceeding \$100 million must have a financial plan and projects exceeding \$500 million must also have a project management plan. For details of the required submittal and approval of these two plans, which are required for all “major” projects exceeding the two estimated total costs, refer to Chapter 2 “Roles and Responsibilities” of the LAPM .

#### **XVII. LOCAL AGENCY SIGNATURE**

The Federal Contract Provisions Checklist shall be signed by the person preparing the contract specifications. The checklist shall be signed even if prepared by the same person who will sign the PS&E Certification.

#### **XVIII. CALTRANS ACCEPTANCE**

Caltrans will indicate the appropriate acceptance statement based on the type of review, as described in Chapter 12, “Plans, Specifications & Estimate,” of the LAPM and sign the bottom of the form.

The bidder's attention is directed to the provisions in Section 3, "Award and Execution of Contract," of the Standard Specifications and these special provisions for the requirements and conditions concerning award and execution of contract.

Bid protests are to be delivered to the following address: **[Agency to provide information]**

The award of the contract, if it be awarded, will be to the lowest responsible bidder whose bid complies with all the requirements prescribed.

The contract shall be executed by the successful bidder and shall be returned together with the contract bonds, to the Agency so that it is received within 10 days, not including Saturdays, Sundays and legal holidays, after the bidder has received the contract for execution. Failure to do so shall be just cause for forfeiture of the proposal guaranty. The executed contract documents shall be delivered to the following address: **[Agency to provide detailed information if this paragraph is used]**

A "Local Agency Bidder DBE Information (Construction Contracts)," Exhibit 15-G2 form is included in the Bid book to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

The successful bidder's "Local Agency Bidder DBE Information (Construction Contracts)," Exhibit 15-G2 form should include the names, addresses and phone numbers of DBE firms that will participate, with a complete description of work or supplies to be provided by each and the dollar value of each DBE transaction. When 100 percent of a contract item of work is not to be performed or furnished by a DBE, a description of the exact portion of that work to be performed or furnished by that DBE should be included in the DBE information, including the planned location of that work. A successful bidder certified as a DBE should describe the work it has committed to performing with its own forces as well as any other work that it has committed to be performed by DBE subcontractors, suppliers and trucking companies.

The successful bidder is encouraged to provide written confirmation from each DBE that the DBE is participating in the contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. If a DBE is participating as a joint venture partner, the successful bidder is encouraged to submit a copy of the joint venture agreement. The "Local Agency Bidder DBE Information (Construction Contracts)," Exhibit 15-G2 form shall be completed and returned to the Agency by the successful bidder with the executed contract and contract bonds.

#### **SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES**

Attention is directed to the provisions in Section 8-1.03, "Beginning of Work" in Section 8-1.06 "Time of Completion," and in Section 8-1.07, "Liquidated Damages," of the Standard Specifications and these special provisions.

The Contractor shall begin work within 15 calendar days after the contract has been approved by the attorney appointed and authorized to represent the City/County of \_\_\_\_\_.

This work shall be diligently prosecuted to completion before the expiration of \_\_\_\_\_ WORKING DAYS beginning on the 15 calendar day after approval of the contract.

**(INSERT AMOUNT OF LIQUIDATED DAMAGES)**

The Contractor shall pay to the City/County of \_\_\_\_\_ the sum of \$ \_\_\_\_\_ per day, for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed above.

### **Liquidated Damages**

Liquidated Damages are based on the estimated cost of field construction engineering. In special cases, liquidated damages greater than the estimated field construction engineering cost may be specified, provided detailed reasons are given to support the greater amount. In every case, show the calculations that support the recommended rate. Liquidated damages are not to be used as disincentives to encourage timely completion.

Use the following formula for highway construction projects to avoid excessive liquidated damages:

$$\frac{L\% \text{ (See Table below) } \times \text{Engineer's Estimate} + \text{RE Office Expenses} *}{\text{Working Days} **} = \text{Liq Dam/calendar day}$$

\* Resident Engineer office expenses over the life of the contract should be added unless the cost is already included in the Engineer's Estimate.

\*\* Working days used to calculate liquidated damages should not include water pollution establishment or plant establishment days.

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## 13.5 PRELIMINARY RIGHT OF WAY ACTIVITIES

### REQUEST AUTHORIZATION TO PROCEED (PE)

Separate work authorizations and fund obligations are normally made for Preliminary Engineering (PE), Right of Way (including appraisal, acquisition, relocation assistance, and utility relocation) and Construction phases, if federal funds are to be used in each of these phases.

### PRELIMINARY STUDIES

At this early stage in the development process, it is crucial to correctly evaluate the project requirements: namely, the limits, location (including existing utilities), scope, costs, and whether any additional right of way will be required. Each agency should establish a process for accumulating this data, which will play an integral part in successfully completing the Field Review, the Preliminary Environmental Study (PES) Form and the Plans, Specifications & Estimate (PS&E) for the project.

### FIELD REVIEWS

Formal field reviews, which may include FHWA and Caltrans representatives are not required on local agency transportation projects **off** of the National Highway System (NHS) (for additional details, see Chapter 7, “Field Review” of the LAPM). However, Field Reviews are suggested practice for all complex projects. A representative from FHWA should be consulted on all FHWA High Profile projects. All requests for FHWA participation should be coordinated through the DLAE.

Local Agencies should complete the PES Form and the first two pages of the Field Review Form **prior** to requesting a Field Review. If it appears that additional right of way will be required, one of the intended results of the Field Review is to provide sufficient data to complete the right of way estimate (see “Right of Way Estimate” in this chapter). The information contained in these two documents is crucial in obtaining FHWA authorization to proceed further with the next stage of the project (see “Request for Authorization to Proceed Right of Way” in this chapter).

The Field Review process brings together all interested parties in order to reach agreement on the important aspects of the project, including such items as the design features, alternative proposals for building the project, respective responsibilities of the various agencies involved, level of documentation required in the NEPA process, and whether a public hearing will be necessary. For Right of Way objectives, the Field Review may confirm the need to acquire right of way and relocate the occupants, or relocate utilities and/or railroad facilities, which can significantly affect the project development in particular, the costs and scheduling. The review also facilitates the identification of compensable property interests plus uncovering project requirements such as the need for temporary construction easements, permits to enter, etc. Therefore, it is strongly encouraged that the Caltrans Right of Way Coordinators be invited to participate in the Field Reviews, as their assistance could be extremely helpful.

When the preliminary review is completed, the local agency is responsible for completing the Field Review Form. If there are right of way requirements for the project, the DLAE should forward a copy of this form to the Right of Way Local Programs Coordinator. For NHS projects, all appropriate forms and attachments must be completed. For non-NHS projects, the two-page Field Review Summary must be completed at a minimum. Items 7 and 9 apply to right of way issues. 13.6 Environmental Approval.

## 13.6 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

All local agency federal-aid transportation projects “off” the SHS must comply with the provisions of the NEPA and the implementing regulations (23 CFR 771) thereto. Local agencies may not proceed with final design, right of way acquisition, or project construction until full compliance with the NEPA has been documented and approved by Caltrans.

The level of documentation required in the NEPA process will vary depending upon the NEPA Class of Action. A proposed major highway or a new highway on a different alignment, for example, will normally require an extensive study (an Environmental Impact Statement [EIS]), while minor improvements to existing highways such as a roadway intersection signal installation may require only a short analysis (a Categorical Exclusion [CE]).

All local agency projects must demonstrate compliance with NEPA and other federal environmental laws before proceeding with right of way work or the final design of a project.

### PRELIMINARY ENVIRONMENTAL REVIEW--PES

The “Preliminary Environmental Study (PES) Form” Exhibit 6-A of the LAPM is designed to identify such items as the existing conditions in the project area, environmental issues that may require further study and the need for public hearing, or resource or regulatory agency permit. Question No.24 in Exhibit 6-A and Exhibit 6-B “Instructions for Completing the PES Form,” specifically relate to right of way impacts and a “YES” answer would indicate that further action is necessary.

### PUBLIC HEARINGS

In general, public hearings should be held for a project if there is substantial environmental controversy, if there is widespread interest in holding the hearing or if an agency with jurisdiction over the project requests one. The procedures for holding hearings, including the requirements for notifying the public, the contents of the notification, scheduling, and the hearing process are all discussed in Chapter 8, “Public Hearings,” of the LAPM.

Federal regulations require public hearings under certain circumstances. For example, projects being processed with an Environmental Assessment (EA) require a public hearing when significant amounts of right of way will be required for the project. Public hearings are also required during the circulation period of all draft EIS.

Public involvement is advantageous because it can broaden the agency’s knowledge of the project area. If a public hearing is to be held and additional right of way or property rights will be required for the project, right of way personnel should be involved as early as possible. A public forum offers an excellent opportunity to discuss the acquisition and relocation impacts with the affected persons. The importance of explaining these projects within the context of a public hearing cannot be overstated. One of the most difficult aspects of any project is the displacement of people and/or personal property. Property owners rarely see the importance of a project when balanced against their own needs and desires. Often the project simply means the disruption of their lives and lifestyle, or the need to relocate and reestablish their residence or business in a new area. As a result, those most directly affected are often hostile and unwilling to reach any agreement on an amicable basis.

notice of the hearing. If the owner(s) believe that their property should not be required, they have the right to appear at the hearing and contest the adoption of the Resolution of Necessity.

Great care must be taken in the exercise of the power of eminent domain. The process is discussed in detail in Chapter 9 of the Caltrans *Right of Way Manual*.

### RELOCATION ASSISTANCE

The Uniform Act also contains basic requirements when displacement occurs as a result of the transportation project. These requirements are found at 49 CFR 24 Subparts C, D and E. The relocation procedures are also discussed in detail in Chapter 10, "Relocation Assistance," of the Caltrans *Right of Way Manual*.

The purpose of the Uniform Act is to assure fair and equitable treatment of displaced persons, so that such persons do not suffer disproportionate injury from projects designed to benefit the public as a whole. It is important to understand that successful relocation is essential not only to those displaced but also to the progress of the entire highway project.

While the local agency needs information about any displacement, which will occur because of the project, the displaced persons have an equal or greater need for information about the benefits, the eligibility requirements to obtain these benefits, and the appeal process in the events these benefits are denied. FHWA has prepared a broadly written brochure entitled "*Your Rights and Benefits as a Displaced Person*." The brochure explains these matters and is intended to be used by relocation agents and at public hearings. Copies are available from the Caltrans District Right of Way Coordinator. In addition, FHWA has also prepared a more specific explanation of these benefits and the requirements to obtain them. This summary should minimize any disruption caused by the move and maximize the likelihood of a successful relocation. A copy of this summary is provided as Exhibit 13-D, "Uniform Relocation Act Benefits Summary," in this chapter.

### GENERAL REQUIREMENTS

The relocation agents and any private sector consultants should meet the selection criteria found in the "Consultant Selection Criteria," Exhibit 13-C in this chapter.

The relocation activities should be coordinated with both the appraisal and acquisition functions.

It is crucial to ensure that:

- Timely calls are made.
- Proper entitlements and advisory services are provided.
- Relocation Assistance Program (RAP) payments are timely and properly calculated.
- The appeal process is communicated to the displacees.
- Diaries are maintained.
- All notices (Eligibility, Vacate, Entitlement, etc.) are timely.

### PROPERTY MANAGEMENT

Property management includes the administration of property acquired for transportation projects, so that the public interest is best served. FHWA regulations for the property management function are found in 23 CFR 710. These policies and procedures apply to

all real property acquired by local agencies in connection with projects where federal funds participate in any of the right of way costs for the project. Federal funds may be used to cover the net costs incurred in leasing, rental, maintenance, disposal of improvements, and the clearance of the property. For additional details, refer to Chapter 11, "Property Management," of the Caltrans *Right of Way Manual*.

