Local Programs Procedures

LPP 11-01 Manual Update
Subject: Oversight & Process Reviews

Reference:
Local Assistance Procedures Manual (LAPM),
Chapter 19-Oversight & Process Reviews; Chapter 11-Design Standards;
Chapter 16-Administer Construction Contracts; Chapter 17-Project Completion;
Chapter 20-Deficiencies & Sanctions

Effective Date: March 1, 2011 Approved: Original Signed By

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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 update Chapter 19 of the LAPM to not only identify Process Reviews performed by both Caltrans and FWHA, but to also identify others that not only perform process reviews but are also performing other types of oversight of local agency federal-aid or state funded transportation projects.

BACKGROUND

Chapter 19 previously identified Caltrans and FHWA Process Reviews as the main method for determining if a local agency receiving federal-aid funds is in compliance with the applicable federal laws, regulations and procedures; currently this is no longer the main method. Chapter 19 also states the purpose of the Caltrans Process Review Program is to maintain a continual process to improve local assistance procedures for a more efficient and effective federal-aid and state funded local assistance program. While this purpose remains, a number of others are currently involved in the review and oversight of local agencies to ensure their compliance with applicable federal and state laws, regulations, and procedures of their federal-aid or state funded transportation projects.

PREVIOUS PROCEDURE

The previous procedure for Process Reviews remains in place, however it is now being supplemented by other methods being used in performing oversight to measure compliance with applicable federal and state laws, regulations, and procedures of local agency federal-aid or State funded transportation projects.

NEW PROCEDURE

The new procedure will add the contributions of others that are also performing process reviews and contributing oversight to ensure local agency compliance with applicable federal and state laws, regulations, and procedures on local agency federal-aid or state funded transportation projects.

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.

- 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:

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SUMMARY OF CHANGES

LAPM Item	Change
Chapter 19	Reissued in its entirety as Oversight and Process Reviews. Original Chapter 19, "Process Reviews." Includes updated table of contents
Chapter 11 **Section 11.4 (Design Exceptions) page 11-26**	Updated reference to Chapter 19 to reflect new chapter title, "Oversight and Process Reviews."
Chapter 16 **Section 16.17** **(Construction Engineering Review by the State** **page 16-46**	Updated reference to Chapter 19 to reflect new chapter title, "Oversight and Process Reviews."
Chapter 17 **Section 17.6** **(Consequences for Non-Compliance)** **page 17-8**	Updated reference to Chapter 19 to reflect new chapter title, "Oversight and Process Reviews."
Chapter 20 **Section 20.1 (Introduction)** **page 20-1**	Updated reference to Chapter 19 to reflect new chapter title, "Oversight and Process Reviews."

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CHAPTER 19 OVERSIGHT AND PROCESS REVIEWS

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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. Pursuant to the October 4, 2010, Caltrans/FHWA Joint Stewardship Agreement, Caltrans will provide FHWA with an annual summary of oversight activities by July 30th of each year.

OTHER CALTRANS GUIDANCE AND ASSISTANCE

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

- Providing local agencies with accurate federal-aid project development procedures and program guidelines;
- Providing local agencies with a sample Quality Assurance Program for the sampling and testing of materials and the procedures used in the construction of the local agency project;
- Providing quality assurance guidance and measures to local agencies such as the "Quality Assurance Program (QAP) Manual" for use by local agencies which was developed to help local agencies with their Quality Assurance Programs;

- Using Independent Assurance Caltrans personnel to certify local agency material samplers, testers, and laboratories;
- Establishing the Local Oversight Action Plan (LOAP) team consisting of federal, state and local agency members to jointly prepare and implement changes and improvements to the *Local Assistance Procedures Manual*, and other local agency guidance, as well as identifying local agency, Caltrans, and FHWA oversight roles and responsibilities;
- Producing Office Bulletins to quickly implement regulatory and other changes to the *Local Assistance Procedures Manual* and *Local Assistance Program Guidelines*;
- Preparing the "Caltrans Oversight Information Notice" (COIN); alerting local agencies to new and innovative practices and/or procedures; and best practices; along with findings, areas or items of concern or non-compliance;
- Providing continuous federal-aid project training in consultant selection, contract procurement, administration, and closeout;
- Providing training such as the Resident Engineer's Academy and the Federal-aid Series for local agency staff, consultants, and related professionals.
- Hosting statewide meetings and conferences, such as the City-County-State-Federal Cooperative Committee meeting, to receive local agency and Caltrans district feedback.

