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Remarks and Instructions

The complete manual, revision packages, and individual chapters can be accessed at www.wsdot.wa.gov/publications/manuals/m22-01.htm.

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Please contact William Wonch at 360-705-7379 with comments, questions, or suggestions for improvement to the manual.

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Washington State Department of Transportation
Highways and Local Programs
Engineering Services
PO Box 47390
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**Washington State
Department of Transportation**

Local Agency Guidelines

M 36-63.35

March 2018

Local Programs
Engineering Services

Americans with Disabilities Act (ADA) Information

English

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25.1 General Discussion

[LP ROW Services website](#)

The Washington State Department of Transportation (WSDOT) has overall responsibility to the Federal Highway Administration (FHWA) for the acquisition, management, and disposal of real property on all FHWA funded transportation projects in the state. WSDOT Local Agency Coordinators act as consulting experts to local governments in Washington State who are acquiring right of way for federally funded transportation projects. They independently provide high-level technical assistance, compliance monitoring, certification compliance reviews, as well as training and project support to local engineering and technical staff, their consultants and right of way professionals on behalf of WSDOT's Local Programs Division.

The acquisition process is regulated by Public Law 91-646 "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended", [49 CFR Part 24, Chapter 8.26 RCW](#) and [WAC 468-100](#). Neither the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) nor its implementing regulations at 49 CFR Part 24 allow the certification of right of way (ROW) to be sub-delegated to any agency or any agency with Certification Acceptance (CA) status.

[49 CFR 24.101\(b\)](#)
[49 CFR 24.101\(d\)](#)
[ROW Manual Section 25.2](#)
[LPA-001](#)
[LPA-003](#)

If there is federal funding on ANY phase of the project (P.E., ROW, or construction), ROW must be acquired in accordance with the agency's Approved ROW Procedures, federal/state requirements, the guidelines outlined in this manual, as well as the policies and procedures in the *Right of Way Manual* in order for the project to be eligible for federal funding. ROW acquired prior to July 1, 1971, is exempt. In addition, the local agency must comply with Title VI requirements identified in [Chapter 28](#).

[23 CFR 710.201\(h\)](#)

WSDOT may, by written agreement (approved ROW Procedures), use the services of land acquisition organizations of counties, municipalities, or other state or local governmental agencies for acquiring rights of way for FHWA projects. Any such organization may be used only if it is adequately staffed, equipped, and organized to provide such services, and if its practices and procedures are in substantial conformity with WSDOT accepted procedures.

It is the responsibility of WSDOT to fully inform political subdivisions of their responsibilities in connection with federally-assisted transportation projects and to provide training to the local agencies. It is the local agencies' responsibility to comply with the requirements of this chapter, the URA, and [49 CFR Part 24](#). The local agency will assess their staff's level of expertise with the requirements stated above. If the local agency determines their staff does not fully understand these requirements, it is their responsibility to request assistance and/or training to ensure the acquisition process is followed correctly.

It is essential that local agencies and WSDOT communicate freely and work closely together during the entire acquisition process to expedite projects and to assure that all federal and state requirements are met. Early notification to the Region Local Agency Coordinator is required for projects with right of way acquisition when there are federal funds in any phase of the project.

.11 WSDOT Services – At the earliest possible date, the local agency should notify the LAC of upcoming federal-aid projects that have ROW activities. In addition, the local agency should advise the LAC of the need for WSDOT assistance. WSDOT is committed to an ongoing program that will provide effective assistance and guidance to local acquiring agencies. To this end, WSDOT will designate an LAC to act as consulting expert to local governments who are acquiring right of way for federally funded transportation projects. The LAC provides oversight and guidance on the federal acquisition process to ensure local agencies are acquiring, managing, and disposing of real property and real property interests consistent with state and federal regulations. ROW activities include title, appraisal, appraisal review, acquisition/negotiation, relocation, and property management activities (collectively referred to as acquisition or acquisition process).

Chapter 31

.12 Consultant Services – When the local agency does not have adequate staff to perform appraisal, negotiation, or relocation functions, it may contract for these services and obtain federal participation in the costs.

The local agency should contact the Region Local Programs Engineer for assistance in preparing any contract for services to assure FHWA participation in the contract. FHWA has determined that the consultant agreements for ROW services must meet the consultant contracting requirements.

25.2 Approval of Right of Way Acquisition Procedures

23 CFR 710.201(a)

23 CFR 710.201(h)

LPA-001

LPA-003

When an agency intends to use federal funds in any phase of a project, the agency must assure their ROW Procedures are current and approved prior to initiating ROW activities, and must demonstrate at the time of certification that current staff is qualified and that their procedures meet LAG manual requirements. ROW procedures are normally considered current if they are less than three years old, and there have been no changes to staff approved to perform ROW activities within the agency. Procedures will need to be updated for one or more of the following reasons:

1. Staff turnover
2. Approved procedures are more than three years old. However, if the local agency does not have a federal aid project in the foreseeable future, the procedures do not need to be updated even if they are beyond the three-year time period. If the local agency is thinking of doing early acquisition for an unfunded project, the local agency needs to have updated procedures.
3. A change is requested regarding who can perform specified activities.
4. Revisions to the ROW Program, such as statutory, regulatory, or policy changes.

Acquisition procedures are submitted on local agency letterhead to the Region Local Programs Engineer for review prior to final execution by the local agency. Region Local Programs forwards the procedures through the LAC for approval. The local agency will be approved to acquire ROW based upon the submitted procedures.

The responsibilities and expectations for each of the agency ROW positions are defined in the Right of Way Procedures form. The level at which an agency will be approved will depend on the agency's staff qualifications. Qualifications should be specific to the right of way function for which the staff is listed. Local Program's notifies the local agency of the approval with a copy to the Region LAC. Periodic

reviews of procedures will be conducted by the LAC for agencies acquiring ROW on federal aid projects. If through these periodic reviews it is determined that the local agency acquisition practices are not in full compliance, or the local agency no longer has staff qualified to perform a particular function, then WSDOT will determine what actions are required to achieve full compliance and the use of qualified staff.

Approved procedures will designate the title of the position. When staff changes or additions occur, the agency will submit the person's right of way experience and qualifications to the LAC.

Procedures shall include the following:

1. Agreement to comply with state and federal laws and FHWA regulations.
The agency should agree to follow this manual and the *Right of Way Manual* M 26-01 or the agency's own manual if they have a WSDOT/FHWA approved ROW manual.
2. Agreement will list agency's current staff and position(s) performing the separate functions of program administration, appraisal, appraisal review, acquisition, relocation, and property management. All agency staff who perform any of these separate functions should be listed. **Note:** Agency personnel such as administrators and members of the executive branch who might participate in the acquisition of ROW for federal aid projects need to be aware that their actions must conform to the Uniform Act and [49 CFR Part 24](#).

[LAG 25.51](#)

[LAG 25.6](#)

[LAG 25.91](#)

[LAG 25.52](#)

[LPA-003](#)

[49 CFR 24.10](#)

[RCW 8.26.085](#)

[WAC 468-100-010](#)

[ROW Section 12-5.5](#)

3. Resumes for all current staff, including their position(s) and a brief statement of their qualifications pertaining to the function they are performing.
4. Waiver Valuation procedures.
5. A procedure for handling administrative settlements including the approving authority(s) and process.

Local Agencies must have a relocation appeal procedure in place, prior to starting relocation activities for any projects involving relocation assistance, as required by federal regulations. The agency shall notify the LAC prior to starting relocation activities.

Note: Local Agencies need to submit FHWA Annual ROW Statistical Report for active federal aid projects by October 25 each year. The data provided is for ROW activities from October 1 through September 30 and should reflect parcel activities that occurred within the reporting period.

.21 Acquiring Right of Way – Acquisition of ROW may be performed by the following entities:

- By a local agency that is adequately staffed, equipped, and organized to discharge its ROW responsibilities and has ROW procedures approved by WSDOT. Staff may consist of qualified contract personnel and/or licensed private Real Estate Brokers (see [RCW 18.85](#) in addition to or in lieu of regular employees of the agency).
- By another local agency that meets the requirements above.

25.3 Preliminary ROW Activities

[23 CFR 710.203\(a\)\(3\)](#)

There are certain right of way activities that are eligible for preliminary engineering funds if those activities take place prior to NEPA approval or after NEPA approval but prior to the ROW being authorized. Those ROW activities that are eligible are identified in the table below:

Preliminary ROW Acquisition Activities Eligible for Preliminary Engineering Funds 23 CFR 710.203(a)(3)	Pre-NEPA or Post-NEPA & Pre ROW Authorization
Title Searches and Review	X
ROW Planning w/ROW Staff and/or Consultants	X
ROW Plan Preparation	X
ROW Design Development (determining ROW needs)	X
Public Meetings/Hearings (projects w/ROW)	X
ROW Estimates & Schedules (scoping)	X
PFE*/True Cost Estimate	X
Appraisals (including inspections) and AOS*	X
Right of Entry (testing, surveying, etc.)	X
Relocation Plan/Study (includes survey of occupants)*	X
WSDOT Technical Assistance/Review for activities listed above	X
LAC Review of ROW Activities (if required by Approved ROW Procedures)	X

*Completing an appraisal/PFE/Relocation Plan during the PE Phase is an agency risk decision. If a local agency chooses to complete an appraisal, project-funding estimate (PFE), or relocation plan too early, it may require a subsequent update or a new one to be completed again. FHWA cannot pay for an activity twice if the need for the second payment was due to a local agency's business decision. However, if the update is needed due to an unexpected delay beyond the local agency's control, the incurrence of expenses for a second time should be eligible expenses.

Agencies cannot start activities that could be considered negotiations with property owners pre-NEPA for the project, unless they are acquiring under [23 CFR 710.501](#) (LPA funded early acquisition) or Section 710.503 (protective buying and hardship acquisition). Early contact of occupants cannot give the appearance of initiation of negotiations. In addition, if the agency plans to request to use the value of the acquired property as a match, they need to meet the requirements in [23 CFR 710.501](#).

Local Programs conducts billing reviews each year for selected construction projects that will address any non-compliance issues.

25.4 Right of Way Acquisition

[Appendix 25.178](#)

[LPA-011](#)

[LPA-012](#)

When there is federal participation in **any** phase of a project (PE, RW and/or CN), federal regulations **must** be followed. The checklist of Federal Aid Requirements provides useful reminders and should be used as guidance to ensure compliance.

.41 Determining Whether or Not Right of Way (Acquisition) is Needed

1. **ROW (acquisition) Needed** is defined as land or property rights or interests necessary for construction, operation and/or maintenance of the proposed project, or any prior (advanced/early) acquisition that was acquired specifically for the current project. This includes temporary rights required to complete the construction as shown on the Plan, Specification & Estimate (PS&E) (such as placing personnel, materials, equipment, and machinery outside of existing ROW). If the property and/or property rights were acquired specifically for this project prior to the National Environmental Policy Act (NEPA) start date the agency may be required to demonstrate compliance with [23 CFR 710.501](#). The agency should contact their region LPE and Environmental Engineer to determine whether additional documentation is required. If the property was purchased for use on the current project (e.g. advanced/early acquisition), then the ROW must have been acquired in accordance with the requirements of this manual.

[Appendix 25.174](#)

[Appendix 25.175](#)

Advanced/early acquisition is defined as prior acquisition of property and/or property rights or interests that was completed specifically for the current project prior to NEPA approval. This does not include properties within the existing ROW that were purchased as part of a previous project. Regardless of the funding source, advanced/early ROW acquisition parcels must be included in the ROW Certificate. Contact the LAC if you have questions.