The management and administration of acquired property includes:

- An inventory of all improvements acquired as part of the right of way.
- An accounting of the property management expenses and the rental payments received.
- An accounting of the disposition of improvements and the salvage payments received.

#### **SPECIAL REQUIREMENTS**

**If a private consultant provides property management services, the firm must have a valid California Real Estate Broker's license and a minimum of two (2) years experience at the working level in management of rental properties.**

See Chapter 17, Exhibit 17- EX 13, "Consultant Selection Criteria and Guide." of the Caltrans *Right of Way Manual*.

Former owners and tenants subject to termination by the local agency on short notice will not be charged more than fair market rents.

#### **EXCESS LANDS (ACQUISITION AND DISPOSAL)**

The regulations covering acquisition and disposal of Excess Lands are found in 23 CFR 710 and 771. FHWA no longer requires reimbursement of the federal share of proceeds from the sale of excess real property. Local agencies shall use these funds for subsequent Title 23 (US Code) eligible projects. Local agencies may consider creating a dedicated Title 23 (highway) account where proceeds from the sale of excess will be deposited and only used for Title 23 projects. See 23 CFR 710.403(e).

### **13.10 RIGHT OF WAY CERTIFICATION**

When a local agency performs right of way activities on a federally assisted local project, the local agency prepares the Right of Way Certification. The Right of Way Certification is necessary before a project can proceed to construction. The purpose of the Right of Way Certification is to document that any interests necessary for the project have been, or are being secured, and physical obstructions including buildings, utilities and railroads have been, or will be removed, relocated or protected as required for construction, operation and maintenance of the proposed project. The Right of Way Certification also documents that right of way activities including the relocation of any displacees were conducted in accordance with applicable state and federal laws and regulations.

#### **CERTIFICATION FORMS**

A separate Right of Way Certification must be completed by local agencies for each local assistance project even if no right of way is required for the project. All Certifications can be prepared using forms specified by Caltrans (see Exhibit 13-B in this chapter).

On the Right of Way Certification Form, the local agency should use only the portions applicable to the project being certified.

### UTILITY RELOCATION

Local agency transportation projects often involve utility relocation. For utility relocation details refer to Chapter 14, “Utility Relocations,” of this Manual.

Note: If there are any utility facilities that require adjustment/relocation, even if they are owned and operated by the sponsoring local public agency, the “NO Right of Way Certification” form must not be used to certify the project.

### PROJECT CERTIFICATION—RIGHT OF WAY REQUIRED

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

All local agencies will certify their own projects, but it is of crucial importance to adhere to the Code of Federal Regulations and the Caltrans *Right of Way Manual* that incorporate these federal regulations, so that any state or federal funds to be used for the project are not jeopardized. This emphasizes the gravity for non-qualified local agencies in the selection of qualified consultants or in contracting with a qualified local agency to perform the respective right of way functions for them.

### LEVELS OF CERTIFICATION

There are four levels of Right of Way Certification, which are discussed below.

#### Certification No. 1

The certification documents the following:

- All the work is within existing right of way acquired for a previous construction project and all new work will be within that existing right of way,

OR

- Acquisitions are complete (escrow’s closed and/or Final Orders of Condemnation recorded),

AND/OR

- There are effective Orders for Possession on all remaining unacquired parcels,

AND

- All occupants have vacated the lands and improvements,
- Relocation Assistance and payment requirements have been met,
- All necessary material and/or disposal sites have been secured,

AND

- All rights of way clearance, utility, and railroad work has been completed, or all necessary arrangements have been made (Utility Notices issued, demolition contracts awarded, railroad contracts executed) for the work to be undertaken and completed as required for proper coordination with the physical construction schedules.

### **Certification No. 2**

This level of Certification documents the following:

All the requirements for Right of Way Certification No. 2 are the same as for Certification No. 1, except that one or more parcels are in the agency's possession by virtue of effective Rights of Entry or an Agreement for Possession and Use. Similar documents such as a permit, license, or an approved Right of Way Contract with an effective right of possession date, also require the use of a Certification No. 2. (See limitations on use of "Rights of Entry" contained in Section 13.12 in this chapter)

### **Certification No. 3**

This level of Certification documents the following:

- All requirements are the same as for Certification No. 1, except legal possession or right of occupancy and use of a few remaining parcels are not complete. A Certification No. 3 may only be used in an exceptional circumstance and on a very limited basis. It must be accompanied by a full written justification. At a minimum the justification must include the following:
  1. An outline of the very unusual circumstances that require early advertisement.
  2. A statement how and/or why it is believed to be in the public's interest.
  3. A statement that a Resolution of Necessity has been approved on all parcels yet to be acquired.
  4. The reason why a Certification No. 1 or No. 2 is not possible.
  5. Anticipated actual dates when legal possession and physical occupancy and use, will be obtained and substantiation that such dates can be met (a copy of the executed Order of Possession or Right of Entry can be attached to satisfy this requirement).
  6. A statement that all remaining residential occupants have had replacement housing made available to them (for additional information, see Chapter 10, "Relocation Assistance," of the Caltrans *Right of Way Manual*).
  7. A statement assuring that occupants of residences, businesses, farms, or nonprofit organizations who have not yet moved from the right of way are protected against unnecessary inconvenience and disproportionate injury, or any action coercive in nature.
  8. Identification of each parcel on which legal possession and/or right of occupancy and use has not been obtained.
  9. **BIDS CANNOT BE OPENED UNTIL THE CERTIFICATION 3 IS UPGRADED TO A CERTIFICATION 2.**

**Certification No. 3 With a Work-Around (3W)**

This special Right of Way Certification 3W may be used only in the most extraordinary circumstances. The local agency must show that there is a critical need to advertise and award the project and describe in detail the extraordinary circumstances. If federal funds are involved in any portion of the project including construction, approval of the work around must be obtained from FHWA in advance of certifying the project for advertising. This Certification will allow physical construction of a project to commence while occupants of businesses, farms, or nonprofit organizations remain within the right of way. All occupants of residences must have had replacement housing made available to them in accordance with the Uniform Act. The Certification must be completed in a timely manner, with proper and complete documentation and justification. Should the local agency anticipate a need to certify the right of way for a project under this type of certification, the District Right of Way Coordinator should be contacted as soon as the circumstances are confirmed during the PS&E stage.

**TIME REQUIREMENTS FOR RIGHT OF WAY CERTIFICATIONS**

Under ideal conditions, a Certification No.1 would be completed for each project at the PS&E stage. Because this is not always possible, the lower levels of certification allow projects to proceed within limitations while the remaining necessary rights are acquired.

The local agency must transmit all Certifications to the DLAE for all federal-aid projects along with the Request for Authorization. In those cases when a project advances to advertising on a Certification No. 3, an upgraded Certification No.1 or No.2 must be received by the DLAE prior to the bid opening date. In rare cases where a Certification No. 3W is used, an "Updated" Special Certification No. 3W, dated and signed must be received when the local agency has legal and physical possession of the property that is being worked around.

**13.11 EMERGENCY RELIEF PROJECT CERTIFICATION****EMERGENCY OPENING PHASE**

Emergencies require rapid response. A Right of Way Certification is not required prior to work being done to open the highway. After a situation has officially been proclaimed, emergency actions will often be taken to reopen facilities without going through the usual right of way steps. After the facility has been reopened, the emergency actions must be reviewed for right of way implications. If any persons or properties were affected during the repairs, even temporarily, appropriate steps must be taken, to determine and provide timely just compensation for the property rights acquired that is due to the affected property owner. This may include appraisal and purchase of property rights, relocation assistance, etc.

Following the review and any indicated subsequent actions, either a "No Right of Way" Certification or a Right of Way Certification must be prepared for each project within

180 days of the date of emergency proclamation and submitted for review and accepted by the DLAE or by the District Right of Way Local Programs Coordinator, as described previously.

**PERMANENT RESTORATION PHASE**

Once the facility has been reopened and the emergency is over, any further work to restore or improve the facility is no longer exempted from the requirements for certification prior to advertising, obtaining bids, etc. Restoration projects shall follow the procedures outlined in this chapter (see Chapter 11, "Disaster Assistance," of the LAPG).

## 13.12 RIGHT OF WAY CERTIFICATION FORM--DISCUSSION

In order to assist the local agency in completing the certification form, the following explanations are provided for each of the items, which appear on the certification.

For additional information, see Chapter 14, "Project Certification" of the Caltrans *Right of Way Manual*.

### STATUS OF REQUIRED RIGHT OF WAY

All new property rights required for a project must be included in the Right of Way Certification. This includes any interests in real property that lie outside of the existing right of way boundary lines, as well as regular parcels acquired by deed, Final Orders of Condemnation and Orders for Possession. It also includes temporary interests such as rights of entry (see below, "Rights of Entry"), construction or access easements, permits to enter during construction, licenses, etc. It is important to include the expiration date of any temporary rights in the Certification, so that they may be evaluated in terms of the construction schedule. Rights OF Entry

A Right of Entry allows an agency representative to enter someone's property for a specific purpose at a specified time. Obtaining a Right of Entry can require that the agency pay just compensation at the time agency takes possession. A Right of Entry does not replace the Right of Way Contract. It shall not be used to certify control of the right of way for the project. The local agency must first have an appraisal of the property rights prepared and present an offer of settlement to the owner. The Right of Entry will not be utilized if the project will displace people or impact improvements of a significant nature. A Right of Entry is appropriate only when the local agency would normally acquire the needed interest, but the owner cannot or will not provide an executed right of way contract, and eminent domain proceedings are not the practical approach. It is used only in extraordinary circumstances and can never be used for the sole reason of meeting the scheduled Certification date.

**NOTE:** The Form that is acceptable is the state's "Agreement for Possession and Use," Exhibit 8-EX-25 of the Caltrans *Right of Way Manual*. This Form should not replace the use of a Right of Way Contract.

### STATUS OF ACCESS CONTROL

Access to the project must be adequate to meet the needs during construction. At the same time, access rights for persons whose property abuts on the project boundaries cannot be denied or unreasonably restricted, unless other access is available or provided to the owner during construction. If no access can be provided, the owner is entitled to compensation during the course of construction.

### STATUS OF AFFECTED RAILROAD OPERATING FACILITIES

The local public agency must confirm that all arrangements have been made with the railroad. If railroad-operating right of way is not within the project limits or ends two feet of the rail crossing, then “**NONE**” would be noted on the Certification form. Railroads are considered clear for advertising when all arrangements have been made with the railroad for entry on to their property and/or for working on or near the tracks. Types of agreements that may be required include Temporary Construction Easement or Right of Entry, Construction and Maintenance Agreements or Service Contracts. Contact the railroad for specific requirements.

### MATERIAL AND DISPOSAL SITES

When projects involve the excavation or importation of soils and other materials to or from a material and/or disposal site, separate agreements providing for the use of the sites, the owner’s name, and the duration of the agreement must be listed.

Note: Typically, on local public agency projects there is excess material, which the contractor disposes of as part of the contract. The disposal site is not a project need. Under these circumstances, in completing the No Right of Way Certification, the “**NO**” column should be checked. Only when a separate disposal site is necessary as a part of the project should the “**YES**” answer be given.

### UTILITY RELOCATION

It is the local agency’s responsibility to provide for the relocation, protection or removal of all private and public utility facilities which conflict with the construction of the proposed project. It is necessary to reach agreement concerning: (1) the date by which the relocation will be completed, (2) the financial liability for the relocation costs with each of the utility companies having facilities within the project area or that are affected in some way by the project, and (3) who will perform the utility relocation work.

Note: **23 CFR 635.309(b) requires utility arrangements to be completed prior to project construction except where it is determined such work is not feasible or practical.** Federal participation in the utility relocation costs is a right of way issue and not a construction matter, even if the relocation will occur during construction. A separate Authorization Approval must be received prior to any utility relocation.