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

FHWA OVERSIGHT AND PROCESS REVIEWS

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

- <u>Construction Contractor Payment Reviews</u>
  The purpose of these reviews is to evaluate and test the controls that are related to the financial aspects of construction contractor payments for local agency federal-aid projects. The review may include preparation of the project cost estimate, approval of and payment of monthly cost estimates, the preparation and processing of change orders and the completion, and final acceptance of the work.
- <u>Financial Integrity Review and Evaluation (FIRE)</u>
  Construction Contractor Payment Reviews, Improper Payment Reviews, Inactive Obligation Reviews, and other reviews may be performed to fulfill, in part, the requirements of the FIRE Program established via FHWA Order 45601 b. Performance of these reviews and other oversight activities are necessary to support FHWA's annual certification of the adequacy of the internal and financial controls in place to support the agency's financial statements. Construction Contractor Payment Reviews are one of the tools that can be used by FHWA in support of the FIRE.

- Process Reviews of Selected Local Agency Federal-aid Projects
  Based upon random selection of local agencies or local agency federal-aid projects, FHWA performs process reviews of the federal-aid program, and local agency federal-aid projects to establish a confidence level that verifies local agencies and their federal-aid projects fully comply with federal and state laws and regulations.
- Process Reviews of specially funded Federal-aid Projects
  Local agency specially funded projects frequently have unique requirements which may require special implementation. Such projects can be evaluated by FHWA to both measure compliance and the results. One example is the American Recovery and Reinvestment Act (ARRA) in 2009 which was of limited duration and had as one of its primary purposes for FHWA to expeditiously assist in the creation of jobs in the construction industry by rebuilding the transportation infrastructure.
- Program and/or process reviews of Caltrans/local agency high risk areas based upon risk analysis
  FHWA identifies high risk areas in the federal-aid process and program. Using the results of the risk analysis, FHWA may choose to perform program and/or process views of these high risk areas within Caltrans, local agencies, or local agency projects.
- FHWA's Verification Process
  Used for project authorizations/final vouchers; retained project-level approvals; High Profile project approvals; and inactive obligations.

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

OVERSIGHT AND REVIEWS BY OTHER FEDERAL AGENCIES

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

OVERSIGHT USING MINI PROCESS REVIEWS

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

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

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

OTHER OVERSIGHT METHODS

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

19.4 OVERSIGHT/PROCESS REVIEW COMMITTEE

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

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

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

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

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

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

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

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

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

19.5 FINDINGS/RECOMMENDATIONS

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

Other objectives include:

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

FINAL REPORT

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

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

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

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

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

CORRECTIVE ACTIONS

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

19.5 REFERENCE

Caltrans/FHWA Joint Stewardship Agreement

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Any deviation from standards related to the above geometric criteria require that the local agency comply with the design exception approval procedures described below.

It is important to note that design exceptions that would result in the construction of a federally funded new bridge that would result in a Sufficiency Rating (SR) of less than 80 are not allowed. The controlling criteria for bridge width, vertical and horizontal over and under bridge clearances, and approach roadway alignment are among the factors that are rated during each biennial bridge inspection. Explanation of the rating factors can be found in the publication entitled *Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges.*

Safety - Deviations from the above geometric control criteria related to safety must be handled in accordance with the procedures outlined below. Deviations from the criteria contained in the other safety-related publications referenced in Section 11.2 do not require special handling.

Pavement Structural Section - Deviations from the pavement structural section design criteria referenced herein must be justified and documented in some manner, but do not require approval in accordance with the design exception approval procedures described below.