[LAG 25.44](#)

- If it is later determined that ROW is needed, either a ROW Project Funding Estimate (PFE) or a True Cost Estimate, as applicable, a ROW Plan, and a Relocation Plan (if required) must be prepared and submitted to the Region Local Programs Engineer who will notify the Region LAC (who is responsible for review and approval). There are significant differences between the two forms of estimates and care must be used when selecting either the PFE or True Cost Estimate process. The Region LAC should be consulted when this decision is to be made. See Subsection 25.41 for explanations and requirements of the PFE and the True Cost Estimate.

2. **No ROW (acquisition) Needed** means that the proposed project can be built entirely within the agency's existing ROW. Existing ROW is defined as land already incorporated into the roadway facility or land certified under a previous federal aid project. Leases, permits and easements for construction activities, slopes, drainage, etc., whether temporary or permanent, are considered ROW acquisition.

If it can be documented that the land or property rights/interests were purchased for a purpose other than the transportation related project being certified then the Uniform Act and [49 CFR Part 24](#) requirements do not apply. This would be considered existing right of way.

[Appendix 25.174](#)

[Appendix 25.175](#)

[Appendix 25.176](#)

[Appendix 43.62](#)

It is the responsibility of the agency to determine that “No ROW” is needed for a project at the time the Design Approval Documentation form is completed and prior to the obligation of funding. This can be accomplished by applying the Sufficient Property Rights Flowcharts. The agency will complete and sign the Design Approval Documentation form that acknowledges they have completed reviewing existing property rights. In the case of a non-CA agency, the agency will work with the Local Programs Engineer. The No ROW Needed Verification Checklist is a tool that can be used during the local agency’s ROW determination process. Once the project has been fully designed and prior to advertising the project for construction, the agency shall verify that No ROW is needed for the project. Local Agency staff must be qualified to sign acknowledging the ROW part of the Design Approval Documentation form and to perform the Program Administration function under their Approved ROW Procedures. Local Programs will provide training to local agency staff responsible for these functions. The training will focus on the importance of reviewing the PS&E to make sure it is consistent with the no ROW determination. Local Programs will maintain a list of CA agency reviewers who have completed the training. Non-CA agencies will need to work with WSDOT Local Programs staff to complete the verification process.

If ROW needs change, the agency will follow the current process of updating the design approval, project prospectus, and NEPA. It is also recommended that the agency provide an amendment to the Statewide Transportation Improvement Program (STIP).

.42 Acquiring Sufficient Property Rights – A local agency must acquire real property interests that are adequate for the construction, operation, and maintenance of the project ([23 CFR 1.23](#) and [710.201\(e\)](#)). The preference is for local agencies to purchase fee rights or temporary and permanent easements. However, there are circumstances when other real property interests can be considered. The details of these circumstances should be discussed with the LAC prior to submitting the Right of Way Plan for approval.

If the local agency is considering acquiring something other than fee or permanent easement real property interests, then they must provide documentation establishing how the real property interests they are acquiring satisfy the requirement for sufficient property rights. FHWA must be assured that their investment in the project is in the public interest and will last for a reasonable amount of time that is commensurate with the level of investment. There are no set guidelines that describe the appropriate term length, but 20 years is the absolute minimum term that should be considered. Longer terms may be required, and the higher the federal investment, the longer the term expected by FHWA. An analysis of the design life of the improvement must be done and the minimum term must equal the design life. Unless leases are with public agencies, leases should be considered only under rare and unusual circumstances since they typically have termination clauses that could require the removal of improvements with little notice, and possibly without cause. Things to consider include:

- Is the term of the real property interest at least as long as the life cycle of the improvement? When will major maintenance be required and does the property interest term extend to when the first major maintenance is expected?
- What is the likelihood for renewal of the term of the real property interest, or invocation of any provision for its termination?

- Can a rational explanation of why the project is a good investment for FHWA under such circumstances be provided?
- If the rights acquired are from a governmental agency, is there anything in their regulations that prevent them from granting the rights requested?

Note: If FHWA does not accept the local agency's justification, they must be prepared for FHWA to either make a finding that they have not acquired sufficient property rights (which would preclude ROW certification) or FHWA may consider a conditional approval that would require the local agency to either repay the project funding or reestablish a replacement improvement in a new location with their own funds (and the right of way for the new location must have been acquired in accordance with the Uniform Act).

The following situations are considered to be sufficient, and do not require the agency to complete a justification to be submitted for FHWA approval:

- DNR aquatic lands – DNR typically grants only term easements for uses of state-owned aquatic lands. The term of an easement will normally not exceed 30 years and is not renewable by policy. A new easement may be applied for one year in advance of the current easement agreement term expiration.
- BPA (Bonneville Power Administration) – BPA typically grants only revocable permits (Land Use Agreement Fee) for uses under their power lines.
- WSDOT – WSDOT typically grants only term leases and/or easements for uses of their property.
- BIA (Bureau of Indian Affairs) – BIA policy may vary by tribe as not all tribes are willing to grant permanent easements. Some tribes may grant only a non-permanent easement.

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Section 6-7.3

Government-Acquisitions (Political Subdivisions) – Examples of political subdivisions of the state of Washington are state, federal, counties, cities, towns, school districts, irrigation districts, etc. Government agencies are entitled to just compensation for the acquisition of property rights needed for federal aid transportation projects and the provisions of the URA will apply. Acquiring permanent rights or less than fee long-term rights should be done in accordance with Chapter 6 of the ROW Manual; however, there may be some deviation of URA requirements as legal authority may control how agencies transfer real property to other agencies.

The provisions of the URA (49 CFR 24) may not apply if the local agency needs to acquire temporary property rights from another agency to construct your project. The acquisition of these rights are generally through mutual consent and agreement between agencies using a permit or interlocal agency agreement. The risk is low that government agencies will not acquire the temporary proper rights from each other when constructing their federally funded transportation projects. WSDOT is making a risk-based decision to not certify temporary property rights acquired under a permit or interlocal agency agreement if there is mutual consent between agencies and the agencies have complied with the laws and regulations pertaining to the conveyance of property rights. In addition, a ROW phase will not be triggered if an agency only needs temporary property rights from another agency and no other rights are acquired for the project.

ROW Chapter 11

23 CFR 409

23 CFR 620

[23 CFR 635.309](#)[Appendix 25.175](#)

LAG 25.23

[49 CFR 24.101\(c\)\(2\)](#)

Use of WSDOT Property – The Region Local Agency Coordinator (LAC) should be contacted immediately when it is determined that the local agency project requires the use of WSDOT’s property. The LAC will advise the local agency of the process and timeline needed to acquire sufficient legal rights to construct and operate on WSDOT property. The length and type of use of WSDOT property will determine if it will be considered an acquisition and subject to certification requirements. If a local agency requires temporary use of property owned by WSDOT for the construction of a transportation project and those rights are obtained under a WSDOT general permit or agreement, WSDOT will not consider this part of the acquisition process and the permit would not be subject to ROW certification. This also applies if a local agency obtains permanent rights from WSDOT through a relinquishment. These activities are governed by 23 CFR Part 710 Subpart D, Real Property Management and are not Uniform Act activities, nor activities which must be addressed under the certification requirements found in federal regulations. The acquisition of all other permanent property rights and/or property interests acquired from WSDOT for a federally funded local agency project is subject to certification requirements Your agency will need to work closely with the appropriate region Real Estate Services staff to acquire the necessary property rights.

.43 Determining Acquisition of Property and/or (Sufficient) Property Rights

Fee – Fee title should be acquired when the agency needs the exclusive use and occupancy of the property for itself. Fee simple is the unqualified ownership and power of disposition of property; all rights to control, use, and transfer the property at will are acquired.

Easements – An easement is a transfer of an interest in land from one party to another providing a right or privilege to enjoy the property or a part of it for a particular, specific purpose that is not inconsistent with the owner’s use and enjoyment. Easements can be temporary, permanent, or for a specified term.

Permanent Easements – A permanent (perpetual) easement may be acquired when the agency needs a non-exclusive right to enter upon the property of another. A permanent easement for road, street, or highway purposes should include, but not be limited to, the right to occupy, construct, control, operate, maintain, and reconstruct the facility.

Non-Permanent Easements – An easement that has a defined term and expiration date. Some property owners, including state/federal agencies, are unwilling to grant permanent easements. Term easements may be acceptable provided the term equals the design life.

Temporary Easements – A temporary easement is used when the agency requires a property right which is temporary in nature, but are not part of the permanent right-of-way. Temporary rights expire by the terms in each individual temporary easement.

Permits – A permit or right of entry is not an interest in land. It only provides basic permission to enter upon property to a named entity for a specific purpose, usually for a specific period of time. It cannot be transferred and can be terminated or revoked by the owner at will. In most situations, permits are used when no other property rights are to be acquired from the same ownership as part of the same project, and are normally obtained without the payment of compensation (commonly referred to as

mutual benefits) because the provisions of the Uniform Act do not apply in these situations. The term mutual benefit is not defined in federal regulations and is often misunderstood and incorrectly applied by agencies to federal aid transportation projects. The use of a permit is acceptable when your agency is solely performing work exclusively for the benefit of the property owner, would not create a compensable damage, and is not needed to construct your project. Permits can be used with other agencies to perform work on their property, such as tying into another roadway. Permits are generally not considered sufficient to construct, operate or maintain proposed projects. When considering the use of permits or other property rights such as leases, rights of entry, land use licenses, etc. consult with the LAC.

[LAG 25.42](#)

All rights acquired for the project, including advanced/early acquisitions must be shown on the right of way plan.

Property Right vs Right to Enter

Property Right	Right to Enter (Permit)
Required/needed for the project	Not required/needed for the project
Element of project design	Not part of project design
Prior to offer	Post offer
Mitigation for compensable damage	Requested by owner
Show rights on ROW plan	Not shown on ROW plan
Valuation includes cost of item	No compensation paid
Temporary Construction Easement (TCE) obtained	Permit obtained
Transfers with ownership	Non-transferrable
Sufficient for construction	Not sufficient for construction

[ROW Chapter 6](#)

Exempt

[RCW 18.85.151\(6\)](#)

[RCW 18.85.081](#)

[23 CFR 710.501\(a\)](#)

[NEPA Categorical Exclusions – A Guidebook for Local Agencies](#)

.44 Early/Advance Acquisitions – *Early acquisition* is defined in federal regulations, as the “...acquisition of real property by State or local governments in advance of Federal authorization or agreement.” In practical use, early acquisition refers to the acquisition of real property prior to the final NEPA decision on a project: The Record of Decision, or ROD, for projects developed with an Environment Impact Statement (EIS); a Finding of No Significant Impact, or FONSI, for projects developed with an Environmental Assessment (EA); or, a Categorical Exclusion (DCE/ECS). WSDOT has two types of early acquisitions; those that occur prior to the initiation of NEPA and those that occur after the initiation of NEPA but prior to NEPA approval. Those acquisitions occurring after the initiation of NEPA but prior to NEPA approval are referred to as “concurrent early acquisitions”. *Advance acquisition*, as discussed in subsection 4 below, is a term that refers specifically to hardship acquisitions and protective buying.

In each case, federal guidelines must be followed in the acquisition process. The Agency should place copies of any documentation pertaining to early or advance acquisition approval in the parcel acquisition file if it is required as described below. In addition, note the date and actions pertaining to such approval in the parcel acquisition diary.