### RIGHT OF WAY CLEARANCE

The preliminary investigations included in the field review will reveal the presence of any improvements or physical obstructions that must be removed prior to construction. Care should be taken in arranging for the removal of these items in order to properly coordinate with the construction schedule.

### **AIRSPACE AGREEMENTS**

Airspace leases are revenue-producing agreements for parcels within (above or below) the operating right of way. When subsequent projects are proposed, which affect the airspace leasehold areas or pose a problem for the lessee's use of the site, provision must be made in the contract to minimize this conflict. If airspace leasehold area is required for the project, the lease must be cancelled and arrangements for the lessee's relocation must be made prior to certifying the project.

### **COMPLIANCE WITH THE RELOCATION ASSISTANCE PROGRAM**

The Uniform Act prescribes certain benefits and protections for persons displaced by local projects, which are funded in whole or in part with federal money. Among other benefits the Uniform Act provides are relocation payments for residential displacees and for businesses, farms, and nonprofit organizations. The Act also provides certain protections such as requiring the availability of replacement housing for residential displacees, minimum standards for such housing, and assurances that displacees have sufficient time in which to choose their replacement properties. Finally, the Act provides for certain "advisory services" for displacees. Each of these legal requirements must be satisfied and then addressed in the Right of Way Certification.

### **COOPERATIVE AGREEMENTS**

Cooperative Agreements are defined as any formal agreement between Caltrans and a local agency for a project on the SHS wherein the parties share in the development activities. If there are Cooperative Agreements covering responsibilities or obligations for the respective portions of the project, these agreements must be listed on the Right of Way Certification form.

### **ENVIRONMENTAL MITIGATION**

When an approved NEPA document includes mitigation commitments involving the acquisition of property, a list of those commitments along with the date each parcel is expected to be acquired, must be listed on the Right of Way Certification. While wetland and floodplain mitigation is mainly the responsibility of the project engineer and their environmental staff and/or consultant, the mitigation measures involving the acquisition of property to accommodate replacement wetlands is the responsibility of the District Right of Way staff. To ensure the most efficient and expeditious implementation of mitigation commitments, it is imperative that the local agency project engineer, District Right of Way Engineer and District Environmental staff collaborate closely on the acquisition of mitigation parcels and the subsequent implementation of mitigation measures.

## ACCEPTANCE OF RIGHT OF WAY CERTIFICATION

When there are right of way issues involved, the local agency will certify that the issues have been resolved. Because local agencies are now certifying their own projects, it should be stressed that the authorized official or designated alternate executing the Certification must be certain that the proper right of way procedures have been followed and that the requirements of the Uniform Act have been met.

All local agencies may certify their own projects but it is of crucial importance to adhere to state and federal standards, so that the federal funds for the project will not be jeopardized. This emphasizes the gravity for non-qualified agencies in the selection of qualified consultants or in contracting with a qualified agency to perform the various right of way functions. Upon receipt, the District Right of Way Local Programs Coordinator will review the Certification to see that each item has been completed in compliance with federal and state laws and regulations and if applicable, the date by which the right of way will be cleared.

If all of the right of way issues have been dealt with in a satisfactory manner, both duplicate originals will be accepted and a signed original copy will be returned to the local agency.

If there are irregularities in the Certification and it cannot be accepted as submitted, the Right of Way Local Programs Coordinator will return the Certification to the local agency with an explanation as to why it cannot be accepted and the steps that are necessary for acceptance.

Certifications 1, 2, and 3 will be accepted in the district. Certifications 3W will be forwarded to Caltrans headquarters for review and FHWA's approval.

## 13.13 REIMBURSEMENT/FISCAL POLICY

### PURPOSE

This section contains critical requirements and basic principles relating to the eligibility of Right of Way transactions for federal reimbursement. From this overview, the local agency should be able to understand the overall federal and state requirements. Detailed procedures are found in Chapter 5, "Accounting/Invoices," of the LAPM.

### REIMBURSEMENT PROCESS OVERVIEW--CALTRANS

Caltrans receives federal funds on a reimbursement basis. This means Caltrans must first obtain Authorization to Proceed (E-76), incur costs, and bill the FHWA for payment before receiving payment. Federal funds are received by Caltrans as reimbursement for federally eligible expenditures.

As noted above, the normal sequence of events to obtain prior Federal Authorization and reimbursement through Caltrans is:

- a. Obtain authorization to begin work. Federal authorization is gained by obtaining an E-76, "Approval to Proceed" which means funding is available. Only eligible expenditures incurred for work after the date FHWA approves the request are reimbursable.

- b. Reimbursement is limited to the amount shown on the E-76. However, the amount can be revised. If necessary, execute a revised E-76 with FHWA. The revised E-76 is used to increase or decrease the federal funding limit shown on previous agreements.
- c. Submit progress payment invoices during the course of the work and a final invoice upon completion, along with the other documents discussed below.
- d. Final Voucher Project with FHWA after work is completed. Caltrans may audit project charges to ensure that FHWA is billed for all federally eligible expenses. When Caltrans has billed FHWA for all expenses, it sends vouchering documents to FHWA and closes out the project.

Project costs incurred prior to approval of the E-76 are ineligible for federal reimbursement. Charges incurred for eligible costs after the E-76 is signed are federally reimbursable. Actual federal reimbursement is not made until an E-76 is approved and executed. If there is no Program Supplement or an award package for construction, no reimbursement will be given even if the E-76 is approved and executed. Progress payments can be made during the Right of Way phase. Upon completion of a project, Caltrans may audit the charges and close out the project.

If the local agency wants federal participation for a Hardship or Protection parcel, federal approval must be obtained in advance of the NEPA compliance. If approval is not obtained, the local agency should be aware that the acquisition must still comply with the Uniform Act in order to be eligible for federal reimbursement for other project costs.

## REPORTING COSTS

FHWA has approved Caltrans' cost accounting and cost coding systems. FHWA has agreed as to which Caltrans activities and expenditures are eligible for reimbursement for each phase of work. These agreements are incorporated into Caltrans' accounting system, coding instructions, and manuals--serving as a model for local agencies.

The local agency must be able to separate all costs, and code them as eligible or ineligible. Caltrans will review this breakdown to ensure only eligible costs are reimbursed.

Right of Way costs are recorded in Caltrans' accounting system in two categories:

- Capital Outlay
- Incidental (Support)

Capital Outlay consists of those Right of Way costs necessary to acquire and clear right of way for the construction of the project. All Capital Outlay costs must be charged to a specific project. In order to meet the FHWA requirements, Capital Right of Way costs must be documented in sufficient detail to determine eligibility. This includes transactions for land, improvements, damages, utility relocation, demolition and clearance, relocation assistance, condemnation deposits and income and expense relating to sale of improvements.

Incidental costs include personnel and operating expenses of the Right of Way functions, which produce the Capital Outlay payments. The term "Incidental Cost" is used by FHWA, and "Support Cost" is used by Caltrans.

A Federal Project number is assigned to each project and must be noted on all project documents.

### 13.15 REFERENCES

23 Code of Federal Regulations (23 CFR Part 710 and 771)

49 Code of Federal Regulations, Part 24 (49 CFR 24)

23 Code of Federal Regulations, 635.309(b)

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended in 1987 (Uniform Act)

Title VI of the 1964 Civil Rights Act

Caltrans, *Right of Way Manual*

*Local Assistance Procedures Manual (LAPM)*

*Local Assistance Program Guidelines (LAPG)*

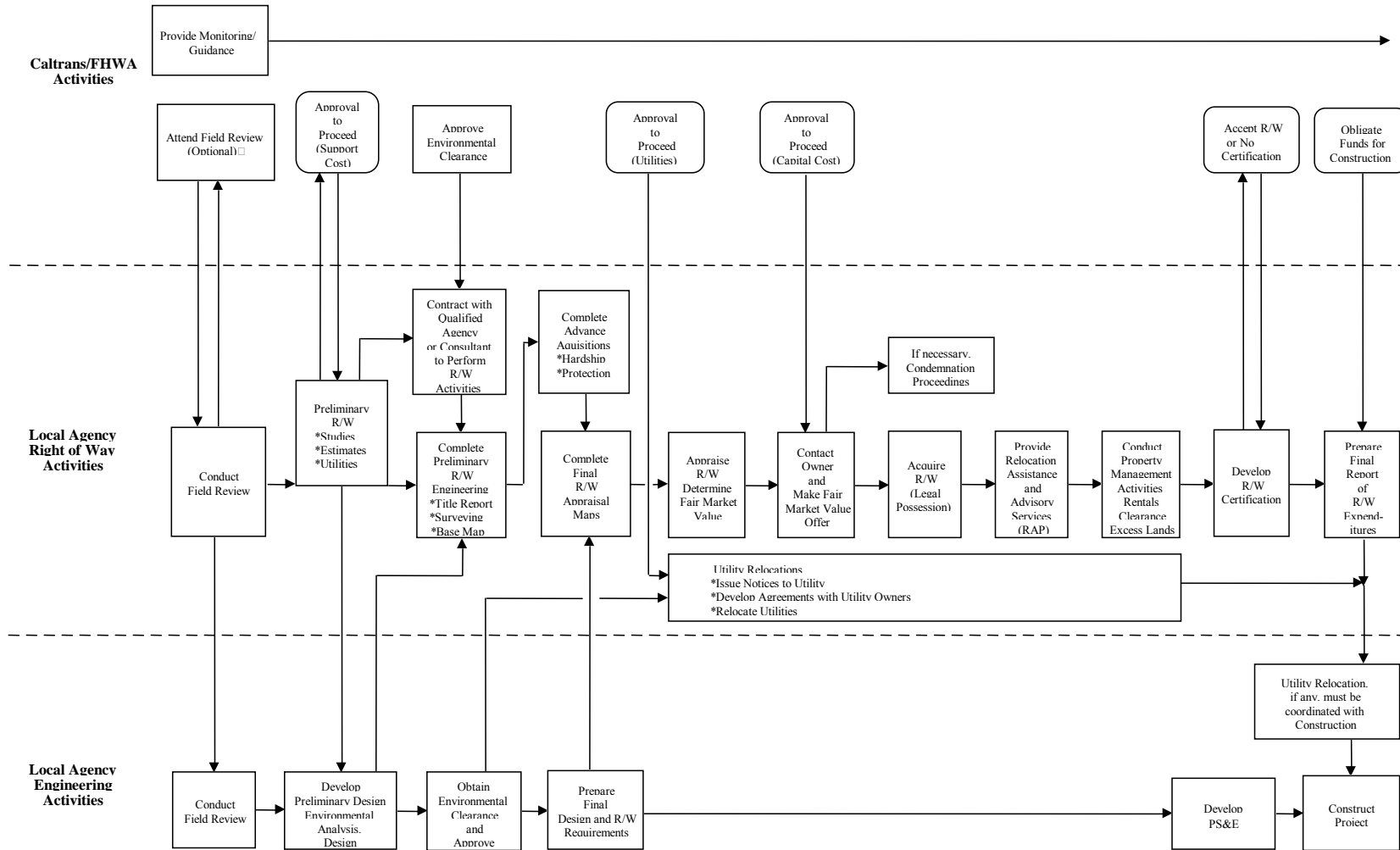
*Standard Environmental Reference (SER)*

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FIGURE 13-1 FLOWCHART OF RIGHT OF WAY PROCEDURES



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The approval should contain a statement that the Caltrans District Utility Coordinator has reviewed the relocation plans and is familiar with the circumstances requiring Special Authorization to Relocate Utilities.