Drainage - The hydrologic and hydraulic criteria contained herein is for guidance only. Deviations should be justified and documented, but do not require approval in accordance with the design exception approval procedures described below.

Bridge Railings - Deviations from the nonstructurally related design criteria referenced herein do not require approval in accordance with the design exception approval procedures described below. Bridge rail on NHS projects let after August 16, 1998, must meet crash test requirements of NCHRP 350.

Bikeways - Deviations from the "Mandatory Standards," as defined and indicated in the *Caltrans Highway Design Manual*, require approval in accordance with the design exception approval procedures described below.

Pedestrian Facilities - Deviations from the state pedestrian standards shall be documented in a form of a memo and retained in the project files. This memo shall discuss the justification and reasoning for not meeting the applicable standards. Deviation from federal pedestrian standards shall be documented in accordance with the federal *ADA Standards for Accessible Guidelines for Buildings and Facilities*.

Standards For Which Deviations Are Not Permitted

Bridge Structural Capacity - Deviations from the criteria contained herein for the structural capacity of bridges and other structures are not allowed. Deviations from bridge design details in the various Caltrans bridge design manuals and publications referenced herein are permitted as long as they do not impact structural capacity.

Signs and Markings - Deviations from the "Mandatory Standards" for signs and markings as defined and indicated in the *Manual on Uniform Traffic Control Devices* (MUTCD) and the *MUTCD California Supplement* are not allowed, unless a proposal to experiment with non-standard devices is submitted to the California Traffic Control Devices Committee and approved for experimental use.

Design Exception Approval Procedures

Local Projects on the State Highway System

Local projects on the SHS must follow the design exception approval procedures outlined in the Caltrans *Project Development Procedures Manual*. Refer to this website at: http://www.dot.ca.gov/hq/oppd/pdpm/pdpmn.htm

Local Projects not on the State Highway System

The following design exception approval procedures are to be followed.

The FHWA has delegated Caltrans approval authority for design exceptions on local projects not on the SHS. However, since local agencies are in a better position to assess applicability to any given situation on local roads; design exception approval authority (for those standards from which deviations are permitted) is now delegated to the City and County Public Works Directors. Public Works Directors may delegate this approval authority within their local agency, if the Public Works Director is not a registered civil engineer in the State of California, or if the local agency has a large engineering staff with multiple layers of responsibility. The person with approval authority must be a registered civil engineer in the State of California. Approval of design exceptions on local federal-aid projects shall be signed by the Public Works Director or the person to whom approval authority has been delegated.

The approval authority for design exceptions may be delegated to a private consulting firm that is on retainer as City or County Engineer.

To facilitate process reviews (see Chapter 19, *Oversight and Process Reviews*, of the LAPM), local agencies are required to keep copies of design exceptions prepared for their projects in their project files. If any local agency fails to complete and retain the completed and approved project design exception; their delegation to approve future design exceptions may be rescinded.

Design Exception Fact Sheet

The standard *Design Exception Fact Sheet* (Exhibit 11-F in this chapter) must contain the following information:

- Existing conditions
- Proposed work and nonstandard features
- Standard for which the exception is required
- Accidents - if applicable
- Design year traffic volumes - if applicable
- Added cost to make standard
- Description of any additional work to enhance safety
- Reason for requesting exception
- Reviews

involved. Such recovery shall be credited to the project or projects from which the claim or claims arose.

16.16 TRAFFIC SAFETY IN HIGHWAY AND STREET WORK ZONES

INTRODUCTION

The purpose of this section is to provide guidance and to establish procedures to ensure that adequate consideration is made for traffic safety in highway and street work zones, regarding motorists, pedestrians and construction workers on all federal-aid construction projects.

PROCEDURES

Each local agency shall develop and implement procedures consistent with the requirements of this section and Chapter 12, "PS&E," Section 12.6, "Plans," that shall contribute to the safety of motorists, pedestrians and construction workers on all federal-aid highway construction projects.