An agency may use eminent domain, but the agency must be able to prove public use and necessity, which may be difficult when the environmental alternatives have not been evaluated or selected. The use of eminent domain on a locally-funded acquisition in advance of a project NEPA approval is a decision that the local agency should

make after undertaking a risk analysis to determine if they want to proceed with the acquisition using eminent domain. The risk analysis should consider if the proposed project has multiple alignments that could be considered to address the transportation issue. If there is only one obvious alignment, the local agency's ability to prove public use and necessity is good, which makes the risk low. If there are multiple alignments to address the transportation issue, then the local agency should determine the property needs for the multiple alignments. If each alignment requires different parcels to address the transportation issue, then the agency's ability to prove public use and necessity may be low due to uncertainty of the need for the parcel, and the risk is higher.

23 CFR 710.501

For all early acquisitions prior to the initiation of the NEPA process, the local agency must show that the early acquisition did not influence the project through the decision on need to construct the project, the consideration of alternatives, or the selection of the design or location of the proposed improvement and demonstrate compliance with [23 CFR 710.501](#). The agency should contact their region LPE and Environmental Engineer to determine whether additional documentation is required. If NEPA cannot be approved, then the agency cannot incorporate the parcel into the project. If the project cannot be built without the parcel, then the entire project may be ineligible for federal funding. Concurrent early acquisition parcels will be covered under the overall NEPA evaluation.

23 CFR 710.501(b)

An agency may apply market value (or if donated, the current appraised value) toward their share of project costs, as long as they meet the requirements of 23 CFR 710.501(b). The acquisition of early or advance ROW must not influence the environmental assessment for the project. Properties with a 4(f) Resource may not be purchased if the agency wants to apply the market value toward their share of project costs. The agency can only request match for the Just Compensation plus the administrative settlement, if applicable. The costs of the appraisal or any other documentation necessary to meet the requirements of [23 CFR 710.501\(b\)](#) are not eligible to be used as a match.

Appendix 25.177

Early and Advanced Acquisition Alternatives. There are five alternative methods (item #4 has two methods) of early and advanced acquisition provided in federal statutes and regulations. Each alternative has distinct conditions which must be met, as described below. However, there are certain specific conditions that every alternative must meet:

- The property must be lawfully obtained.
- The acquisition must fully comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
- Per 23 CFR 701.501(c)(5) and 771.113(d)(4) and 40 CFR 1506.1, these early acquisitions cannot have an adverse environmental impact or limit the choice of reasonable alternatives in the NEPA analysis for the project, or have an adverse environmental impact on the parcel. (e.g. If a building that would have been determined to be eligible for the National Register of Historic Places is acquired and demolished, this would be an adverse environmental impact on the parcel).
- Local agencies will not do early acquisition on properties that are protected under section 4(f) of the Department of Transportation Act of 1966, codified at 23 USC 138, and the regulations at 23 CFR 774.
- The acquisition must fully comply with Title VI of the Civil Rights Act of 1964.

Early Acquisition Options:

23 CFR 710.501(b)

1. **Agency-Funded, No Match or Reimbursement** – The agency may initiate acquisition of real property, using local funds, at any time it has legal authority to do so, based on program or project considerations prior to NEPA clearance. Pre-approval of the use of this option is not required from FHWA, and this option can be useful for corridor preservation, access management, or similar purposes. This option is used when the Agency will not be seeking either reimbursement or matching credit from FHWA. As noted above in the early acquisition alternatives, this alternative must fully comply with the Uniform Act and not have adverse environmental impacts or limits the choice of reasonable alternatives in the NEPA analysis for the project or the parcel.

23 CFR 710.501(c)

2. **Agency-Funded with Matching Credit** – In order for the Agency to use the acquisition costs of early acquisition as a credit toward the Agency’s matching share of a federal-aid project, the FHWA must concur in a written determination provided by the Agency that the acquisition did not influence the environmental assessment for the project or the parcel, including:
 - The decision on the need to construct the project.
 - The consideration of alternatives.
 - The selection of the design or location.
 - A statement that the property will be incorporated into a Federal-aid project.
 - The original project agreement covering the project was executed on or after June 9, 1998.

In determining the costs to apply to credit for the matching share of the project, the Agency will use the historic cost of the acquisition. This cost is limited to the amount that was paid to acquire the property at the time of its acquisition, and excludes appraisal fees, relocation costs, and any other costs incurred beyond the acquisition price itself. When the historic acquisition costs cannot be reasonably obtained, or such cost was not typical for the time due to extenuating circumstances, the Agency may use the current fair market value of the property.

23 CFR 710.501(d)

3. **Local-Funded with Reimbursement** – This option is not currently available in Washington State.

23 CFR 710.501(e)

4. **Federal-Funded Early Acquisition** – Consistent with federal legislation commonly referred to as MAP-21 (Moving Ahead for Progress in the 21st Century), a local agency may program an early acquisition project in the STIP (State Transportation Improvement Plan) and, after meeting the additional conditions listed below, request authorization to proceed with the acquisition and obtain federal funding participation. This early acquisition alternative is particularly useful for doing corridor preservation, as it does not require that the agency have a specific transportation project programmed or in development at the time the early acquisition, using federal funds is carried out. There are some specific conditions that apply to this alternative:
 - The early acquisition project must be included in the STIP.
 - A NEPA analysis must be performed for the scope of the early acquisition project, and must be approved by FHWA. In most cases, if the purpose and need for this project is simply to acquire property and hold it until needed

for a transportation project, the NEPA clearance would be done with a DCE/ECS. For the purpose of the NEPA analysis, and consistent with the federal requirement, an early acquisition project under this alternative is considered to have independent utility.

- Although the agency must follow the Uniform Act, as required for all other early acquisition alternatives, early acquisition under this alternative may not be carried out under the threat of eminent domain. If an agreement cannot be negotiated with a property owner, the agency will have to wait until a specific transportation project requiring this property has been completed through the NEPA process and FHWA funding is authorized for such project.
- Real property interests acquired under this option may not be developed until a specific transportation project requiring this property has been completed through the NEPA process and FHWA funding is authorized for such project.
- If the real property acquired under this alternative is not incorporated within 20 years in a project eligible for FHWA funding, FHWA will offset the State's federal funding by the amount of federal funds used in this early acquisition project.

23 CFR 710.503(a)

5. **Hardship Acquisition and Protective Buying (Advanced Acquisition Options).**

In addition to the early acquisition options set out in 1 thru 4, federal regulations provide for doing advance acquisition under two options: Hardship and Protective Buying. (Unless otherwise stated elsewhere in this manual, the term “advance acquisition” will be understood to apply specifically to hardship and protective acquisition.) Normally, these two options will apply to a limited number of properties, whereas the early acquisition provisions of 1 thru 4 may apply to some or all properties on a project. Both options must meet these conditions:

- The project must be included in the currently approved STIP.
- The state must have complied with the public involvement requirements addressed in federal regulations at 23 CFR parts 450 and 771.
- If applicable, the Section 4(f) determination must have been made on these properties.
- If applicable, the Section 106 requirements of the National Historic Preservation Act must have been completed on these properties.
- All other required NEPA clearances must have been completed on these properties.
- The conditions set out in Section 6-3.2 above also apply to hardship and protective buying.
- For federally-funded projects, FHWA approval for doing a hardship or protective acquisition is required.
- NEPA approval will be secured by following the 2015 Programmatic Categorical Exclusion Agreement.

23 CFR 710.503(c)

- A. **Hardship Acquisition** – A hardship acquisition is initiated by a property owner, not the acquiring agency, when the property owner provides a written statement that:

- Supports the hardship on the basis of health, safety, or financial reasons, and that remaining in the property would pose an undue hardship compared to others.
- Documents the inability to sell the property at fair market value, within a time period that is typical for properties not impacted by the impending project.

Because hardship acquisitions are initiated by the property owner, this advance acquisition option is not practical as a part of WSDOT's project schedule. Note, also, that the state is NOT required by federal regulation to agree to a hardship purchase request.

[23 CFR 710.503\(d\)](#)

- B. **Protective Buying** – In order to do advance acquisition of a property under this option, the state must clearly demonstrate to FHWA (on federally-funded projects) that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

Processing Early and Advanced Acquisitions. The decision whether to proceed with one of the early or advance acquisition options will be made by the Agency. In either case, if FHWA approval is required, as discussed in the earlier sections of this chapter, the request for FHWA approval will be processed through the Local Programs ROW section. It is important to remember that the standard acquisition process, as set out in this chapter, applies to early and advance acquisitions. The main difference between standard acquisition and early or advance acquisitions is that the latter often require additional documentation, such as the approval by FHWA of a request to do an advance acquisition.

[49 CFR 24.101\(b\)\(1\)](#)

[WAC 468-100-101\(2\)\(a\)](#)

[49 CFR 24 Appendix A](#)

.45 Voluntary Acquisition – A process called “Voluntary Acquisition,” which differs from “Donations and Willing Seller Transactions,” may on rare occasion be appropriate for acquisition of property, but only if all of the following circumstances apply:

- No specific site or property needs to be acquired, although the agency may limit its search for alternative sites to a general geographic area. Where an agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly.
- The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.
- The agency will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
- The agency will inform the owner in writing of what it believes to be the market value of the property.

If these circumstances appear to apply to a project, the Voluntary Acquisition process may apply, but **must** be approved by the LAC with Headquarters Local Programs before any steps are taken to initiate the acquisition process. If approved, steps to follow for voluntary acquisition are governed by federal and state regulations and shall include:

1. Clearly advise the property owner, in writing, prior to making any offers that the agency will be unable to acquire the property in the event that negotiations fail.

2. Provide the owner with an estimate of the fair market value of the property.
3. Provide relocation assistance to any tenants upon mutual acceptance by the acquiring agency and property owner.

If approved, the local agency must work closely with the LAC on all steps of the voluntary acquisition process.

[RCW 8.25.020](#)

[LAG 25.96](#)

Note: Real estate transactions using this process are subject to real estate excise tax. Also, the statutory evaluation allowance will not be reimbursable, as it is only required for acquisitions made under threat of eminent domain.

Mitigation sites – If a mitigation site is required as an environmental commitment for your project it does not meet the test of a voluntary transaction. Your agency is obligated to acquire a mitigation site for the project as failure to do so would likely result in the project becoming a “no go” and is not acceptable to FHWA. This is true even though your project may have multiple properties to choose from to comply with your environmental commitment.

.46 ROW acquisition is \$10,000 or less two types of estimates:

1. **Project Funding Estimate (PFE)** is a detailed parcel-by-parcel estimate of total expected right of way acquisition costs and is used to obtain authorization and funding for the project. A PFE is **required** if any appraisals are planned to be waived, and the Agency intends to prepare waiver valuations for any of the parcels on the project. A PFE is based on market transactions (sales) that reflect the current real estate market. Ideally, it is completed by an appraiser, an appraisal reviewer, and a relocation expert. Other ROW staff with appropriate experience, including qualified consultants, may also prepare a PFE.
 - A Project Funding Estimate (PFE) is prepared for every project where right of way will be acquired, unless all properties to be acquired are to be appraised or donated.
 - As a minimum, the PFE contains the following information.
 - A parcel-by-parcel list of right of way costs with project summary totals reported on the Right of Way Project Estimate and Cost Breakdown.
 - A project data package including sales, sales map, neighborhood and project description, scope of sales search and, if applicable, damage studies, cost to cure documentation, and Assumptions and Limiting Conditions.

Note: The PFE Parcel Worksheet is included in the data package.