#### **VERBAL AUTHORIZATION**

Verbal Special Authorization to Proceed may be requested, if during construction a previously unknown utility conflict is discovered that will delay the contractor. Verbal Special Authorization to Proceed may be obtained from the Caltrans District Utility Coordinator (via the DLAE) by telephone or fax. The Caltrans District Utility Coordinator will confirm each verbal authorization via letter to the local agency's Project Engineer. Such confirmation letters shall be issued within five (5) working days or sooner, depending on the complexity of the relocation and the circumstances, which necessitate it. A copy of each confirmation letter will be sent to the DLAE.

If Verbal Special Authorization to Proceed is obtained, the local agency must furnish a written submittal to the DLAE confirming the information and containing a fully documented relocation plan. This must be accomplished within 30 days. An appropriate diary of decisions and discussions shall be maintained.

### **14.3 HIGH AND LOW RISK UNDERGROUND FACILITIES**

Caltrans' Policy on High and Low Risk Underground Facilities Within Highway Rights of Way requires all high risk utility facilities located within project limits are positively identified and to be shown on project plan.

For Federally Participating "Off-System" projects, compliance with the state's policy on High and Low Risk Underground Facilities is not mandatory. It is, however, highly recommended that this policy be followed to insure the maximum safety during construction of the project.

#### **NOTE: When it is an "On-System" project.**

All local agency projects on the SHS shall conform to the state's "Policy on High and Low Risk Underground Facilities within Highway Rights of Way." See *Caltrans Project Development Procedures Manual* (PDPM), Appendix LL, Utilities. A copy of the policy may be obtained from Caltrans Division of Design. It is also available online at: [http://www.dot.ca.gov/hq/oppd/pdpm/apdx\\_htm/apdx\\_ll/apdx\\_ll.htm](http://www.dot.ca.gov/hq/oppd/pdpm/apdx_htm/apdx_ll/apdx_ll.htm)

When performing Right of Way Utility Relocation on a "On-System" project, local agency's Project Engineer must complete the "Project Engineer's Certification of Utility Facilities" and submit it as an attachment to the project certification, as required by the policy.

## 14.4 AUDIT REQUIREMENTS

Utility Coordinator is responsible to submit request for any applicable audits as described in Section 5.8 of Chapter 5 of the LAPM.

**NOTE: When it is an “On-System” project.**

**The following are requirements for Pre-Award Evaluation and Post Award Audit. The Utility Coordinator is responsible to submit requests for audit when applicable:**

### **PRE-AWARD EVALUATION:**

Caltrans pre-award evaluation is required for Utility Agreements, contracts and subcontracts involving federal funds. The local agency shall make a written request through the DLAE, for a pre-award evaluation to Caltrans Audits on Utility Agreements which equal or exceed \$1 million, for lump sum Utility Agreements over \$100,000, or where a consultant will perform preliminary engineering equal or exceeding \$1 million. These requirements are subject to change. Please contact the Caltrans District Utility Coordinator for information on current authorization limits and details.

### **POST AWARD AUDIT:**

The State is responsible to conduct final post audits of actual and necessary costs incurred by utility owners pursuant to a Utility Agreement or contract on federal-aid projects. This also applies to subcontractors under the prime agreement.

## 14.5 REFERENCES

- *23 Code of Federal Regulations (CFR) 645*
- *48 Code of Federal Regulations (CFR), Chapter 1, Part 31*
- *California Streets and Highways Code, Sections 702, 703, 705, and 706*
- *Caltrans Encroachment Permits Manual*
- *Caltrans Project Development Procedures Manual, Appendix LL, Utilities*
- *Caltrans Right of Way Manual (ROW Manual)*
- *Code of Civil Procedure, Section 1268.350*
- *Government Code, Section 53630*
- *Intermodal Surface Transportation Efficiency Act (ISTEA)*
- *Water Code Sections 7034 and 7035*
- SAFETEA-LU Web site at: <http://www.fhwa.dot.gov/safetealu/factsheets.htm>”.

# CHAPTER 15 ADVERTISE AND AWARD PROJECT

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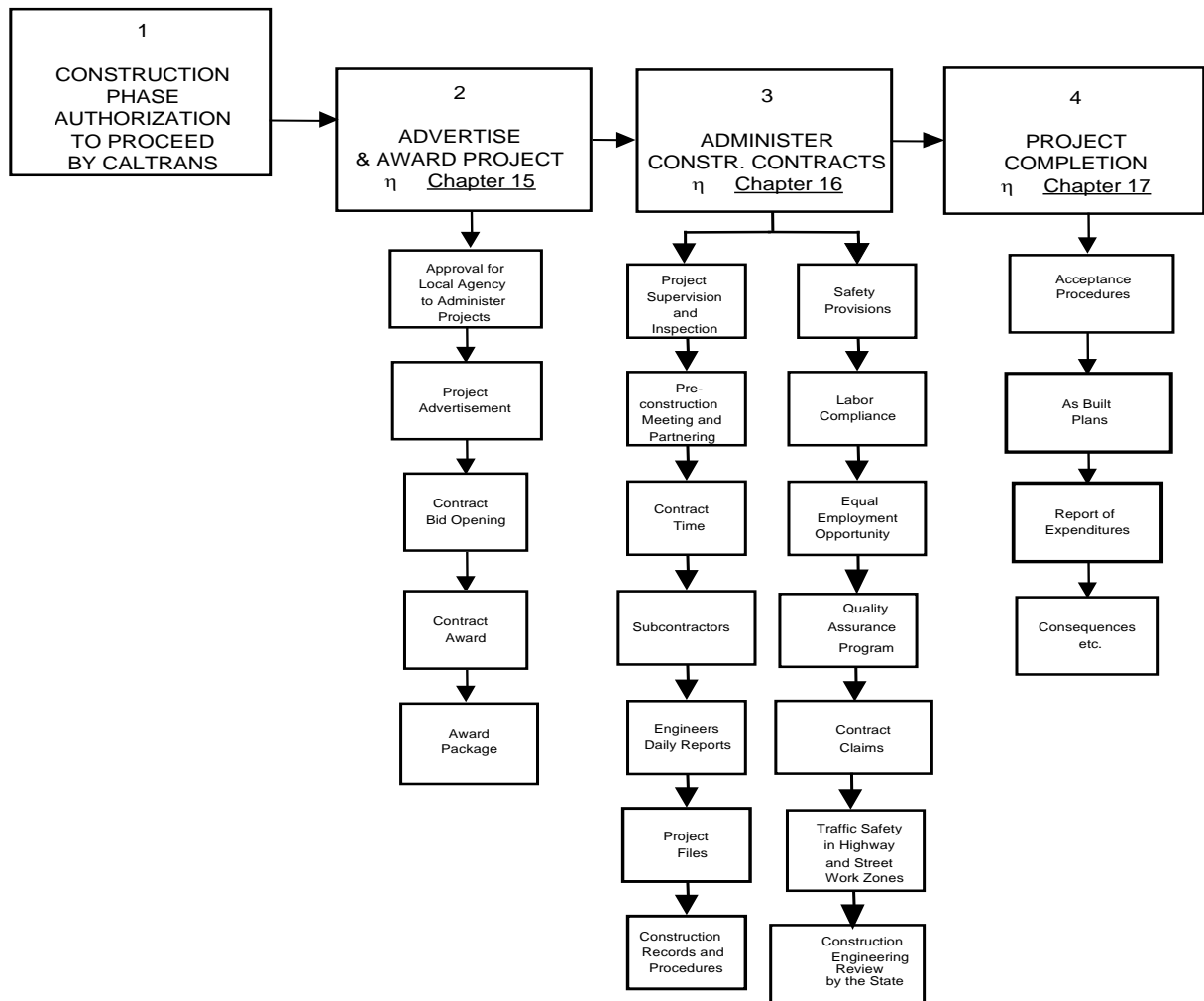
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# CHAPTER 15 ADVERTISE AND AWARD PROJECT

## 15.1 INTRODUCTION

This chapter, Chapter 16, “Administer Construction Contract,” and Chapter 17, “Project Completion,” are for use by local agencies who administer federal-aid construction projects under an “Administering Agency-State Agreement.” These three chapters replace the previously issued *Local Programs Manual, Volume II*, titled “Contract Administration Procedures.” When a locally sponsored project funded with federal-aid is within the state right of way (R/W) and the State (Caltrans) is the administering agency, the state’s *Construction Manual* is normally used.

**FIGURE 15-1 ADVERTISE & AWARD PROJECT**



This chapter covers the activities beginning with advertising of a construction contract and continuing through the bid opening, award, and detail estimate procedures. It has been prepared mainly as a guide for administration of federal-aid contracts by local agencies. Each local agency Resident Engineer should be familiar with the contents of this chapter, Chapter 16, “Administer Construction Contract,” and Chapter 17, “Project Completion” before administering such contracts.

## 15.2 DEFINITION OF TERMS ACRONYMS

- AASHTO - American Association of State Highway and Transportation Officials
- AC - Advance Construction
- ASTM - American Society for Testing and Materials
- Administering Agency - The state or a city, county, other public agency, or nonprofit organizations, that advertises, opens bids, awards and administers the contract. They are frequently called local agency or agency and were previously called responsible agency.
- Bid Rigging - a conspiracy to disrupt or circumvent the competitive environment by establishing a competitive advantage for certain bidders.
- CCO - Contract Change Order
- CE - Construction Engineering. This phase includes the work of project advertising<sup>1</sup> through construction, preparation of as-built plans, final estimates, and payments. This phase must be authorized prior to advertising, and CE must be separately identified in this authorization.
- CFR - Code of Federal Regulations
- Contingencies - An amount of funds usually a small percentage of the detail estimate, set aside for unforeseen items or quantities of work not specified in the contract documents, but required to complete the project. The percentage used for contingencies varies depending on the type and scope of work.
- Contract Administration - Includes advertising, opening bids, award, and execution of the contract; control of work and material; and making payments to the contractor.
- Contractor - The person or persons, firm, partnership, corporation, or combination thereof, who have entered into a contract with the administering agency, as party or parties of the second part of his/her or their legal representatives.
- DBE - Disadvantaged Business Enterprise. A for-profit “small business concern” that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. One or more such individuals must also control the management and daily business operations. These individuals must be citizens (or lawfully admitted permanent residents) of the United States and (1) any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis, or (2) who are either Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka), Women, or any other group found

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<sup>1</sup> CE includes advertising only if not included in PE phase and only after authorization date.

Just as the bid may be rejected for being irregular or unresponsive, a bid may also be rejected on the grounds that the bidder is not a responsible bidder. A bidder may be deemed not responsible because of past unsatisfactory performance, as evidenced by failure to meet the local agency's qualification requirements, or because of State or federal suspension/debarment action. The administering agency should check to see if a contractor is suspended or debarred from federal contracts. A publication titled, *A Listing of Parties Excluded from Federal Procurement and Nonprocurement Programs* is available electronically in the internet at: <http://epls.arnet.gov>.

Note: Contractor's "Debarment and Suspension Certification" is part of the "Notice to Contractors and Special Provisions" boilerplate.

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

## PROCEDURES

The administering agency shall follow its own procedures for bid opening, provided such procedures include:

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

If a local agency elects to prequalify contractors, the agency's prequalification procedures shall not include procedures or requirements for bonding, insurance, prequalification, qualification or licensing of contractors, which may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed.

Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating. For further discussion on prequalification of bidders see: AASHTO publication on *Suggested Guidelines for Strengthening Bidding and Contract Procedures* (which is available in the FHWA *Contract Administration Core Curriculum*).