For each construction project, the local agency's procedures shall include, but not be limited to the following:

- Traffic Control Plan (TCP)

  1) A traffic control plan is a plan for handling traffic through a specific highway or street work zone or project. TCPs may range in scope from a very detailed plan designed solely for a specific project, to a reference to standard plans, or various manuals. The degree of detail in the TCP shall depend on the project complexity and traffic interference with construction activity.

  2) Traffic control plans shall be developed for all federal-aid projects and included in the plans, specifications and estimates (PS&Es).

  3) The scope of the TCP should be determined during the planning and design phases of a project.

  4) Provisions may be made to permit contractors to develop their own TCPs and use them if the local agency find that these plans are as good or better than those provided in the PS&E.

- Responsible Person

  The local agency shall designate a qualified person at the project level who shall have the primary responsibility and sufficient authority for assuring that the TCP and other safety aspects of the contract are effectively administered. While the project or resident engineer may have this responsibility, on large complex projects another person should be assigned at the project level to handle traffic control on a full-time basis. The person's name should be included in the "Resident Engineer Contract Administration Checklist" (see Chapter 15, Exhibit 15-B) if the resident engineer is not given this responsibility.

- Training

  All persons responsible for the development, design, implementation and inspection of traffic control shall be adequately trained.

- Accident Analysis

Local agencies should analyze construction and maintenance work site accidents for the purpose of correcting deficiencies which are found to exist on individual projects and to improve the content of future traffic control plans.

- Pay Items
  The method of payment for traffic control items should be described in the project specifications.

16.17 CONSTRUCTION ENGINEERING REVIEW BY THE STATE

On State administered projects the procedures outlined in the Caltrans *Construction Manual* shall be followed. On locally-administered projects the construction engineering of "Locally Administered" projects shall be reviewed as outlined in the "*Oversight and Process Reviews*," Chapter 19. When structure (bridge) work is involved, the process review team shall include a representative from the Caltrans Engineering Service Center, Office of Structure Construction.

As part of the process review, a Caltrans review team will annually review randomly selected local agency projects throughout the State for assessing the effectiveness of their traffic control procedures. The results of this process review will be forwarded to the FHWA Division Administrator.

A final inspection of the work shall be made by the local agency. This inspection shall be prior to final completion and acceptance by the local agency and before project verification by Caltrans DLAE. For details on final inspection see Chapter 17, Section 17.3, "Final Inspection Procedures for federal-aid Projects."

16. 18 REFERENCES

18 USC 1020
23 CFR
29 CFR 5.7(b)
41 CFR 60
48 CFR Part 31 (provisions for contractor furnished equipment)
49 CFR
US DOT, FHWA, 1997 *Contract Administration Core Curriculum*
FHWA Technical Advisory, *Construction Contract Time Determination Procedures*, T 5080.15 - 10/11/91
California Department of Transportation Standard Specifications
California Public Contract Code Chapter 4
49 CFR part 23
Form FHWA 1273 Contract Provisions
State of California DOT, *Quality Assurance Program Manual*, July 1994
Caltrans *Construction Manual*
California Division of Industrial Safety - *Construction Safety Orders*
"An informational Guide on Occupational Safety" 1972 AASHTO publication
California Public Records Act (Government Code Section 6253)
California Information Practices Act (Civil Code Sections 1798, et seq.)
Federal Aid Programming Guide (NS 23 CFR 635A) (Materials and right of way delays)
Technical Advisories (TA): T 4540.1 Equipment Rental Rates

- Participating Cost Previously Claimed
- Subtotal - Change in Participating Posts
- Reimbursement Ratio
- Amount of this Claim
- Invoice Total

Progress payment invoices shall be mailed directly to the Accounting Service Center in Sacramento at the address given in the example. No district review will be required for progress payments; however, final payment invoices shall be submitted directly to the DLAE as part of the Final Report of Expenditures and will be reviewed by the district prior to payment. A final detail estimate is not required for right of way only projects, since the final report of expenditures document provides the information required.

- **Force Account Projects -** Projects with Force Account work also require a Report of Expenditures. These projects are usually emergency relief type and include emergency repair work. Other federal-aid projects may incorporate all, or a part of the project to be built using the force account method. A completed example of a Report of Expenditures for a project including Force Account Work is included as Exhibit 17-L. For more information on force account procedures, see Chapter 12, "Plans, Specifiations & Estimate," under "Method of Construction."