The Agent/appraiser assigned to do the PFE completes the estimate as follows:

- Inspect the project and becomes familiar with the engineering features of the plan.
- View individual parcels to determine the effects of acquisition.
- Prepares a Neighborhood and Project Description which defines existing uses, zoning, trends, transportation and utilities, economic influences, a synopsis of the project and its effect on parcels, and any changes in the aforementioned likely to be caused by the project.

LPA-210

LPA-210b

- Gathers sufficient comparable land sales and listings for the various types of parcels and remainders within the project. All sales shall be inspected, photos taken and written up on Market Data Sheets. (If the sales are to be used exclusively on parcels where the Agency has determined to waive the appraisal, the sales must be confirmed. In all other cases, a reasonable effort shall be made to confirm all sales. Unconfirmed sales will contain an explanation of the confirmation effort including the parties' names and phone numbers where attempts to make contact were unsuccessful.)

Appendix 25.172

LPA-215

ROW Section 4-2

- Prepares project and sales vicinity map.
- Prepares PFE Parcel Worksheet for each parcel on the project.
- Includes any applicable damage studies.
- Includes cost-to-cure documentation for estimates and/or bids.
- Includes applicable Assumptions and Limiting Conditions if data Package will be referred to in the preparation of Abbreviated Appraisals.

Note: Right of Way Manual Section 4-2. 42.1, paragraphs E, F, and G do not apply to local agencies.

LAG 25.52

2. **True Cost Estimate** can be used only when all parcels are to be appraised or donated. The ROW PFE **must** be used if the agency wishes to make use of the waiver valuation procedure. A True Cost Estimate is a parcel-by-parcel estimate of total expected right of way acquisition costs drawn from the County Assessor's records, from replacement cost schedules for minor site improvements or estimates from local vendors, and is used to obtain authorization and funding for the project; therefore, in many cases the level of expertise required for its preparation may be less stringent than for a PFE. However, if damages to the remainder are severe, particularly in the case of a reduction in the highest and best use of a remainder property, a True Cost Estimate cannot be used as a legitimate measure of the total expected right of way costs. In such a case, a PFE will be necessary. Agencies are advised to contact their LAC when these types of situations arise.

A True Cost Estimate consists of three parts: a worksheet for each parcel to be acquired, a table summarizing all estimated acquisition costs and a project description.

- .47 ROW Plan** – A ROW Plan indicating the property required to build and maintain the transportation project is required. A right of way plan is a valuable visual-aid tool for negotiators, appraisers, and attorneys involved in acquisition transactions. It also helps property owners understand why and how their properties are being acquired.

Appendix 25.170

The Agency's ROW plan shall be considered approved upon seal and signature of a registered Professional Engineer or Professional Land Surveyor in accordance with [RCW 18.43.070](#) and [RCW 58.09](#). The ROW plan shall contain essential data needed for appraisal, negotiation, and right of way certification activities, and illustrate the following information:

- Survey line or centerline for the alignment, including sufficient ties to physically locate the alignment. Please contact the Local Agency Coordinator if other acceptable survey practices are proposed to establish the alignment.
- Sufficient information for preparation or verification of legal descriptions of the affected properties and types of property interests to be acquired.

- Width of the right of way (alignment), grade changes, and other design features/details of the construction.
- The property lines in their entirety and owner's names for each affected property, along with all contiguous parcels to the property being acquired and owned by the same owner, the parcel identification number; the calculated area(s) of the existing parcel(s); the areas to be acquired, including any easement areas; and the calculated area(s) of the remainder parcel(s).

It is recommended ROW plans illustrate the following additional information:

- For affected parcels, improvements within 100' feet of the existing ROW, including those improvements that may be damaged by the project (i.e. residences, commercial structures, signs, septic systems including reserve area, wells, driveways, fencing, irrigation systems).
- Vicinity Map showing the project limits.

A draft of the ROW plan should be submitted to the LAC for review and comment prior to its approval by the Agency.

.48 ROW Phase With Federal Funds – Prior to the authorization of federal funds for ROW, the following requirements must be met: compliance with Chapter 14, FHWA approval of environmental (NEPA) documents, and the submittal of the following documents to the Region Local Programs Engineer.

[Appendix 43.62](#)

- Local Agency Agreement Supplement.
- Funding estimate of probable ROW costs and expenses broken down by parcel.
- Approved ROW plan (part of Approved Design Documentation).
- WSDOT approved relocation plan (if relocation is required, contact the RWTS for assistance).

The obligation of federal funding is the approval (authorization) by FHWA to participate in a share or portion of federally eligible expenditures on an agreed-upon scope of work (also known as a project). This commitment occurs when a project phase or additional funding for a phase is approved and the project agreement is authorized by FHWA. The dollar amount of federal funds approved on the project agreement is known as the obligation of federal funds. Only after the agency receives written authorization from LP are costs incurred eligible for reimbursement. Once FHWA approval has been obtained for the obligation of funds for the ROW Phase, Local Programs will notify the local agency of authorization to proceed with ROW acquisition. Acquisition activities should not occur prior to the obligation of funds. No acquisition costs are eligible prior to this authorization, except those preliminary ROW costs that are allowable in the PE phase.

.49 ROW Phase With Local Agency Funds Only – If federal funds are to be used in any part of the project, or the property is later incorporated into a federally funded project, federal guidelines for acquisition of the ROW must be followed. The local agency must also follow the local agency's approved procedures, which typically requires the LAC to review all offers and supporting data before they are presented to the property owner. **The ROW plan and funding estimate package requirements also apply if federal funds are in any phase of the project.**

[LAG 25.41](#)

Note: A PFE is not required unless the local agency intends to use the waiver valuation process for the preparation of Administrative Offer Summaries (AOSs).

The AOSs must be based on the PFE. A True Cost Estimate cannot substitute for a PFE when preparing waiver valuation.

In order to minimize potential problems which may surface during the certification process, the local agency submits a copy of the ROW plan and Relocation Plan (if applicable) for review/approval before starting the acquisition process. A copy of the ROW plan must be made available at the time of certification.

25.5 Appraisal/Waiver Valuation – Administrative Offer Summary (AOS)

ROW Chapter 4

49 CFR 24.102(n)(3)

Negotiators cannot supervise appraisers, review appraisers, or waiver valuation preparers, unless FHWA approves a waiver of this requirement, and appraisers, review appraisers, or waiver valuation preparers shall not have any interest, direct or indirect, in the property being valued.

49 CFR 24.103

WAC 468-100-102

.51 Appraisal – The requirements pertaining to the appraisal of property to be acquired and an explanation of requirements for an acceptable appraisal report are provided in *Right of Way Manual* M 26-01 Chapter 4. If desired, a listing of WSDOT approved fee appraisers and appraisal reviewers is available from the Region LAC or via a link on the WSDOT Real Estate Services website at www.wsdot.wa.gov/realestate.

49 CFR 24.103(d)

WAC 468-100-102(4)

The appraiser shall be an experienced, qualified appraiser. At a minimum, an appraiser should have a college degree or four years of active experience in the real estate field leading to a basic knowledge of real property interest valuation, or any combination of such experience and college study to provide a total of four years beyond high school graduation. An appraiser who is qualified under WSDOT criteria and on WSDOT's approved appraiser list will be considered qualified for FHWA projects.

49 CFR 24.103(a)

WAC 468-100-102(1)

49 CFR Appendix 24.103

LPA-217

LPA-218

The appraiser shall prepare an appraisal report which is a written document containing among other elements, the following:

1. The purpose of the appraisal which includes a statement of the estimated value and the rights or interests being appraised.
2. The estimate of just compensation for the acquisition. In the case of a partial acquisition, allocate the estimate of just compensation for the property to be acquired and for damages to remaining property in either the report or a separate statement.
3. The data and analyses (or reference to same) to explain, substantiate, and document the estimate of just compensation.
4. An adequate description of the physical characteristics of the property being appraised, including items identified as personal property. Local Programs created templates that are available for use but are not required if the agency has a similar form.

49 CFR 24.102(c)(1)

49 CFR 24.102(f)

RCW 8.26.180(2)

WAC 468-100-102

ROW Appendix 4-1

Part 1(A)(f)

Appraiser/Owner Contact – Property owners have the legal right to inspect the property with the appraiser. Every effort must be made to ensure that the property owner has been extended that opportunity for a joint inspection. The appraiser shall document in the appraisal report his or her attempts to contact the property owner, which shall include attempts to contact the property owner either by phone and/or in person. The appraiser should be flexible in his or hers schedule in order to accommodate the property owner. If contact cannot be made by telephone, the

appraiser should send a letter explaining the need for the inspection and inviting the owner to join in the inspection. The letter shall be sent “Return Receipt” in order to document the attempt for contact.

49 CFR 24.102(c)(2)(ii)
RCW 8.26.180(2)
WAC 468-100-102(1)

.52 Waiver Valuation (commonly referred to as Administrative Offer Summary (AOS)) – In accordance with federal regulations, an appraisal and appraisal review can be waived in certain cases. To qualify, the just compensation, based on the ROW Project Funding Estimate, must be no greater than the waiver valuation limit as defined in the agency’s approved ROW procedures (typically \$25,000), **AND** the acquisition **must be uncomplicated**, with the only damages being minor cost to cure items. The combined estimate of the just compensation plus the cost to cure(s) cannot exceed the agency’s approved waiver limits. The PFE must be based on confirmed comparable sales and must reflect the current market.

For example, if the agency plans to acquire a strip of land that they estimate is worth \$12,000, but the acquisition will change/limit the owner’s ability to develop their property at some point in the future, the Waiver Valuation Procedure **cannot** be used because it is no longer uncomplicated and an appraisal must be prepared by a qualified appraiser.

In such instances where the valuation is waived, just compensation should be based on current comparable sales. All data used to arrive at an estimate of just compensation must be included in the project file. When the waiver procedure is used, it is important that the local agency determines that the offer being made is fair and equitable.

LPA-003

In March 2013, WSDOT updated its AOS policy. The local agency must update their Waiver Valuation Procedure, to reflect the new policy. Otherwise, the agency must continue to offer an appraisal for all AOS’s regardless of the amount, as specified in their procedures under the prior policy. Any project where acquisitions were initiated under a prior AOS policy must continue with that prior policy until completion of the project’s right of way phase.

If the LPA has updated their Waiver Valuation Procedure to reflect the new policy the following applies:

- If the AOS is \$10,000 or less, the offer must state that an administrative offer is being made and an appraisal has not been completed.
- If the AOS is \$10,001 or greater, the offer must state that an administrative offer is being made, that an appraisal has not been completed and an appraisal will be prepared if requested by the property owner.

Waiver Valuation (AOS) Value Limits	
Condition A: \$10,000 or Less	Condition B: \$10,001 to \$25,000
No requirement to offer to provide property owner with an appraisal.	Offer letter must include provision that the agency will provide an appraisal at the property owner’s request.

Section 25.51

Under Condition B, if the owner requests an appraisal, the local agency **is required** to provide and pay for one that meets the standards.

25.6 Appraisal Review

49 CFR 24.104
WAC 468-100-103
ROW Chapter 5

The reviewing appraiser should be knowledgeable of the property values in the project area. The depth of review should be in direct relationship to the difficulty of the particular appraisal. The reviewing appraiser must be either a WSDOT review appraiser, on the approved list of review appraisers maintained by WSDOT, or an employee of the acquiring agency, who is authorized by their approved ROW procedures to review appraisals. To qualify as an agency review appraiser, an individual must, at a minimum, be a Certified General Appraiser with the Washington State Department of Licensing and have successfully completed at least one appraisal review training class approved by WSDOT.