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

The administering agency shall retain the following completed documents for the successful bidder in the project file:

- Local Agency Bidder UDBE Commitment (Construction Contracts) (Exhibit 15-G1)
- Local Agency Bidder DBE Information (Construction Contracts) (Exhibit 15-G2)
- A list of bidders and total amounts bid with an item-by-item breakdown (see Exhibit 15-D, "Bid Tabulation Summary Sheet [Sample]") of the three lowest bidders
- The Noncollusion Affidavit (see Chapter 12, "Plans Specifications & Estimate," Exhibit 12-E, Attachment D, "Noncollusion Affidavit")
- A Local Agency Bid Opening Checklist (Exhibit 15-I)

Where the lowest bid exceeds the engineer's estimate by an unreasonable amount as defined by established agency procedures, or where competition is considered to be poor for the size, type, and location of project, bids may be rejected unless an award of contract is justified as being in the best interest of the public. See Section 15.6, "Contract Award, Bid Analysis Process," and *FHWA Technical Advisory T 5080.4 (December 29, 1980)*, and *T 5080.6 (December 17, 1982)* for additional information regarding bid reviews. These technical advisories can be found in the appendix to the *US DOT, FHWA pub; Contract Administration Core Curriculum*.

The administering agency shall assure that all bids submitted include a completed addenda certification statement. The addenda certification statement is as follows:

- (1) The amount representing the payments made under the original contract plus payments made under the new contract, or
  - (2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.
- (e) If the surety awards a contract for completion of a defaulted federal-aid contract, or completes it by some other acceptable means, the FHWA considers the terms of the original contract in effect and that the work be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action is therefore needed in connection with any defaulted federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for federal participation on the project should not exceed the amount representing what the cost would have been, if the construction had been completed as contemplated by the plans and specifications under the original contract.

## 15.7 AWARD PACKAGE

The administering agency shall complete and forward the following information as one package to the DLAE immediately after award of the contract and prior to submitting the first invoice of the construction phase:

- The Local Agency Contract Award Checklist (Exhibit 15-L in this chapter)
- Detail Estimate (Exhibit 15-M in this chapter)
- Finance Letter (Exhibit 15-N in this chapter)
- Resident Engineer's Construction Contract Administration Checklist (see Exhibit 15-B in this chapter)
- Copy of the Local Agency Bidder DBE Information (Construction Contracts) (Exhibit 15-G2 in this chapter)

The purpose of the Local Agency Award Checklist is to minimize delays in processing payments for federal-aid projects.

A "Detail Estimate" (see Exhibit 15-M) and "Finance Letter" (see Exhibit 15-N) must be prepared outlining all project costs by Improvement Type Code. From the information contained in the Detail Estimate, Division of Local Assistance will prepare a revised Authorization to Proceed (E-76), which automatically updates the funding agreement between Caltrans and FHWA. If the award amount is more, or significantly less than the amount estimated at the time of authorization, the administering agency should submit a revised E-76 and revised Finance Letter to the DLAE along with the Award Package.

NOTE: If the amount of federal funds obligated and agreed to in the "Authorization to Proceed (E-76)" is less than the full pro-rata share, the federal reimbursement ratio used in the Detail Estimate and subsequent progress invoices will be held at the ratio of federal funds to total project funds authorized in the E-76. That ratio may be increased in the final Detail Estimate and Final invoice up to the full pro-rata share to utilize the full amount of federal funds authorized.

The local agency and State personnel involved shall ensure timely processing of the Master Agreement, Program Supplement, Detail Estimate, and Finance Letter. The local agency is responsible for ensuring that the various forms are complete and accurate.

If at any time during construction, the project cost is expected to overrun, the administering agency must submit a Revised Detail Estimate **along with a request for modification of the Authorization to Proceed (E-76)**, and a revised Finance Letter. The Revised Detail Estimate should include the effects of all change orders and anticipated changed work through the end of the contract. This is to avoid future revisions.

It is the administering agencies responsibility to ensure that there are enough federal-aid funds programmed by their MPO/RTPA (STP, TEA, or CMAQ) or Caltrans (HSIP, HBP, ER, and RRX), to cover an increase due to a revised detail estimate. If additional federal funds are required, the local agency must obtain written approval from the MPO/RTPA or Caltrans prior to submitting a Revised Detail Estimate.

The Resident Engineer assigned to the project shall complete and sign the Resident Engineer's Construction Contract Administration Checklist. The purpose of this checklist is to assure that the resident engineer is familiar with the federal requirements before the project starts. Deficiencies in contract administration procedures discovered by process reviews are difficult to correct "after the fact." If the project has proceeded to the point that a deficiency cannot be corrected, federal and/or state funds may be withdrawn.

The DLAE shall perform a review of these documents for correct format and obvious errors and/or omissions. Complete and accurate documents will be forwarded to the DLA. The master agreement and program supplement must be executed prior to reimbursement. Invoices from the administering agency for the construction phase will be processed for reimbursement only after the project award information is submitted.

## 15.8 REFERENCES

- 23 USC 112
- 23 USC 114(a)
- 23 CFR 635
- 23 CFR part 40
- 23 CFR 630 Subpart C
- 49 CFR 26
- California Public Contract Code, Chapter 6, Section 6100
- California Public Contract Code Section 7106
- FHWA TA T 5080.4, *Preparing Engineer's Estimate and Reviewing Bids* - 1980
- FHWA TA T 5080.6 *Guidelines on Contract Procedures with Emphasis on Bid Reviews and Evaluation* - 1982
- DOT, FHWA 1997 *Contract Administration Core Curriculum*
- FHWA *Final Report Process Review on Competition in Bidding and Engineer's Estimate Review* - 1991
- US DOT/US Dept. of Justice, *Suggestions for the Detection and Prevention of Construction Contract Bid Rigging* - 1983
- AASHTO *Suggested Guidelines for Strengthening Bidding and Contract Procedures* - 1981
- SAFETEA-LU Web site: <http://www.fhwa.dot.gov/safetealu/index.htm>

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- **Final Inspection Forms**
  1. **Final Inspection Form FIF-6/05 (Exhibit 17-C)** - This form when completed by both the local agency and the DLAE or OSE (SHS projects) shall be included as part of the Federal Report of Expenditures for all projects.
- **Final Invoice** - Final Invoice should conform to the format in Exhibit 17-D. Submit one original. The Final Invoice **must** agree with the Final Detail Estimate.
- **Final Detail Estimate** - The format of the final detail estimate is the same as presented in Chapter 15, Section 15.7, "Award Package," except that it must be labeled "Final" and show the total of previous progress payments plus the final invoice. The local agency shall prepare the final detail estimate. If claims are still pending, the final detail estimate should not be prepared until the claims are resolved. The final detail estimate must agree with the final invoice. State costs (Example: state material testing) should not be included in the final detail estimate prepared by the local agency. Once claims are settled, the final invoice and a final detail estimate shall be submitted to the DLAE as part of the Report of Expenditures.
- **Change Order Summary** - The Change Order Summary should conform to sample form in Exhibit 17-E. This is required regardless of whether or not change orders were made during the course of the contract. If there were none, please note "none." Additionally, the following mandatory items of information must also be included on this form:
  1. **Liquidated Damages** - Indicate the liquidated damage days charged (calendar days) if any, the amount per day, and the total amount charged. Refer to Chapter 16, "Administer Construction Contracts," Section 16.15, "Claims," for contractor's claims procedures. If there were no liquidated damages, please note "none." Liquidated damages shall also be shown on the Final Invoice and Final Detail Estimate.
  2. **Contractors Claims** - Refer to Chapter 16, "Administer Construction Contracts," Section 16.15, "Contract Claims," for contractor's claims procedures. If there were no contractor's claims, please note "none."
  3. **Date of acceptance**
- **Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors** (Exhibit 17-F) - This form shall be completed and signed, and it shall be in conformance with the requirements in Chapter 9, "Civil Rights and Disadvantaged Business Enterprises." The completed form shall be submitted to the DLAE or OSE (SHS projects) with the final report of expenditures for construction contracts (or as specified in the provisions for consultant contracts).
- **Disadvantaged Business Enterprises (DBE) Certification Status Change** (Exhibit 17-O) - This form shall be completed, signed, and submitted to the DLAE or OSE (SHS projects) with the final report of expenditures for construction contracts (or as specified in the provisions for consultant contracts). If no change, state so.
- **Materials Certificate** (Exhibit 17-G) - This certificate (commonly referred to as the "Materials Certificate") is to be included in the project files upon completion of the project. Exceptions to the certification should be documented in project records in summary form along with explanations and attached to the certificate, including change orders to accept nonconforming materials.
-

- **Cover Letter for the Report of Completion of Structures and Report of Completion of Structures on Local Streets and Roads** (Exhibits 17-I and 17-J) This report is to be forwarded by the DLAE to the Engineering Service Center Division of Structures, Office of Structures Maintenance and Investigations Local Assistance Branch, for projects which include a bridge or other major structure. This information is necessary to incorporate all bridges into the statewide inventory and maintenance management system. (Include two (2) copies in the Report of Expenditures).
- **Report of Completion of Right of Way Expenditures** - Projects with Right of Way expenditures require additional information in the Report of Expenditures. When the project is complete, a summary of the progress payment requests is submitted on a Report of Completion of Right of Way Expenditures, Form FM 1592A (see Exhibit 17-K). This claim should be submitted when final right of way costs are known in order to expedite audit of the claim and reimbursement. The report shall also include the following:
  1. A parcel list.
  2. 2. Final maps (those that come with Right of Way Certification if not previously sent).
  3. 3. A breakdown of Right of Way costs (with participating costs shown separately). The total participating costs should equal the "Participating Costs to Date" as shown on the Final Progress Requests (Forms FM 1592A).
  4. Final Invoice for Right of Way - The invoice must be prepared on an agency letterhead; each phase must include:
    - a. All agency and project identification shown on the form including the Local Agency-State agreement number.
    - b. Dates and amounts of funding authorized for Incidental and Capital Outlay.
    - c. Period of expenditures (dates) for Incidental and Capital Outlay.
    - d. Cost breakdown for Incidental and Capital Outlay as follows:
      - Total Cost to Date
      - Rental Income
      - Nonparticipating Cost to Date
      - Subtotal - Participating Costs

**FEDERAL REPORT OF EXPENDITURES CHECKLIST**

Federal-aid Project Number: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Location: \_\_\_\_\_  
\_\_\_\_\_

- Final Inspection of Federal-aid Project (See Exhibit 17-B for FHWA Full Oversight projects) or Local Agency Final Inspection Form (See Exhibit 17-C for State-Authorized projects)
- Final Invoice (See Exhibit 17-D)
- Final Detail Estimate and Detail Estimate Summary (See Exhibit 15-M)
- Change Order Summary (See Exhibit 17-E)
- Statement of the existence or absence of liquidated damages and/or contractor's claims(See Exhibit 17-E)
- Date of completion: \_\_\_\_\_
- Date of acceptance: \_\_\_\_\_
- Final Report- Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors (See Exhibit 17-F)
- Materials Certificate (Exhibit 17-G)
- \* Report of Completion of Structure (two copies) (*Shall include one set of "As Built" Plans*)(See Exhibit 17-I and Exhibit 17-J)
- Disadvantaged Business Enterprises (DBE) Certification Status Change (Exhibit 17-O)

**Note:** A single submittal of all these documents will facilitate timely project closure.

\* Additional documents required on bridge/major structural project or projects which meet specified conditions (described under **Reports at Completion of Contract**). Send Original copy to structures.

**Distribution:** (All projects): (1) Original Report of Expenditures  
(2) Local Agency project files

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Form CP-CEM 2403(F) (New 10/99)

**DISADVANTAGED BUSINESS ENTERPRISES (DBE) CHANGE IN CERTIFICATION STATUS REPORT**

The top of the form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles, the Administering Agency, the Contract Completion Date, and the Estimated Contract Amount. It requires the Prime Contractor's name and Business Address. The focus of the form is to substantiate and verify the actual DBE dollar amount paid to contractors on federally funded projects that had a changed in Certification status during the course of the completion of the contract. The two situations that are being addressed by CP-CEM 2403(F) are, if a firm certified as a DBE and doing work on the contract during the course of the project becomes Decertified, and if a non-DBE firm doing work on the contract during the course of the project becomes Certified as a DBE.