The DLAE shall perform a review of these documents for correct format and obvious errors and/or omissions. Upon verification that the Report of Expenditures is complete, the DLAE shall forward it to LPA for processing.

STATE FUNDED PROJECTS

For state funded projects, in state transportation programs such as the Environmental Enhancement and Mitigation (EEM) Program, the local agency shall complete the "Final Project Expenditure Report" (Exhibit 17-M). The report with the final invoice attached will be submitted to the DLAE.

Note: These programs were intended under the blueprint legislation as state only funded projects. However due to varying circumstances of the state budget each year, and the variations of the State Highway Account, Caltrans at times may require projects in these programs to utilize federal-aid funds. When this occurs the Federal Report of Expenditures shall be completed as described under federal-aid projects above.

The DLAE will verify project completion as described for State-Authorized federal-aid projects, sign the report and, except for EEM projects, forward the original plus two copies to the Headquarters Division of Local Assistance.

For EEM projects, the DLAE will forward the original plus two copies of "Final Project Expenditure Report," to the Local Programs Accounting, with a copy to the EEM Program Manager in the HQ Division of Local Assistance. Use "Final Report of Right of Way Expenditures"(Exhibit 17-N) for Projects involving the acquisition of real property or rights thereto with funds direct deposited into an escrow account. In this case, the DLAE will not verify project completion until the close of escrow is completed and the recordation of both the grant deed and the Agreement Declaring Restrictive Covenants (ADRC). A copy of the recorded grant deed(s) and the original ADRC will be attached to the final report of right of way expenditures.

17.6 CONSEQUENCES FOR NON-COMPLIANCE

Sanctions may be imposed by Caltrans on agencies that are found in noncompliance with the reporting requirements listed above in Section 17.5. The types of sanctions are further discussed in Chapter 19, "*Oversight and Process Reviews*."

If there is a discrepancy between the Final Invoice and Final Detail Estimate, the agency is notified by phone that a discrepancy exists and their payment will be delayed until it is resolved. If the problem cannot be resolved within (180) days, the LPA shall bill the agency for all expenditures made on this project. If the local agency does not pay the accounts receivable bill within thirty (30) days, the LPA shall initiate action with the State Controller to offset funds due the local agency.

If the local agency has previously included in their billing, items not reimbursable by the FHWA or over-billed progress payments that exceed the Final Estimates, the local agency shall be billed for the overpayment. The local agency shall pay the state's accounts receivable bill within thirty days or LPA shall initiate action with the State Controller to offset funds due the local agency. The same policy shall apply to those recommendations from Process Review Reports on applicable findings or the improper utilization of Disadvantaged Business Enterprises.

17.7 REFERENCES

23 CFR 635 subpart D
23 CFR 637 subpart B
23 CFR 640.113
23 CFR 635.126 and Section VI of FHWA From-1273
49 CFR Part 26
Caltrans *Construction Manual*, Chapter 5, Section 5-1, "Project Records and Reports"
Caltrans *Construction Manual*, Chapter 6, Section 6-01, 6-02, and 6-03, "Sampling and Testing"
United States Code, Title 23 Chapter 1, Section 121, "Payment for States Construction"
FHWA " Construction Administration Group" at:
http://www.fhwa.dot.gov/programadmin/contracts/index.htm
FHWA " Construction and Maintenance" at: http://www.fhwa.dot.gov/construction/

CHAPTER 20 DEFICIENCIES AND SANCTIONS

20.1 INTRODUCTION

As outlined in earlier chapters, Caltrans will no longer be involved in most project level reviews and approval activities. The Process Review is now Caltrans primary method of ensuring that federal and state requirements are met, (see Chapter 19, "*Oversight and Process Reviews*," of the Local Assistance Procedures Manual [LAPM]). During a Process Review of a local agencies project files or project site, errors and/or deficiencies could be found. If that happens, federal and/or state funds may be withdrawn from a project depending on the severity and circumstance of the deficiency.