The reviewing appraiser should field inspect the property appraised as well as the comparable sales which the appraiser(s) considered in arriving at the fair market value of the whole property and of the remainder(s), if any. If a field inspection is not made, the file shall contain the reason(s) why it was not made.

The reviewing appraiser shall examine the appraisal reports to determine that they:

1. Are complete in accordance with this manual and contain the criteria required by *Right of Way Manual Appendix 4-1 Appraisal Guide*.
2. Follow accepted appraisal principles and techniques in the valuation of real property interest in accordance with existing state law.
3. Include consideration of compensable items, damage, and benefits, but do not include compensation for items non-compensable under state law.

LPA-214b

The reviewing appraiser shall place in the parcel file a signed and dated certification of value setting forth:

1. An estimate of just compensation including, where appropriate, the allocation of compensation for the property acquired and for damages to remaining property.
2. A listing of the buildings, structures, fixtures, and other improvements on the land which were considered part of the property to be acquired.
3. If applicable, a statement that there is an uneconomic remnant/remainder, and the value of the remainder.
4. A statement that the reviewing appraiser has no direct or indirect present or future interest in such property or in any monetary benefit from its acquisition.
5. A statement that the estimate has been reached independently, without collaboration or direction, and is based on appraisals and other factual data.

49 CFR 24.102(k)
RCW 8.26.180(9)
RCW 47.12.160
ROW Section 5-5.2
ROW Section 6-1.2.F
ROW Section 6-11.1

.61 Uneconomic Remainders – An uneconomic remainder is defined as a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the agency has determined has little or no value or utility to the owner.

For partial acquisitions, the review appraiser determines (if Agency staff) or recommends (if consultant) whether the remainder is uneconomic. If the remainder will no longer have utility to the owner, and the **local agency determines** that it is uneconomic, the agency must offer to purchase the remainder from the property owner.

Detailed instructions regarding the review appraiser's responsibilities for reporting and documenting uneconomic remainders can be found in the ROW Manual. Please note, it is WSDOT's policy that even though a parcel may be considered to have little or no utility or value in the "before" situation, when an acquisition leaves a remainder, that remainder should be declared an "uneconomic remnant". This step is not required by federal regulations. If your agency decides to follow WSDOT policy, it must apply it uniformly on the entire project.

25.7 Agency Concurrence for Setting Just Compensation

[49 CFR 24.102\(d\)](#)
[RCW 8.26.180\(3\)](#)
[ROW Section 6-1.2.B](#)
[LPA-214b](#)

It is the responsibility of the **agency** to set just compensation. This can be done by adding a line to the bottom of the review appraiser's certificate as shown on the Local Agency Certificate of Value, to the bottom of the Administrative Offer Summary (AOS), or by stating the same information in a separate memo. In any case, the statement must be signed and dated by an employee of the agency who has approving authority **prior** to the time the offer is made. When a right of way plan revision occurs, a new AOS, appraisal and/or Certificate of Value may be required.

Before initiating negotiations for the acquisition of real property interests, the **agency** shall establish the just compensation which **shall not** be less than the approved appraisal of the property and shall make a written offer to acquire in that amount. Appraisals are not required if an AOS has been prepared or if the owner has indicated a willingness to donate the ROW after being informed of their right to receive just compensation. If an waiver valuation was used to set just compensation, the negotiator must notify the property owner that they can request an appraisal be prepared in accordance with the agency's approved Waiver Valuation Procedure. (The threshold for offering an appraisal depends on the Agency's approved Waiver Valuation Procedure in place at the time of the offer). The local agency is responsible for providing and paying for this appraisal.

25.8 Title

[ROW Chapter 8](#)

The agency will acquire evidence of the condition of title for all properties from which real property interest rights are to be acquired. It is suggested that a preliminary title report be ordered from a title company and the title to the property acquired cleared so that a policy of title insurance can be issued showing title vested in the agency subject only to those exceptions which can reasonably be accepted. If a title company is not used to provide this information, the acquisition file must include sufficient documentation to validate the signatories on the instruments and show that the interest acquired is free from unreasonable encumbrances.

Special care should be taken to insure that the parties shown as the vested owners by the title evidence are named correctly in the conveyance instruments, and that the parties signing are the same or have authority to sign. The notary acknowledgement form (jurat) should be appropriate for the status of the granting party.

In general, the elements necessary to acquire the needed real property interest(s) are:

1. Acquisition instruments signed by all parties with an interest in the fee title.
2. Releases from mortgages and deeds of trust. If the local agency determines that it wants to accept title subject to a monetary lien, the local agency should look to [Chapter 8](#) of the [ROW Manual](#) for guidance as to informing the owner of their potential risks.

3. Releases of encumbrances, such as easements, which adversely impact the rights being acquired.
4. Releases of priority liens, such as materialman's liens, judgments, state tax liens, and federal tax liens.

25.9 Negotiations

[ROW Chapter 6](#)

[Exempt](#)

[RCW 18.85.151\(6\)](#)

[RCW 18.85.081](#)

.91 Qualifications – For local agency staff to be approved to acquire property without direct supervision by the LAC, they must have either an Associate Degree in real estate or a Bachelor Degree or equivalent experience. In addition, they must have two years full-time experience in real estate acquisition, sales leasing, appraisal, title, escrow, or property management. One year of experience must be in eminent domain acquisition performed according to the provisions of the Uniform Act. Additional experience in eminent domain acquisition can replace education on a year-for-year basis.

Local agencies using staff to negotiate who do not have the necessary qualifications must work closely with the LAC as explained in the Procedures Approval letter.

[RCW 18.85.011](#)

If a local agency uses a consultant fee negotiator, the consultant must meet the applicable state licensing requirements. At a minimum, this must be a current, valid real estate salesperson's license issued by the State of Washington. Consultant fee negotiators must also have qualifications and experience generally equivalent to those for local agency staff negotiators.

.92 Separation of Functions – A separation of functions maintains the integrity of the acquiring agency's transactions. Thus, the appraisal, appraisal review, and negotiations for a parcel are performed by three different persons. It is recognized that the use of two separate individuals as appraiser and negotiator on a low-value acquisition can be both difficult and expensive. The use of a single qualified individual to both, appraise (or prepare an AOS) and negotiate a parcel is permitted where the value of the acquisition is \$10,000 or less. It should be noted that the appraisal shall be reviewed prior to negotiations, and the review appraiser shall be neither the appraiser nor the negotiator.

[49 CFR 24.102\(d\)](#)

[49 CFR 24.102\(e\)](#)

[RCW 8.26.180\(3\)](#)

[ROW Section 6-1.2.C](#)

.93 Offer/Summary Statement – Upon initiation of negotiations, the agency shall provide the owner of real property and/or property rights to be acquired with a summary of the appraisal (they can provide the appraisal to fulfill this requirement), or if an Administrative Offer Summary (AOS) a copy of the comparable sales data, a written offer letter, including a summary of the basis for the amount it has established as just compensation for the proposed acquisition. At a minimum the offer letter shall include the following:

1. The amount established as just compensation.
2. A statement explaining that the offer is based either on an appraisal made by a qualified appraiser and reviewed by a qualified Review Appraiser, or an Administrative Offer Summary (AOS) under the Waiver Valuation Procedure). The LPA's current approved Waiver Valuation Procedure will determine the agency's obligations for offering an appraisal if one was not performed.
3. Identification of the real property to be acquired, including the estate or interest being acquired.

4. Identification of improvements and fixtures considered to be part of the real property to be acquired.
5. The amount of just compensation for the real property to be acquired and any amount included for damages to remaining real property shall be separately stated. If the agency does not provide a copy of the AOS/Appraisal then items addressed in the valuation that will be handled during construction shall be explained in the offer and a construction memo signed.

When a right of way plan revision occurs, a new AOS, appraisal and/or Certificate of Value may be required, especially if the acquisition area or the property interests to be acquired changes.

[LPA-350](#)

The local agency should review their current approved Waiver Valuation Procedure to confirm that the correct language is being used in the offer letter.

[Section 25.10](#)

[23 CFR 710.105\(b\)](#)

[23 CFR 710.305\(d\)](#)

[23 CFR 710.505](#)

[23 CFR 710.507](#)

[49 CFR 24.108](#)

[RCW 8.26.180\(10\)](#)

[WAC 468-100-106](#)

[ROW Section 6-1.2.J](#)

[LPA-383](#)

.94 Donation (see Also Section 25.10 Donated Property) – A donation may be accepted only after the owner has been informed in writing and has waived, in writing, their right to just compensation and has released the local agency from its obligation to have the property appraised. This applies to individuals, businesses, corporations, other private entities, and non-federal government agencies (state, local and tribal governments). Non-federal governmental agencies must follow their laws and regulations relative to the conveyance of property and make sure they have the legal authority to donate. If a donation is accepted in advance of NEPA clearance, it is considered an early acquisition.

[LAG 25.21](#)

.95 Dedication – ROW obtained through normal zoning, subdivision, or building permit procedures may be incorporated into a federal aid project without jeopardizing participation in other project costs, provided such dedication does not constitute an unconstitutional taking. Dedicated land incorporated into the roadway facility is considered part of the existing ROW. As such, dedicated land is not required to be included in a right of way certification.

[RCW 8.25.020](#)

.96 Statutory Evaluation Allowance (SEA) – The agency must notify the property owner of the availability of a statutory evaluation allowance not to exceed \$750 to help defray the owner's expenses actually incurred in evaluating the agency's offer. This statutory requirement only applies to offers made under the threat of eminent domain. Therefore, when an agency's offer is NOT under threat of eminent domain, either by choice or regulation (such as early/advance or voluntary acquisitions), the agency does NOT have to notify the owner of the \$750 SEA. An agency is not prohibited from offering the \$750 SEA on non-eminent domain offers; however, FHWA will not participate in the cost. Agencies must be consistent in their policy to offer (or not offer) the \$750 SEA to property owners, and apply it uniformly.

[49 CFR 24.9](#)

[WAC 468-100-009](#)

[LAG 25.16](#)

.97 Documentation – A diary or negotiator's log must be maintained for each parcel wherein each individual involved in a negotiation, a relocation, or a property management function shall enter and initial a suitable description of each contact and other information concerning that function. See [Section 25.15](#) for additional direction on preparing diaries. Upon request, the Region LAC will provide explanations and examples of adequate records.

When negotiations are complete, the negotiator shall keep in the project file a signed statement for each parcel that:

1. The written agreement embodies all considerations agreed to by the negotiator and the property owner.
2. The negotiator understands that the acquired property is for use in connection with a federal aid transportation project.
3. The negotiator has no direct or indirect interest in the property or in any monetary benefit from its acquisition, at present or in the future.
4. The agreement has been reached without any type of coercion.

.98 Negotiations by Mail – If no relocation is involved, the local agency may conduct ROW negotiations as follows:

1. Mail to the owner the fair-offer letter, a summary statement (explains nature of acquisition, conditions affecting remainder after construction, and other pertinent details which would have been explained in a face-to-face meeting with owner), the document of acquisition (deed, easement, or other document required for signature), property plat or sketch showing acquisition limits and effects on any remainder, and a copy of an acquisition brochure.
2. Within a reasonable period of time, typically about two weeks, make a follow-up phone call (documented in the diary). Answer questions or, if owner requests it, make an appointment for personal contact.
3. Follow normal procedures for further negotiations.

.99 Acquisition of Contaminated Properties – The agency should take reasonable care to determine if properties needed for a project are contaminated. In the case where properties being acquired by the agency will become part of a state highway, the agency must involve WSDOT in the acquisition process as early as possible to ensure that the property will be in an acceptable condition for WSDOT to accept the transfer of ownership. The local agency should contact the LAC if they are considering acquisition of contaminated properties.