The form has a column to enter the Contract Item No (or Item Nos.) as well as a column for the Subcontractor's Name, Business Address, Business Phone, and contractor's Certification Number.

The column entitled Amount Paid While Certified will be used to enter the actual dollar value of the work performed by those contractors who meet the conditions as outlined above during the time period they are Certified as a DBE. This column on the CP-CEM-2403(F) should only reflect the dollar value of work performed while the firm was Certified as a DBE.

The column called Certification/Decertification Date (Letter attached) will reflect either the date of the Decertification Letter sent out by the Civil Rights Program or the date of the Certification Certificate mailed out by the Civil Rights Program. There is a box to check that support documentation is attached to the CP-CEM-2403 (F) form.

There is a Comments section for any additional information that may need to be provided regarding any of the above transactions.

The CEM-2403(F) has an area at the bottom where the Contractor and the Resident Engineer sign and date that the information provided is complete and correct.

There is a Comments section for any additional information that may need to be provided regarding any of the above transactions.

The CEM-2403(F) has an area at the bottom where the Contractor and the Resident Engineer sign and date that the information provided is complete and correct.

## 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*) 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 Chapters 1 and 2 of this manual, 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 pre-award 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 Opportunities 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;

- In the absence of prior approval documentation, the use of publicly owned equipment, mandatory use of borrow/disposal sites, use of patented/proprietary materials, use of warranty/guaranties, and use of agency-furnished materials, shall make all or part of the construction phase ineligible for reimbursement with federal funds (see Chapter 12, “Plans, Specifications & Estimate,” of the LAPM)
- Failure to submit a “Material Certificate” shall result in a partial loss of funding for the construction phase. Failure to adequately document and address all exceptions to the certification will result in all or partial loss of reimbursement. Failure to implement an approved materials and testing program for the project will result in the loss of federal funds for the project (see Chapter 16, “Administer Construction Project,” and Chapter 17, “Project Completion,” of the LAPM).
- Failure to enforce the Contract DBE provisions with regard to utilization or substitution will make all or part of the construction phase ineligible for reimbursement with federal funds (see Chapter 9, “Civil Rights and Disadvantaged Business Enterprises,” of the LAPM). (*This applies to Contracts executed before May 1, 2006 with race-conscious DBE goals.*)
- Failure to maintain the completed project (roadway and appurtenances constructed with federal funds and/or mitigation sites), or portions of the project shall result in repayment of all or a portion of the federal reimbursement. (See Chapter 18, “Maintenance,” of the LAPM).

**Examples of some of most common (found by Caltrans) Major Project Deficiencies (State) are:**

- RTPAs that use Exchange Funds for non-Article XIX purposes or for other than projects will have to return the funds given to them (see Chapter 18, “Optional Federal Exchange and State Match Programs,” in the LAPG).
- Counties that use Exchange Funds for other the non-Article XIX purposes will have to return the funds given to them (see Chapter 18, “Optional Federal Exchange and State Match Programs,” in the LAPG).
- On Environmental Enhancement and Mitigation (EEM) projects, reimbursable costs must be invoiced for by the end of the first state fiscal year following the fiscal year, during which funds were allocated by the CTC. Failure to comply will result in loss of the federal reimbursement (see Chapter 20, “Environmental Enhancement and Mitigation,” in the LAPG).

## UNRECOVERABLE PROJECT DEFICIENCY

An Unrecoverable Project Deficiency is defined as “a deficiency of such magnitude as to create doubt that the policies and objectives of Title 23 of the USC (or other applicable federal codes) will be accomplished by the project,” (quote from “PS&E Certification”) and the project has proceeded to the point that the deficiency cannot be corrected. This level of deficiency shall result in the withdrawal of all or a portion of the federal and/or state funds from the project.

**Examples of some of the most common (found by Caltrans and FHWA) Unrecoverable Project Deficiencies (Federal) are:**

- Projects that are not on an approved FTIP/FSTIP are not eligible for reimbursement with federal funds for any project activities prior to approval of the FTIP/FSTIP and project authorization (see Chapter 2, “Financing the Federal-Aid Highway Program,” in the LAPG.)

- Any preliminary engineering, right of way and construction activities done prior to authorization are not eligible for reimbursement (see Chapter 3, “Project Authorization,” of the LAPM)
- Violation(s) of permit requirements or conditions obtained as a requirement of the environmental process, or failure to secure required permits, or NEPA approvals will result in a loss of all or part of the federal project funding (see Chapter 6, “Environmental Procedures,” of the LAPM).
- No pre-award audit for consultant contracts of \$1 million or more.
- Consultant contract awarded, but not through competitive negotiations, when a noncompetitive negotiated contract is not warranted.
- Design work (over and above what is required for NEPA compliance) prior to NEPA approval is not eligible for reimbursement with federal funds (see Chapter 3, “Project Authorization,” Chapter 6, “Environmental Procedures,” and Chapter 12, “Plans, Specifications & Estimate,” of the LAPM).
- Failure to include required contract provisions, Form FHWA-1273 and other contract provisions - certifications, in the bid documents shall make the construction phase of the project ineligible for federal reimbursement (see Chapter 12, “Plans, Specifications & Estimate,” of the LAPM).
- Right of Way Acquisition prior to NEPA approval (except for hardship and protection with FHWA prior approval) is not eligible for federal reimbursement (see Chapter 3, “Project Authorization,” Chapter 6, “Environmental Procedures,” and Chapter 13, “Right of Way,” of the LAPM).
- Additional costs resulting from incorrect statements on Right of Way Certification are not eligible for federal reimbursement (see Chapter 13, “Right of Way,” of the LAPM).
- Failure to open the bids publicly, failure to read the bids aloud, or failure to discuss reason(s) for not reading bid(s) aloud shall make the construction phase ineligible (see Chapter 15, “Advertise and Award Project,” of the LAPM).
- Award of the construction contract to other than the lowest, responsive bidder for bids based on competition shall make the construction phase ineligible for reimbursement with federal funds (see Chapter 15, “Advertise and Award Project,” of the LAPM).
- Negotiations with bidder(s) prior to award, except for force account projects, shall make the construction phase ineligible for reimbursement with federal funds (see Chapter 12, “Plans, Specifications & Estimate,” and Chapter 15, “Advertise and Award Project,” of the LAPM).
- Award of the contract to a suspended or debarred contractor shall make the construction phase ineligible for reimbursement with federal funds (see Chapter 15, “Advertise and Award Project,” of the LAPM).

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## CHAPTER 12 OTHER FEDERAL PROGRAMS

### 12.1 HIGH PRIORITY PROJECT PROGRAM

#### INTRODUCTION

A **High Priority Project (HPP)** (also known as a Demonstration or Demo Project) is an earmark that has been specifically established and funded through Federal law. HPP earmarks are generally provided as part of the **Annual Transportation Appropriations Act** or the **Multi-Year Surface Transportation Authorization Act**. Both acts provide a general project description and fund amount. HPP earmarks are not restricted to any specific project type. Interchange improvements, grade crossing improvements, safety projects, bridges, and park and ride projects are examples of projects funded with HPP funds. Over the life of the HPP Program in California, there have been nearly 1000 HPP earmarks set forth by legislation, including the Transportation Authorization Act of 1982, the Surface Transportation and Uniform Relocation Act of 1987 (STURA), the Intermodal Surface Transportation Equity Act of 1991 (ISTEA), the Transportation Equity Act for the Twenty-First Century (TEA-21), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) and multiple Annual Appropriations Acts. These projects account for nearly \$3 billion in Federal funds in California.

#### INITIATION OF HPPS

HPP earmarks are initiated by Congress at the request of constituents within a given Congressperson's district. The agency, special interest group or individual that requests the project through a Congressperson is known as the **Project Sponsor**. Once a project has been earmarked, the Project Sponsor should notify and provide the **District Local Assistance Engineer (DLAE)** with a copy of the application that was sent to their Congressperson. A copy is then forwarded to the Caltrans **HPP Program Coordinator** in the Headquarters (HQ) Division of Local Assistance (DLA). Caltrans' management has adopted a position of neutrality toward initiation of HPP earmarks. Caltrans' current policy is to cooperate with local interests seeking to establish meaningful HPP earmarks both on the State Highway System (SHS) and on the Local System. Caltrans will support the local agencies during the planning process for cost-effective projects. **Caltrans cannot sponsor HPPs and cannot accept transferred sponsorship of an HPP from a local agency.**

#### ELIGIBILITY

HPP funds are allocated to specific projects by law. The proposed project must therefore, match the **legislated project description** and fund amount. It is the responsibility of the Project Sponsor to assure the accuracy of the project description and fund amount. These funds can only be used for the project to which they were assigned by law. Any changes to the legislated project description or funding must be approved by Congressional action.

**FUNDING**

If the legislated project description has a typographical or technical error, the local agency or district should forward the correct information to the HPP Program Coordinator through the DLAE. The HPP Program Coordinator will then coordinate with **the Federal Highway Administration (FHWA)** Division Office to make the appropriate changes.

All funds dedicated to a specific HPP may be used on any project with a scope consistent with the original legislated description. The funds may be used for one project or several separate projects adding up to the available funding limit. If the Project Sponsor wishes to modify the legislated project description, the sponsor must coordinate with the appropriate Congressperson to pursue Congressional action. A copy of any formal request to change the project legislation should be transmitted to the DLAE and the HPP Program Coordinator.

The **annual allocations** for HPP earmarks are only available after passage of the respective annual acts. The annual allocations are subject to the limits set by Congress in the appropriations act. This means that even though a certain amount of funds are allocated, the appropriations act sets limits on how much can actually be spent. Local agencies may request **Advanced Construction (AC)** authorization for an HPP. This authorizes them to begin the work using their own funds in advance to pay for the work before Federal funds become available. The local agency must recognize that Federal reimbursement in this case is not guaranteed. In addition, AC may not be used for right-of-way acquisition except in the case of hardship or protection. The DLAE, Area Engineer and HPP Program Coordinator will approve AC on a project-by-project basis. **Requests for AC must be approved by FHWA through the E-76 process prior to any work being performed. Work performed prior to FHWA approval of the E-76 is not reimbursable.**

**Obligation Authority (OA)** is the Federal limitation placed on the amount of allocated Federal funds, which a state can obligate within a fiscal year. The HPP Program has its own special OA, which cannot be used for any other program. This special OA does not expire if not used by the end of the fiscal year and is available until expended or rescinded by legislation. However, it is subject to annual limits set by Congress in each annual appropriations act. The HPP Program Coordinator can be contacted for specific OA information.

**SAFETEA-LU**

Four hundred and twenty-six projects were authorized under SAFETEA-LU. Like all HPPs, the funds allocated under SAFETEA-LU are available until expended or rescinded by legislation. SAFETEA-LU allocates funds incrementally on a yearly basis over the life of the act. These allocations, which total approximately \$1 billion, are made available at 20% per year over five years and are subject to **obligation limitation**.

The obligation limitation for SAFETEA-LU projects were as follows:

Federal Fiscal Year	04/05	05/06	06/07	07/08	08/09
Obligation Limitation	85.55%	87.048%	90.55%	92.45%	93.65%

Since the obligation limitation for this program is less than 100% of the allocations, in order to fully utilize the allocations, regular OA available from other Federal-aid Highway programs may be used to make up the short fall. This requires approval from the Metropolitan Planning Organization (MPO) or the Regional Transportation Planning Agency (RTPA), the Department, and the Federal Highway Administration (FHWA). The Project Sponsor should notify the DLAE in writing with their request. After the information is received from the DLAE, the HPP Program Coordinator will then request that FHWA transfer the shortfall amount in appropriation code funds to the L930 account. Upon transfer of funds, the L930 funds are available for obligation.