It is important to note that the formal process review is not the only method of discovering project deficiencies. Errors or deficiencies are discovered occasionally as part of the normal routine of processing of project submittals by the District Local Assistance Engineers (DLAEs) or Division of Local Assistance Area Engineers.

This chapter is intended to assist local agencies that are involved in developing local assistance projects by providing examples of the deficiencies that have been found in the past and the possible ramifications for those errors or deficiencies. It should be understood that the examples given are by no means all inclusive. The key to avoiding possible sanctions is to follow the procedures outlined in this manual, the *Local Assistance Program Guidelines* (LAPG), and the *Standard Environmental Reference* (SER), and if you have any questions to consult your DLAE.

Section 20.4, "Local Assistance Dispute Resolution Process," of this chapter also provides means for local agency to appeal a sanction that they feel has been imposed upon them unfairly or they feel the penalty is too harsh for the error or deficiency. This appeal process is not limited to just the appeal of sanctions; it can be used by local agencies when they are not satisfied with the decision they receive from a district office.

20.2 DEFICIENCIES

PROCEDURAL DEFICIENCIES

A Procedural Deficiency is defined as a finding that a local agency's practices and procedures fail to demonstrate sufficient familiarity for acceptable levels of conformance with procedures and required certifications defined in the LAPM. In addition to jeopardizing federal and/or state funding on completed or ongoing projects, certifications for future projects may be conditioned, or not accepted until the deficiencies are corrected.

Examples of some of the most common procedural deficiencies (found by Caltrans) are:

- Continued submission of Request for Authorization that contains errors and omissions (see Chapter 3, "Project Authorization," of the LAPM).
- Continued submission of Preliminary Environmental Study Form that contains errors and omissions (see Chapter 6, "Environmental Procedures," of the LAPM).

- Continued submission of Plans, Specifications & Estimate Certifications that contains errors and omissions (see Chapter 12, "Plans, Specifications & Estimate," of the LAPM).
- Continued submission of Right of Way Certifications that contains errors and omissions (see Chapter 13, "Right of Way," and Chapter 14, "Utility Relocations," of the LAPM).
- Continued submission of Local Agency Contract Award Checklist that contains errors and omissions (see Chapter 15, "Advertise and Award Project," of the LAPM).
- Failure of the local agency to comply with the Caltrans Disadvantaged Business Enterprise (DBE) program, particularly with regard to policy, utilization of DBEs, monitoring, and reporting (see Chapter 9, "Civil Rights and Disadvantaged Business Enterprises," of the LAPM).

MAJOR PROJECT DEFICIENCY

A Major Project Deficiency is defined as an error of commission or omission, which violates federal or state law or regulation, and <u>if uncorrected</u>, would prevent federal or state participation in all or a portion of the project.

Examples of some of the most common (found by Caltrans and FHWA) of Major Project Deficiencies (federal) are:

- Failure to initiate an environmental reevaluation following National Environmental Policy Act (NEPA) approval, when changes in the scope of the project are proposed, or when new project environmental impacts surface due to changes in law or investigations, shall result in loss of all or part of the federal funding for the project (see Chapter 6, "Environmental Procedures," of the LAPM).
- Failure to fulfill mitigation commitments or adhered to restrictions identified in the approved NEPA document shall result in a loss of all or part of federal funding for the project (see Chapter 6, "Environmental Procedures," of the LAPM).
- Right of Way activities in violation of the Uniform Relocation Assistance and Real Properties Policy Act, as amended, can result in all or partial loss of project funding. Project funding losses can result even if there are not federal funds in Right of Way but only in other phases (see Chapter 13, "Right of Way," of the LAPM).
- Force Account/Day Labor work, without proper justification, is not reimbursable (see Chapter 12, "Plans, Specifications & Estimate," of the LAPM).
- For Emergency Relief (ER) projects, billing for emergency opening but actually doing permanent restoration work can result in a loss of all or part of the federal funding for the project (see Chapter 11, "Disaster Assistance," of the LAPG).