.100 Global Settlements – A global settlement is the combining of just compensation and relocation benefits into a lump sum settlement.

Because global settlements could compromise the entire project's federal aid eligibility, FHWA will not accept a project ROW certification if it includes a global settlement. The local agency should contact the LAC if they are considering global settlements.

.101 Functional Replacements – When publicly-owned real property, including land and/or facilities, is to be acquired for a federal aid highway project, in lieu of paying the fair market value for the real property interest, the local agency may provide compensation by replacing the publicly-owned real property with another facility which will provide equivalent utility.

The local agency must contact the LAC if they are considering a functional replacement. **FHWA will be involved in this process and will have final approval.**

[23 CFR 710.105\(b\)](#)

.102 Option to Purchase – One of the streamlining techniques the new regulations specifically provide for is the use of options to obtain a contractual right to acquire an interest in land. The use of an option to purchase can facilitate earlier acquisition of a property interest and, in some cases, may be structured to fore-stall development of the land until a clearly determined need of that property for the project has been established. This option also provides for the purchase of a right to temporarily control or restrict development of the property for a de-fined period. The use of options or purchase of temporary rights can save both time and costs for the project.

25.10 Donated Property

Section 25.94

[LPA-383](#)Transportation Needs &
You Brochure[23 CFR 710.105\(b\)](#)[23 CFR 710.305\(d\)](#)[23 CFR 710.505](#)[23 CFR 710.507](#)[49 CFR 24.108](#)[RCW 8.26.180\(10\)](#)[WAC 468-100-106](#)[ROW Section 6-1.2.J](#)

Donations of right of way can be accepted only after the owner (includes non-federal government agencies) has been fully informed by the local agency in writing of their rights to receive just compensation and has released (in writing) the local agency from its obligation to have the property appraised. A copy of the donation letter issued to the property owner informing them of their rights available and the donation letter acknowledgment signed by the owner must be included in each parcel file. It is acceptable for an agency to have an informational discussion with a property owner prior to the initiation of negotiations and start of the appraisal process to see if a property owner is interested in donating property. This is okay as long as the agency does not enter into negotiations or tell a property owner that the project will not move forward if they do not donate. Coercion is not allowed. If an agency elects to have an informational meeting, they should provide an informal letter to the property owner explaining the donation process in general terms and provide the property owner with the Property Needs and You Brochure explaining all of the compensation and benefits they are entitled to receive if they choose not to donate.

The donation clause must be included in the conveyance instrument. Section 323 of 23 USC provides for using the value of donated lands as part of the match against an agency's contribution to the project. Certain conditions need be met:

- The credit may only be applied to a federal aid project if federal financial assistance was not used in any form to acquire the land. Credit to the matching share may not exceed the matching share of costs for that project and excess costs may not be utilized on other projects.
- The donation must be related to the project requiring the donated land.
- Donations of privately-owned real estate made after April 2, 1987, and subsequent to NEPA clearance, are eligible for credit purposes. If a donation is accepted prior to the initiation of NEPA you will need to contact your Region LPE to determine if additional information is required. The value of publicly-owned real estate donated after June 8, 1998, is eligible for match credit.

25.11 Administrative Settlements

[49 CFR 24.102\(i\)](#)[ROW Section 6-12](#)

The Uniform Act requires that “The head of a federal agency shall make every reasonable effort to expeditiously acquire real property interests by negotiation.” Negotiation implies an honest effort by the acquiring agency to resolve differences with property owners. Additionally, the legislative history of the Uniform Act indicates that offers can be flexible, and there is no requirement that they reflect a “take it or leave it position.” Negotiations should recognize the inexact nature of the process by which just compensation is determined. Further, the law requires an attempt by

agencies to expedite the acquisition of real property interests by agreements with owners and to avoid litigation and relieve congestion in the courts.

In addition to the mandates of the Uniform Act, there are significant cost savings which can be realized through an increased use of administrative and legal settlements. Cost savings are in the areas of salaries, witness fees, travel, per diem, court costs, etc.

FHWA and WSDOT encourage local agencies to carefully consider and maximize use of administrative settlements in appropriate situations.

[Section 25.10](#)

An administrative settlement or stipulated settlement is a negotiated settlement of a ROW acquisition case in which the agency has administratively approved payment in excess of fair market value as shown on the agency's approved just compensation. Since relocation benefits by regulation cannot be waived, care should be taken not to include "relocation" in a blanket settlement as the agency may still be required to pay additional benefits as part of the relocation program. This is sometimes called a global settlement.

1. **Any administrative settlement which exceeds the fair market value must be documented, thoroughly justified, and the rationale set forth in writing in order to be eligible for federal aid funds.** The extent of written explanation is a matter of judgment and should be consistent with the circumstances and the amount of money involved. If the local agency has any doubt as to eligibility, it should obtain prior approval from WSDOT through the Region LAC.
2. The local agency shall document the following and make it available for review by WSDOT if it is not already part of the agency's approved procedures:
 - a. Identify the responsible official who has the authority to approve administrative settlements.
 - b. Describe the procedure for handling administrative settlements.
3. The designated local agency representative may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the designated official must give full consideration to all pertinent information. The settlement justification must include an analysis of the circumstances of each individual parcel that convince the agency that an administrative settlement is in the agency's and public's best interest. This documentation shall be completed and approved by the designated local agency official prior to payment(s) being made. The list below is a sample of items to be considered for an administrative settlement, and should not be used as a template.
 - The negotiator's recorded information, including parcel details, estimates, bids, research information, all available appraisals, including the owner's and the owner's rationale for increased compensation. This is the most important part of the justification.
 - Recent trends in court awards in cases involving similar acquisition and appraisal problems and the length of time it takes to get on the court's schedule.
 - A statement can be made that condemnation will take additional time and money, but do not attach a dollar amount to the statement since it would be speculative. You should include items such as updating the appraisal for trial, pretrial, conference, staking of right of way, attorney's expenses, and witness

fees (appraisers, consultants, etc.) will be additional incurred costs. You should not speculate about increased project costs resulting from a delay. You could try to quantify your administrative costs resulting from condemnation proceedings such as additional staff time.

- Describe the trial risks based on experience in the particular jurisdiction (e.g., county, city).

Note: Specific information about the parcel, including copies of appraisals, estimates, bids, research information, etc., **must** carry the most weight in the justification.

Administrative
Settlement
eLearning Course

For additional guidance, reference [Appendix 25.173](#) and the *Right of Way Manual* Section 6-12. Agency staff responsible for writing and approving Administrative Settlements should take the web based training on how to write an effective administrative settlement. The course can be accessed by clicking from our Local Programs ROW Services Webpage using the following link: www.wsdot.wa.gov/LocalPrograms/ROWServices/Training.htm

The course is estimated to take 1 to 2 hours to complete.

25.12 Relocation

[49 CFR 24 Subpart C](#)
[ROW Chapter 12](#)

Those agencies that have trained staff and are approved by WSDOT through the procedures process to provide relocation services may do so. All other agencies should contact their Region LAC for advice on contracting with private consultants. WSDOT does not maintain a list of qualified relocation consultants.

[49 CFR 24.205\(a\)](#)
[RCW 8.26.065\(1\)](#)
[WAC 468-100-205\(1\)](#)
[ROW Section 12-4.2](#)

If a project includes relocation, the local agency must submit a relocation plan to WSDOT for approval **prior** to starting ROW activities. If there are federal funds in the ROW Phase, the relocation plan must be approved before ROW funding can be authorized.

[LAG 25.43](#)

To maintain a project's federal aid eligibility, a relocation plan needs to be submitted and approved prior to starting ROW activities, even if there are no federal funds in a ROW Phase. **This is also true in the case of early or advanced acquisition.**

You may contact WSDOT for sample relocation plans or refer to [Right of Way Manual Chapter 12](#) for guidance. Contact the Region LAC for assistance in preparing relocation plans and carrying out relocation activities.

25.13 Right of Way Certification

Spot check reviews are a proactive measure intended to lessen the risk that local agencies engage in improper practices that result in irreversible problems, compliance issues that could delay, stop ROW certification, or risk federal funding on current and/or future federal aid projects. Such risks are reduced by elevating the LPA's awareness of the LAC's project monitoring and by providing an early opportunity for the LAC to help the agency identify problems before they become compliance issues. WSDOT's acquisition file review process is intended to ensure that the agency has in fact completed the ROW acquisition process in compliance with federal regulations before we make our certification to FHWA. The major difference between a spot check review and a certification review is that the project is not complete, so the focus is on the actions taken by the agency up to the point of spot check review for compliance with the URA. The benefit of performing a spot check review, is regulatory compliance

issues can often be caught early enough in the process that corrective actions may be resolved at the LAC level. Another benefit is the prevention of regulatory compliance issues during the certification review.

The LAC will perform spot check reviews on selected federal aid or federal aid eligible projects. The number of spot check reviews is dependent upon the scope of the project, complexity of acquisitions, the agency's level of experience, and past performance. Spot check reviews are not required on all projects, unless required by the agency's Approved ROW Procedures (as specified in the cover letter by Local Programs). However, the LAC is required to perform spot check reviews on active projects of those agencies having past performance problems, required by ROW Procedures, or if the agency lacks sufficient experience acquiring ROW under the URA.

Prior to ROW certification, the local agency must ensure that the ROW plans were reviewed and approved as part of the design approval, and are consistent with the PS&E (see [Appendix 43.62](#)).

[23 CFR 635.309\(c\)](#)

After ROW acquisition has been completed and about two months before the federal aid project is to be advertised for contract, the ROW certification on agency letterhead must be submitted to the Region Local Programs Engineer. FHWA does not formally approve certifications on non-Interstate projects as they have delegated approval of all certificate 1, 2, and conditional 3s (time-based) and excepted parcel 3s on non-Interstate projects to WSDOT. Local Programs will allow agencies, with proper justification and WSDOT approval, to extend the time-based cert 3 from bid opening to issuance of the Notice to Proceed (NTP) to the contractor. For all non-Interstate Certificates, the actual certification date for federal aid projects is the date on the WSDOT Certification Concurrence Letter sent to FHWA. WSDOT Concurrence is required prior to advertisement. For Interstate projects, FHWA will only approve Excepted Parcel Certificate 3s, and the actual certification date is the FHWA approval letter date. Please note the approval process for ROW certs for local agencies is different from what appears in Chapter 17 of the ROW Manual. ROW certification is a requirement for construction authorization. Since local agencies are expected to go to ad within six weeks of construction authorization (See [Section 22.1](#)), ROW certification should not occur too far in advance of the anticipated ad date.

The certification provides the following information and assurances.

1. Sufficient property rights to construct, operate, and maintain the facility as shown on PS&E has been acquired.
2. Right of way has been acquired in accordance with Uniform Act requirements.
3. Relocation assistance has been completed in accordance with the Uniform Act and meets the requirements of [Right of Way Manual Chapter 12](#).
4. Properties acquired in advance of NEPA Clearance (including donations) shall be identified by parcel number. (This information could take the form of an address or a county tax ID if parcel numbers are not assigned.)

[23 CFR 635.309\(c\)\(1\)](#)

For specifics on certification types, definition, procedures, requirements, and examples, see [Right of Way Manual Chapter 17](#). **Note:** Under federal regulation, a Certificate 1 can be utilized by a local agency if the agency obtains a negotiated or stipulated possession and use agreement. This is different from the procedures in Chapter 17 of the ROW Manual. In addition, certificate 2s must be updated to a

certificate 1 in order for the agency to have all the necessary rights to operate and maintain the facility.