The Federal share for SAFETEA-LU HPPs is 80%. The local agency is responsible for the 20% non-Federal match and any additional funds necessary to fully fund the project. The appropriation codes for SAFETEA LU HPP projects are as follows:

Projects with SAFETEA-LU HPP#s 1-3676:

Federal Fiscal Year	04/05	05/0-08/09
Appropriation Code	HY10	LY10

Projects with SAFETEA-LU HPP#s 3677-5173:

Federal Fiscal Year	04/05	05/0-08/09
Appropriation Code	HY10	LY10

**Revenue Aligned Budget Authority (RABA)** funds are also provided for the SAFETEA-LU HPPs. RABA funds reflect revised receipt estimates to the Federal Highway Trust Fund and can be zero, positive or negative. RABA funds were provided for Federal Fiscal Year 2006. RABA funds come with their own OA at 100% and use the same appropriation codes.

The FHWA SAFETEA-LU High Priority Projects Program Implementing Guidance dated October 2006, can be found at <http://www.fhwa.dot.gov/programadmin/103106att.cfm>. This guidance contains additional detail on SAFETEA-LU HPPs only.

### PLANNING AND PROGRAMMING HPP FUNDS

The local agencies are responsible for submitting their projects to the MPO/RTPA for inclusion in the **Federal Approved State Transportation Improvement Program (FSTIP)**. The FHWA will not obligate Federal funds for the project unless the project is included in the FSTIP.

The process for obtaining Federal authorization to proceed and placing the project under agreement is the same as for other Federal-aid projects. Caltrans and local agency staff are advised to work closely with their FHWA representatives to ensure agreement as to the degree of FHWA involvement. See Chapter 3 “Project Authorization” in the Local Assistance Procedures Manual (LAPM).

### FEDERAL FUND REQUESTS

Most HPP funds are processed (as outlined in Chapter 3, “Project Authorization” in the LAPM) through DLA. Project Managers handling HPP earmarks where the Department is the lead agency must also work with the DLA to obligate HPP funds for their project.

The local agency must request Federal funds from the DLAE. The DLAE will assure that the project for which the local agency is requesting funds fits the legislated project description. The DLAE then completes the E-76 and forwards it to the Implementation Engineer at Caltrans HQ DLA. When the DLAE fills out the E-76, both the Public Law Section and Legislated Project Number should be noted in the “State Remarks” section. The Demo ID field must also be populated. The Implementation Engineer approves the E-76 and forwards it to FHWA. Funds are not available until FHWA has fully approved the E-76. **Any work performed prior to FHWA approval of the E-76 is not reimbursable.**

For HPPs on the SHS, if a local agency has stepped forward with a contribution of its Federal-aid HPP funds, a “Local Assistance Contribution Authorization Agreement” (**Contribution Agreement**) needs to be processed. If a local agency will be doing any work, contributing its own funds, or requesting the state to perform the work for them, a Cooperative Agreement will need to be processed. The Contribution Agreement can be combined with the Cooperative Agreement.

HPP funds for projects on the SHS require a California Transportation Commission vote. When Caltrans is the administering agency of a locally sponsored HPP from SAFETEA-LU, TEA-21 or post-1998 Appropriation Acts, HPP funds are set up for **subvention reimbursement** through Caltrans Local Program Accounting. This allows Caltrans to be directly reimbursed by FHWA rather than having the funds pass through the local agency.

#### **FEDERAL SHARE**

In accordance with 23 U.S.C. Section 117(c), the Federal share for HPP funds is 80% unless otherwise specified in law. The 20% match must come from non-Federal sources, unless the source of Federal funds has specific legislative authority that allows the match to be other Federal funds, including Federal-aid highway funds.

HPPs earmarked under Annual Transportation Appropriation Acts are generally reimbursed at 100%, while HPPs earmarked under the Multi-Year Transportation Authorization Acts are reimbursed at 80%.

Contact the HPP Program Coordinator for specific project requirements.

#### **CONSTRUCTION AND INVOICING**

For construction and invoicing procedures, follow the standard procedure for Federal-aid projects as covered in Chapters 5, “Accounting/Invoices”, Chapter 15, “Advertise and Award Project”, Chapter 16, “Administer Construction Contracts” and Chapter 17, “Project Completion”, of the LAPM.

## **12.2 PUBLIC LANDS HIGHWAYS PROGRAM**

### **INTRODUCTION**

Section 204 of Title 23, United States Code (U.S.C.) establishes a Federal Lands Highways Program (FLHP), which consists of projects on Public Lands Highways, park roads, parkways, Indian Reservation roads and refuge roads. Caltrans involvement is limited to the Public Lands Highways (PLH) element of the FLHP.

## ELIGIBILITY

Local agencies that think their highways would be eligible for DAR funds should contact the base commander of the defense installation that will impact their highways. Sometimes base commanders will contact the local agency when they are planning modifications of their facilities. If after meeting with the local agency the base commander believes that access highway deficiencies are of such character as to justify relief through an improvement, the base commander will report the deficiencies to MTMC.

MTMC has the responsibility for determining the eligibility of proposed improvements for financing with DAR funds. MTMC will request the FHWA, California Division Office, to make an evaluation report of the access road needs of the installation. The evaluation report will include comments and recommendations by the base commander and the local agency. See Exhibit 12-A, "DAR Evaluation Report" in this chapter for information that is included in the report.

The evaluation report will be furnished to MTMC for its use in making the determination of eligibility and certification of importance to the national defense. The criteria upon which MTMC will base its determination of eligibility are included in Exhibit 12-B, "MTMC Eligibility Criteria" in this chapter.

If MTMC determines a project to be eligible for financing either in whole or in part with defense access road funds. MTMC will certify the project as important to the national defense and will authorize DAR funds for the project. The certification will indicate to FHWA the eligible project scope, funding amounts and appropriation code.

## DESIGN STANDARDS

- a) Access roads to permanent defense installations and replacement roads shall be designed to conform to the same standards as the agency having jurisdiction is currently using for other comparable highways under similar conditions in the area, and in accordance with Chapter 11, "Design Standards" of the LAPM. Should local agencies desire higher standards than they are currently using for other comparable highways under similar conditions in the area, the local agencies shall finance the increases in cost.
- b) Access roads to temporary military establishments or for service to workers temporarily engaged in construction of defense installations should be designed to the minimum standards necessary to provide services for a limited period without intolerable congestion and hazard. As a guide, widening to more than two lanes generally will not be undertaken to accommodate anticipated one-way, or traffic of less than 1,200 vehicles per hour. The resurfacing or strengthening of existing pavements will be held to a minimum type having structural integrity to carry traffic for the short period of anticipated use.

## PROJECT ADMINISTRATION

- a) Determination of the agency best able to accomplish the location, design, and construction of the DAR projects will be made by the FHWA California Division Office after consultation with Caltrans and/or local agency within whose jurisdiction the highway lies. When an agency other than Caltrans or the local agency (sometimes another federal agency has jurisdiction over the project area) is selected to administer the project, the FHWA Division Office will be responsible for any

necessary coordination between this agency and the other parties during the life of the project.

- b) DAR projects under the supervision of a local agency, whether “on” or “off” the federal-aid system, shall be administered in accordance with the procedures in the LAPM, as modified specifically, unless approval of other procedures has been obtained from Washington Headquarters Federal Lands Highway Office. DAR funds must be included in the FSTIP and project phases authorized by Caltrans prior to beginning work for which reimbursement will be sought, see Chapter 3 “Project Authorization,” of the LAPM.
- c) The FHWA Division Office shall have a firm commitment from Caltrans or local agency within whose jurisdiction the access road lies, that they will accept responsibility for the maintenance of the completed facility before authorization of acquisition of right-of-way or construction of the project.
- d) When DAR funds are available for a pro-rata portion of the total project cost, the remaining portion of the project may be funded as a federal-aid project if on a federal-aid route. DAR funds shall not be substituted for matching share of the federal-aid portion of a project.

#### **MANEUVER AREA ROADS**

- a) Claims by a local agency for costs incurred to restore to their former condition, roads damaged by maneuvers involving a military force at least equal in strength to a ground division or air wing will be paid from funds appropriated for the maneuver and transferred to FHWA by the Department of Defense (DOD) agency. DAR funds may be used to reimburse the local agency pending transfer of funds by the DOD agency.
- b) Cost incurred by the local agency while conducting a pre-or post-condition survey may be included in the claim to DOD for direct settlement or in the damage repair project as appropriate.

#### **STRATEGIC HIGHWAY NETWORK (STRAHNET)**

The STRAHNET system of public highways provides access, continuity, and emergency transportation of personnel and equipment in times of peace and war. The 61,000-mile system designated by the FHWA in partnership with the DOD, comprises about 45,000 miles of interstate and defense highways and 15,600 other public highways.

The STRAHNET is complimented by another 1,700 miles of connectors (additional highway routes) that link more than 200 military installations and ports to the network. While installations may have multiple access/egress routes, the STRAHNET connector is generally the most direct and highest functional class roadway.

As the designated agent for public highway matters, the DOD’s MTMC is the proponent for STRAHNET and STRAHNET Connectors. The MTMC identifies STRAHNET and STRAHNET Connectors in coordination with the FHWA, the states’ transportation departments, the military services and installations, and the ports.

The ISTEA of 1991 and the National Highway System Designation Act of 1995, provided for inclusion of STRAHNET and STRAHNET Connectors in the 160,955-mile NHS. Federal oversight will ensure optimum maintenance levels for the NHS, thus assuring that the roads can support an emergency deployment.

In addition, the MTMC is also concerned about the traffic safety issues associated with the STRAHNET and STRAHNET Connectors. It is imperative that the number of fatalities, injuries and personal property accidents affecting military personnel are reduced. Therefore, the local agencies, states and FHWA should be cognizant of the need to identify traffic safety issues on this system and program, and appropriate corrective measures.

For official STRAHNET and Update Procedures website:

<http://www.fhwa.dot.gov/hep10/nhs>

## 12.6 HIGHWAYS FOR LIFE PROGRAM

### BACKGROUND

The Highways for Life (HfL) program was established in 2005 under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Sections 1101(a)(20) and 1502. The purpose of Highways for Life is to accelerate the rate of adoption of innovations and technologies, thereby, improving safety and highway quality while reducing congestion caused by construction.

The program provides funding to demonstrate and promote state-of-the-art technologies, elevated performance standards, and new business practices in the highway construction process that result in improved safety, faster construction, reduced congestion from construction, and improved quality and user satisfaction. For each proposed project the **State must be willing to consider making a standard practice of the innovation after a successful demonstration.**

### POLICY

Funded by contract authority, funds remain available for four (4) years. Funds are subject to the overall Federal-aid obligation limitation. States are required to submit an application that includes a description of the proposed project(s). A proposed project shall be eligible for assistance under the pilot program if the project:

- Constructs, reconstructs, or rehabilitates a route or connection on a Federal-aid highway eligible for assistance under Chapter 1 of Title 23, United States Code (USC)
- Uses innovative technologies, manufacturing processes, financing, or contracting methods that improve safety, reduce congestion due to construction, and improve quality
- Will be ready for construction within one (1) year of approval of the project proposal
- The amount allocated for a HfL project may be up to 20% but not more than \$5 million, of the total project cost. HfL funds may be used as the 20% non-Federal match requirement of a project constructed under 23 USC. The Federal share for such a project would be 100%.
- Each local agency should be prepared to provide technical specifications for the proposed innovation, if requested

Historical national funding authorizations for each Federal Fiscal Year:

2005 = \$0    2006 = \$15 M    2007 = \$20 M    2008 = \$20 M    2009 = \$20 M

### PROCEDURE

The District Local Assistance Engineer (DLAE) is the primary contact for local agencies. The Headquarters, Local Assistance HfL Program Coordinator (PC) is the direct contact for the DLAEs. The PC is notified by the Federal Highway Administration (FHWA) when there is a call for applications. The PC then forwards the application packet to the DLAEs. The DLAEs notify the local agencies of the call for projects and are sent an application packet. A local agency seeking HfL funding completes an application and submits it electronically to the DLAE. The DLAE coordinates with local agencies timeliness for submittal of the applications and provides quality control for completeness, and that program criteria are satisfied on all applications received and forwards them to the PC. The PC coordinates with the DLAEs the timeliness for submittal and provides quality assurance reviews on all applications before making a consolidated statewide submittal of all local agency applications to the Headquarters, Division of Budgets, Office of Federal Resources (OFR).