If additional property rights are needed after the certification of the project, any subsequent acquisition must be certified. Please note provisions should be made to ensure the contractor does not enter onto any property until the Agency has legal and physical possession, and the project has been re-certified.

25.14 ROW Certification vs URA Compliance

[Section 25.2](#)

Right of Way Acquisition Procedures apply to all federal aid projects regardless of whether or not the project is to be certified. For example, if the condition of the agency’s ROW Procedures requires the LAC to review parcel files prior to making first offers, your agency must comply.

[2 CFR 200](#)

[Appendix 25.171](#)

Based on changes to federal requirements, specifically the implementation of [2 CFR 200](#), in order for local agencies to maintain federal eligibility of federal funds utilized in a project prior to construction, certain federal requirements must be met even though the project is being constructed using local funds. Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) is mandatory.

RW Documentation Requirements Based on Funding Source When a Project has RW Acquisition	ROW Certificate	URA Compliance
FHWA Funds in PE Phase		X
FHWA Funds in RW Phase	X	
FWHA Funds in CN Phase	X	
100% Local Funds Only – Federalized by NEPA		X
100% Local Funds Only – Project involves Interstate		X

ROW Certificate – Construction Authorization (prior to advertising for construction bids)

[23 CFR 635.309\(b\)](#)

[23 CFR 635.309\(c\)](#)

[49 CFR 24.101](#)

[ROW Chapter 17](#)

Per [23 CFR 635.309\(b\)](#) and [\(c\)](#) the ROW certification procedure for federally-assisted highway projects identifies the acquisition status of necessary ROW for the purpose of advancing a project to construction. This regulation is specific to construction authorization only and is the only time that a ROW certification is issued by WSDOT/FHWA. Title 23 requires that acquiring agencies comply with [49 CFR Part 24](#). The requirements of [49 CFR 24.101](#) apply to any acquisition of real property for programs or projects where there is Federal financial assistance in any part of project costs. The phase program or project means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines. The certification process outlined in [Chapter 17](#) of the [ROW Manual](#) must be followed if federal funds are planned in the Construction or ROW Phase of the project.

URA Compliance – Non-Construction Authorization

If federal funds are used in the Preliminary Engineering (PE) phase the project is required to follow the URA. This is true even if there is only \$1 of federal funding. This also applies to projects which have been federalized by NEPA or involve

Interstate when local funds are used. For example, a project that has been split into two or more separate projects, but is covered by one NEPA document is required to follow the URA when any portion of the overall project involves federal funding.

[49 CFR 24.101](#)

Title 23 requires that acquiring agencies comply with [49 CFR Part 24](#). The requirements of [49 CFR 24.101](#) apply to any acquisition of real property for programs or projects where there is Federal financial assistance in any part of project costs. The phase program or project means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines.

In addition to the URA, the local agency must adhere to additional ROW requirements listed in [23 CFR 710](#), environmental requirements, Buy America, and Title VI requirements.

URA Compliance is required if:

- Federal funds in the PE Phase only
- Locally funded but federalized by NEPA
- Locally funded but involves interstate

ROW Project Compliance Reviews (CR):

- In order to be reasonably certain that local agencies are administering FHWA funds in accordance with the Local Agency Guidelines; WSDOT may perform reviews on selected local agency projects that are locally funded but involve interstate, locally funded but federalized by NEPA, or federal funds are only in the PE phase.

Note: If a local agency later seeks federal funding in the ROW or CN phase a ROW certification will be required.

25.15 Property Management

[23 CFR 710.403\(e\)](#)

If using FHWA funding, the acquiring agency shall establish property management policies and procedures that will assure control and administration of ROW, excess lands, and improvements acquired. FHWA does not prescribe how local agencies track income or expenditures from the sale or lease of excess real property acquired with federal funds. In an audit, the local agency would be expected to produce documentation to show they are in compliance with the regulations. These procedures shall establish:

1. Property records showing:
 - a. An inventory of all improvements acquired as a part of the ROW.
 - b. An accounting of excess properties acquired with FHWA funding.
 - c. An accounting of the property management expenses and the rental payments received.
 - d. An accounting of the disposition of improvements and the recovery payments received.
2. Methods for accomplishing the clearing of ROW when such clearance is performed separately from the control for the physical construction of the project.

3. The methods for employing private firms or public agencies for the management of real property interests.
4. The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

[23 CFR 710.403\(d\)](#)
[ROW Chapter 11](#)

If the agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

Property management activities shall be handled in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit.

The agency is responsible for the preservation of the improvements and for reasonable safety measures when it has acquired ownership and possession of the property.

[23 CFR 710.409](#)
[LPA-407](#)

Should rights of way, including uneconomic remnants, acquired with FHWA funds become excess, they may be disposed of (sale, lease, easement, etc.) only with the approval of WSDOT. To request approval, the agency must complete and submit form [LPA-407](#). Once approved, the agency will receive a written notification from the Local Programs Right of Way Manager that they can move forward with their disposal process.

[23 CFR 710.403\(e\)](#)

If the disposal is to a private party, the agency must determine fair market value through the valuation process. FHWA will either be credited for its share of the net proceeds of the sale or lease payment, or the agency may use the federal share of the net proceeds for activities eligible for funding under Title 23 of the United States Code for transportation purposes. A disposal may be made to a governmental agency for a continued public highway use without charge, and no credit to FHWA is required; however, a reversionary clause is required in the deed per [23 CFR 710.403](#).

FHWA approval is required for disposal (sale, lease, easement, etc.) of any rights of way or uneconomic remnants sold at less than fair market value. The Agency will need to provide a written request showing the exception is in the overall public interest based on social, environmental, or economic benefits, or is for a non-proprietary governmental use. Upon approval, the Agency will include a reversion clause in the deed.

[23 CFR 710.105\(b\)](#)

Federal regulations provide for the use of airspace for non-highway purposes above, at, or below the highway's established gradeline, lying within the approved ROW limits. Allowing a ROW Use Agreement for recreational activities could result in the parcel becoming a protected 4(f) resource; costs associated with mitigating impacts to these resources will not be eligible for federal aid participation. The airspace may be put to various public and private uses, such as parks, play areas, parking, trails, etc., as long as it does not interfere with the roadway operations and does not create a safety hazard to the traveling public. Any such lease will need to describe what activities are allowed on the land.

Where an acquiring agency has acquired sufficient legal right, title, and interest in the ROW of a highway on a federal aid system to permit the use of certain airspace, the right to temporary or permanent occupancy or use of such airspace may be granted by the state subject to prior FHWA approval. If the use of airspace is contemplated, the

Region LAC should be contacted for more detailed policies and procedures that must be considered.

Upon disposal of ROW by deed, license, lease, permit, easement or similar instrument, the local agency shall include the required Title VI lease/deed provisions, as outlined in [Chapter 28](#) (Exhibit 2C).

25.16 Diaries

[49 CFR 24.9](#)

[WAC 468-100-009](#)

[ROW Chapters 3, 6, 8, 9, 12, and 13](#)

.161 General – The diary (also can be referred to as a negotiator’s log) is one of the most important elements of an acquisition or relocation file. It is crucial that it be accurate and complete, for it is frequently the only document in a file that explains how a difficult or complex real property interest transaction proceeded. Diaries are also often the only written documentation that is available to show that ROW transactions were done in compliance with the Uniform Act and [49 CFR Part 24](#). Therefore, diaries need to provide a complete record of the transaction. They need to be well organized and factual, and they should be written to be understandable by someone unfamiliar with the transaction. Also, they should reference any appropriate documents in the file such as brochures provided to property owners or estimates obtained to support an administrative record.

Each diary entry shall clearly show the month, day, and year of the contact; the name of the individual who made such a contact; how the contact was made (i.e., in person or by phone) and the name(s) of the individual(s) contacted. Each diary entry shall provide a summary of the contact. It is not sufficient to enter a simple posting of events as they occurred. For example, merely recording that the agent presented an offer or that “discussions were held” on a given date is not sufficient. The entry should indicate, at the least, where the event took place, what questions the owner asked and what answers the agent supplied. These elements are at the very heart of the negotiation process, and when an acquisition becomes difficult or negotiations break down, a well written diary may be the most important document protecting the acquiring agency’s interests.

Multiple contacts should not be combined into one diary entry. These entries need to be made as soon as possible to ensure accuracy. Upon completion of activity entry, the specialist should initial each entry. Electronic diaries are recommended. Once a diary is complete, it must be dated and signed at the end.

Diary entries need to be limited to a recitation of the facts because the diary is subject to the rights of discovery by all parties in any court proceeding or appeal case. **All persons** who participate in negotiations with a property owner to acquire real property interests, whether a staff or consultant agent/negotiator, a member of an agency’s administrative or executive branch, or an agency’s attorney, shall maintain an appropriate diary or log of such activities and discussions with the property owner.

A collection of emails pertaining to the acquisition of a parcel does not constitute a diary. Information taken directly from email correspondence often contributes to a good diary, but care should be taken to exclude extraneous information.

25.17 Oversight of Consultants Hired to Perform ROW Activities

[23 CFR 710.201\(a\)](#)

[23 CFR 710.201\(b\)](#)

[23 CFR 710.201\(h\)](#)

[LAG 25.2](#)

The Local Agency (typically the person approved to perform the “Program Administration” function on the Approved ROW Procedures) is responsible for overseeing the delivery of the ROW Program on federal aid roadway projects for their agency. The agency must ensure ROW activities are carried out in compliance with federal and state laws, regulations, policies and procedures, therefore the local agency must be involved in all conversations between WSDOT and the consultant. WSDOT’s obligation is to the project owner, not the consultant so any guidance provided will be to the local agency.

Oversight of ROW consultants includes, but may not be limited to:

- early involvement with LAC
- use of consultant contract template approved by WSDOT;
- management of scope of work;
- management of ROW contracts;
- management of and QA/QC deliverables (ROW plans, PFEs, relocation plans, administrative settlement justifications, recommendations/requests for payment, files, etc.);
- review and approval of actions and decisions recommended by consultants; and
- overall responsibility for decisions that are outside the purview of consultant functions.

[LAG Chapter 31](#)

The following checklists are available as a tool for the agency to use in the oversight of the consultant’s work product.

- LPA020 – Project Oversight Review Checklist
- LPA021 – Parcel Oversight Review Checklist
- LPA022 – Relocation Oversight Review Checklist

25.18 ROW Training

The LAC provides/facilitates annual structured training open to all LPAs and consultants that address the requirements for a federal aid project. If requested or the LAC determines the need, the LAC provides one-on-one or group project-specific training to LPAs on the URA and the ROW process on federal aid projects and/or any projects wishing to preserve federal aid eligibility. This training should be tailored for the project according to the LPA’s approved procedures and the ROW acquisitions needed for the project. For instance, if the LPA is using consultants, the training should be for the LPA management approval activities (e.g., agency approval of just compensation, agency approval of administrative settlements, going to condemnation).

25.19 Document Retention

[23 CFR 710.201\(e\)](#)

The acquiring agency shall maintain adequate records of its acquisition and property management activities. Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with [23 CFR 710.201\(e\)](#) and 49 CFR Part 24. These records shall be retained at least three years after construction is authorized.

If an LPA acquires a property or property interests under Early Acquisition procedures and later wishes to incorporate the property into a federally funded project, the LPA will need to maintain records for that parcel so they do not jeopardize federal participation on the project or their ability to incorporate the property into their project.