The applications are then forwarded to OFR and are reviewed and ranked according to the criteria. The OFR is Caltrans primary point of contact with the FHWA California Division. If OFR approves the application, it is forwarded to FHWA for review and evaluation for partial or complete HfL funding. The FHWA HfL review panel makes recommendations, and the Secretary of Transportation makes the final decision on which projects will be funded. Once the project awards are announced by FHWA, the PC notifies the DLAEs. The DLAEs inform the local agencies whether or not their project was awarded.

### APPLICABILITY/IMPACTS

The HfL program applies to and impacts local agencies. This program applies to all local agencies that apply for HfL funding. Such funding will impact local agencies/communities by bringing innovative technologies to local roads and highways and will reduce congestion and improve safety by facilitating faster and safer construction processes.

Each year that HfL funds are available Caltrans will distribute the solicitation for project applications. There is normally a one-to-two month window to submit applications each Federal Fiscal Year, which begins each October 1. The time frame has varied from year to year since the program's inception. For the most recent Federal Fiscal Year, re-solicitation was started in July 2009 and FHWA accepted applications until December 2009. For more information on this program you may access the FHWA HfL web site at: <http://www.fhwa.dot.gov/hfl/>

The local agency points of contact for this program are the DLAEs in each district. A complete listing of DLAEs is located on the internet at: <http://www.dot.ca.gov/hq/LocalPrograms/dlae.htm>

**EXHIBIT 12-C HIGHWAYS FOR LIFE PROJECT APPLICATION PACKET**

**Burden Statement** - This collection of information is voluntary and will be used to select projects for funding with Highways for LIFE program funds. Public reporting burden is estimated to average 8 hours per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The purpose of HfL is to accelerate the rate of adoption of innovations and technologies, thereby, improving safety and highway quality while reducing congestion caused by construction. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 2125-0607 with an expiration date May 31, 2012.

**Highways for LIFE Application**

Please provide complete descriptions and answers to the Highways for LIFE Project Application. If you have any questions, please feel free to contact your District Local Assistance Engineer.

**NOTE: The application cannot exceed 10 pages.**

The format of the application shall be as follows:

1. Applications shall be prepared on 8 ½ x 11 inch paper.
2. Text shall be printed using a font size no less than 12 cpi.
3. Page margins shall be a minimum of 1 inch top, bottom, and each side.

All applications from the State must be submitted to their FHWA Division Office. The division office is to forward the State's application and provide a recommendation memorandum to the HfL office with the following information:

- Identify the features in the application that are truly innovative in their State (not a standard practice);
- Determine if the project meets the minimum requirements of HfL;
- Identify the measurable HfL goals that will be met by the innovations;
- Determine if the innovations will make a significant improvement in the State's construction program;
- Provide a recommendation if this project should be selected as a HfL project; and
- Determine if the State is willing to consider making a standard practice of the innovation after a successful demonstration.

The application must address the following;

**I. Applicant Information:**

- Application for FY
- Application date
- Applicant name, title, phone, and e-mail
- State Highway Department

**II. Project Information:**

- Project description (location, purpose and scope)
- Anticipated FHWA construction authorization date
- Construction duration time
- Partnerships
- Anticipated total project cost

### III. Highways for LIFE Incentives:

- Amount of grant requested
- Amount or percentage requested to be adjusted by increasing the Federal share by using other apportioned Federal-aid funds

### IV. Innovative Features:

*An “innovation”, as defined here, must be one that the State has never before or rarely used. Innovations used on emergency or unique projects are exceptions. The proposed innovations must be available and ready for use. They should not require further development or test and evaluation. The innovations must have (as appropriate) standards, specifications, test procedures, training and operations guidance to support the application of the innovation in routine highway design and construction. Further, the innovations have been used successfully in the U.S. or internationally and documentation or sufficient evidence of the benefits must also be available. **Please provide sufficient information to support the feasibility of the proposed innovations.***

#### Safety

- Describe the proposed innovations that will be used in meeting the HfL performance goal of achieving a work zone crash rate equal to or less than the existing condition. If your goal is different from the HfL goal please provide an explanation of your goal. Include in your discussion the current crash data for the project location.
- Describe the proposed innovations that will be used in meeting the HfL performance goal of achieving an incident rate for worker injuries to be less than 4.0 based on the OSHA 300 rate. If your goal is different from the HfL goal please provide an explanation of your goal.
- Describe the proposed innovations that will contribute to a 20% reduction in fatalities and injuries as reflected in a 3-year average crash rate, using pre-construction rates as a baseline.

#### Construction Congestion

- Describe the proposed innovations that will be used in meeting the HfL performance goal of a 50% reduction, compared to traditional methods, in the duration that highway users are impacted. If your goal is different from the HfL goal please provide an explanation of your goal. Include in your discussion a baseline of how long the highway users would have been impacted if traditional methods were used.
- Describe the proposed innovations that will be used in meeting the HfL performance goal for trip time **or** queue length during construction.
  - The trip time goal is less than 10% increase in trip time during construction as compared to the average pre-construction time using 100% sampling.
  - The queue length goal is a moving queue length less than 1/2 mile (travel speed 20% less than posted speed) in a rural area OR a moving queue length less than 1 1/2 mile (travel speed 20% less than posted speed) in an urban area.

If your goal is different from the HfL goal, please provide an explanation of your goal. Include in your discussion a baseline on what the trip time or queue length would be if traditional methods were used.

Quality

- Does the project include the HfL performance goal of International Roughness Index (IRI) of less than 48 in/mi? If your goal is different from the HfL goal, please provide an explanation of your goal. Include in your discussion a baseline of what the existing minimum acceptable IRI is for the project and the method used in achieving the HfL goal.
- Does the project include the HfL performance goal of achieving tire-pavement noise measurement of less than 96.0 decibels using the On Board Sound Intensity (OBSI)\* test method? This is the tire to pavement noise and not the noise measured for a noise sensitive area or receptor noise. If your goal is different from the HfL goal, please provide an explanation of your goal. Include in your discussion if this is a standard noise measurement for your State. (\* *This is a revision from the FY06 performance goal which identified using the Close Proximity (CPX) test method.*)
- Describe any other proposed innovations that will improve the durability and quality of work performed in fabrication and construction.
- Describe any advanced material that will be used to prolong the life of the infrastructure (i.e. roadway and bridge). Provide justification for selecting its use.
- Identify equipment innovations that will improve quality and describe the functionality of the equipment.

User Satisfaction

- Does the project include the HfL performance goal of 4+ on the Likert scale for the following questions; (1) How satisfied the user is with the new facility, compared with its previous condition, and (2) How satisfied the user is with the approach used to construct the new facility in terms of minimizing disruption? Describe the process user satisfaction will be measured.

**V. Summary:**

Provide a brief summary on how this demonstration project can impact the future practices of the industry and the U.S. Department of Transportation. The potential for adopting the identified innovations as standard practice and the benefits to be derived for motorists and the program. Describe the techniques and tools your agency plans to use to communicate the various aspects of the project with highway users and community. (i.e. media relations, surveys, news releases, special events, newsletters, etc.)

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**LOCAL ROAD REHABILITATION PROJECTS**

5. Has the RTPA certified that the project meets the standard for rehabilitation?

- Yes  
 No

If "Yes," attach copy of Local Road Rehabilitation Project Certification and skip to next section.

If "No," this Request for Funding Allocation will not be processed until the Certification is provided.

**ENVIRONMENTAL CLEARANCE REQUIREMENTS**

6. Is this request limited to funding for the Environmental Studies component?

- Yes  
 No

If "No," a completed CEQA Environmental Document is required.

For certain types of projects that do not result in either direct or indirect change in the physical environment, a formal CEQA document may not be needed. An example of this type of project is installing bicycle racks on buses. Consult Caltrans Environmental office for interpretations.

7. Is final CEQA determination a categorical exemption (CE)?

- Yes  
 No

If "Yes," skip to question #9.

If "No," go to question #8.

8. Did local agency submit final CEQA environmental documentation to CTC?

- Yes  
 No

If "Yes", please provide Resolution E#:\_\_\_\_\_. This can be obtained from the CTC "Action Taken Report" at <http://www.dot.ca.gov/hq/transprog/ctcliaison.htm>.

If "No," local agency needs to submit environmental documentation to support CEQA determination to: CTC, 1120 N Street, MS 52, Sacramento, CA 95814. This is required to obtain subsequent allocation approval by CTC.

(Note: Notice of Preparation (NOP) and Draft Environmental Impact Report (DEIR) should be forwarded to the CTC to allow the CTC to provide comments in its role as a responsible agency – see CEQA Lead Agency Responsibilities letter dated 4/20/2009 from Division of Local Assistance.)

9. Is this request for a project with any federal funds (STIP or non-STIP)?

- Yes  
 No

If "No," skip question 8, a NEPA Environmental Document is not required.

10. Is this request for Right of Way or Construction funding?

- Yes  
 No

If "Yes," a completed NEPA Environmental Document is required.

**CONSULTANT CONTRACT PREAWARD AUDIT REQUIREMENTS**

11. Will consultants perform any portion of the work on the requested component?

- Yes
- No

If "Yes," answer the following questions. If "No," skip to question #13.

Any contracts  $\geq$  \$1 million?

- Yes
- No

If "No," Pre-award audit not required, skip to question #13.

12. Status of the audit

- Completed (attach "Audit Disposition" letter)
- To be completed by Caltrans ("Pre-award Audit Request Letter" must be sent to DLAE).
- To be completed by local agency or hired Certified Public Accountant at a later date. Submit "Audit Disposition" letter to the DLAE prior to entering into a contract with the consultant(s).

**ESTIMATED TIMELY USE OF FUNDS DEADLINES**

13. Requested Funding Allocation Approval date \_\_\_\_\_

14. Is this request for Project Development costs (Environmental Studies or PS&E)?

- Yes
- No

If "Yes," complete the following:

Estimated expenditure deadline for this project development allocation: \_\_\_\_\_

(Enter June 30<sup>th</sup> of the end of the second fiscal year after the requested approval date.) **Expenditures after this date will not be reimbursed and no adjustment will be made to the county share balance for the under-expenditure unless the CTC extends the deadline.**

15. Is this request for Right of Way costs?

- Yes
- No

If "Yes," complete the following:

Estimated expenditure deadline for this right of way allocation: \_\_\_\_\_

(Enter June 30<sup>th</sup> of the end of the second fiscal year after the requested approval date.) **Expenditures after this date will not be reimbursed and no adjustment will be made to the county share balance for the under-expenditure unless the CTC extends the deadline.**

16. Is this request for Construction costs?

- Yes
- No

If "Yes," complete the following:

Estimated award deadline for this allocation: \_\_\_\_\_

(Enter the date that is 6 months after the date of the requested approval date.) **If the project is not awarded by this date, the funding will be rescinded with no adjustment to county shares unless the CTC extends the deadline.**