25.20 Appendices

Cautionary Note: Please contact your LAC prior to changing any templates in the appendices.

- [25.170](#) Right of Way Plan Checklist
- [25.171](#) ROW Certification vs URA Compliance Case Studies
- [25.172](#) Sample Neighborhood Description
- [25.173](#) Vacant
- [25.174](#) Determining Whether or Not Land or Property Rights or Interest are Needed
- [25.175](#) Determining the Type of Property Rights Necessary
- [25.176](#) No ROW Needed Verification Checklist
- [25.177](#) FHWA Early/Advanced Acquisition Options and Requirements Chart
- [25.178](#) Federal Aid Requirement Checklist
- [25.179](#) Acquisition Process Flowchart
- [25.180](#) LPA Certification Worksheet – Certificate 1 Sample
- [25.180a](#) LPA Certificate 1 Worksheet – Instructions
- [25.181](#) LPA Certification Worksheet – Certificate 2 Sample
- [25.181a](#) LPA Certificate 2 Worksheet – Instructions
- [25.182](#) LPA Certification Worksheet – Certificate 3 Sample
- [25.182a](#) LPA Certificate 3 Worksheet – Instructions

25.21 Local Programs Right of Way Services Website

[Right of Way Services Home](#)

- [Laws & Regulations](#)
- [Manuals & Resources](#)
- [Clarification & Guidance](#)
- [ROW Training & Education](#)
- [LPA Forms & Brochures](#)

The following checklist is provided as an aid to completing a new right of way plan based on [Section 25.4](#) of the Local Agency Guidelines and [WAC 332-130](#).

- _____ A vicinity map showing the project limits and total parcel details for parcels too large to show on the individual plan sheet.
- _____ The survey line or centerline of the alignment.
- _____ The old and new RW limits with sufficient ties to the survey line to allow a legal description to be written for all rights to be acquired.
- _____ Show all rights to be acquired including fee simple acquisitions, permanent easements and temporary easements. Include advanced acquisition parcels.
- _____ The total ownership boundaries of all parcels showing all rights to be acquired.
- _____ The parcel identification number and owner name.
- _____ Contiguous parcels owned by the same owner.
- _____ Verify that the legal description of each parcel has been plotted correctly.
- _____ The calculated area of the parcel(s) to be acquired.
- _____ The calculated area of the remainder.
- _____ Make sure the total, right of way and remainder areas add up correctly.
- _____ Make sure the curve data is correct and matches the information and stationing on the plan.
- _____ Any improvements within 100' of the existing RW line.
- _____ Cross reference notes to existing RW plans, Records of Survey or other documentation.
- _____ Label grade intersection stations.
- _____ Provide necessary backup calculations and title reports.
- _____ Seal and signature of register professional engineer or professional land surveyor in accordance with [RCW 18.43.070](#) and [RCW 58.09](#).
- _____ Design features, width of the new highway (alignment), grade changes, and other detail of the construction.

Verify that the requirements of [WAC 332-130](#) have been met, including:

- _____ Basis of Bearing
- _____ North Arrow
- _____ Text size
- _____ No shading on the plan.
- _____ Identification of corners used to control the alignment
- _____ A description of all monuments shown

**URA COMPLIANCE LETTER
CASE STUDIES**

Case Study #1

=====NEPA=====

<p>Project Federal Funds in PE Local Funds in ROW & CN</p>

Background information: This local agency has federal funds in the preliminary engineering (PE) phase and local funds support the rest of the project. The agency will not seek federal participation in ROW or Construction (CN) of the project.

Guidance: Since Local Programs is not administering funds for construction of this project, it would not require a Construction Authorization ROW Certificate. The acquisition of ROW on this project would however, need to follow the requirements set forth in the URA. It would be the expectation of the acquiring agency to make sure the requirements of the URA were followed on all real property interests acquired for the project. WSDOT Local Programs would issue a URA Compliance Letter. If the agency comes back later and seeks federal funds in ROW or CN phases, a ROW Certification will be required.

Note: Federal funds for the project are from a source other than FHWA and the federal funding is in ROW or Construction, the local agency would follow the normal Construction Authorization ROW Certificate process.

Case Study #2

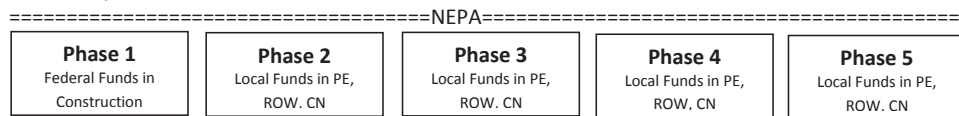
=====NEPA=====

<p>Project 1 (Phase 1) Federal Funds in CN</p>	<p>Project 2 (Phase 2) Federal Funds in ROW & CN</p>	<p>Project 3 (Phase 3) Federal Funds in CN</p>
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Background information: A project that has been split into three separate projects, but is covered by one NEPA document. NEPA covers each of the 3 separate projects, all projects (aka phases, stages, segments) have ROW acquisition, project 1 has federal funds in construction, project 2 has federal funds in ROW, and project 3 has federal funds in construction.

Guidance: Each of the 3 projects would require a ROW Certification when they are ready to have construction authorized. The process outlined in Chapter 17 of the ROW Manual – Construction Authorization ROW Certificate should be followed.

Case Study #3

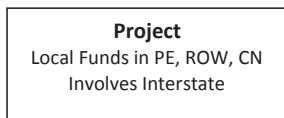


Background information: NEPA covers all 5 phases of the project, all phases have ROW acquisition, phase 1 is the only phase with federal financial assistance – the rest is being done with local funds.

Guidance: Since there is a \$1 of federal funding in this project the URA applies to all phases. In addition, the local agency must adhere to environmental requirements, Buy America, and Title VI requirements. The first phase has federal funds in construction so it will need to be certified using a Construction Authorization ROW Certificate. Phases 2 through 5 have only local funds so while they are required to follow the URA they do not require a Construction Authorization ROW Certificate. Since the entire project is covered by one NEPA document and one of the phases had federal funds, the entire project is considered to be federalized. Since Local Programs is not administering any federal funds for phases 2 through 5 of this project, it would not require a Construction Authorization ROW Certificate. The acquisition of ROW on this project would however, need to follow the requirements set forth in the URA. It would be the expectation of the acquiring agency to make sure the requirements of the URA were followed on all real property interests acquired for the project. WSDOT Local Programs would issue a URA Compliance Letter. Note: Local Programs has no direct involvement in locally funded projects. However, because the project has been federalized, Phase 1 of the project could be as risk if the agency fails to comply with the URA on phases 2 – 5.

Case Study #4

=====SEPA=====



Background information: The local agency is using local funds for the entire project, PE, ROW, and CN. A portion of the project involves changes to interstate right of way, including limited access.

Guidance: Since changes to interstate limited access require approval of FHWA, NEPA will be required which creates a federal nexus (federalized) requiring the agency to comply with the URA. In addition, the local agency must adhere to environmental requirements, Buy America, and Title VI requirements. A URA Compliance Letter will be issued.

**SAMPLE
NEIGHBORHOOD DESCRIPTION
FOR PROJECT: YAKIMA COUNTY: SUNSET HILL ROAD WIDENING No. 311**

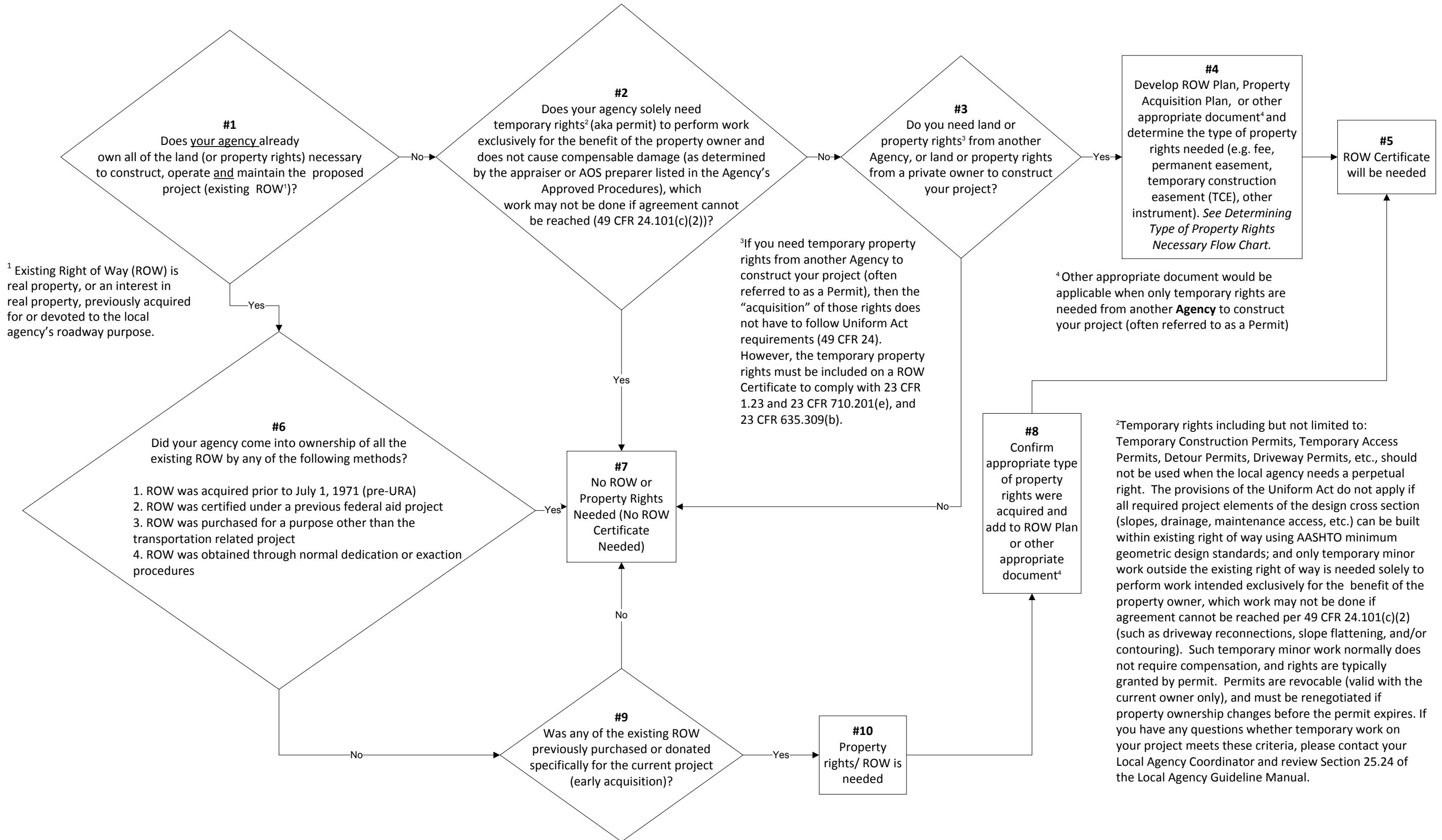
Date: October 21, 1986

The project vicinity is rural Yakima County lying about 25 miles (40 km) westerly of Yakima city limits in an area commonly called Sunset Hill. The county road connecting the area to the city of Yakima is the Sunset Hill Road, which is currently a two-lane arterial. The area is primarily devoted to agricultural uses, such as cattle raising and forest products, but also is developing with single family lot subdivisions and ranchette residential uses. This part of the county is becoming a bedroom area for commuters to Yakima and several commercial uses have developed along the Sunset Hill Road. Zoning here is Agricultural (AG) minimum 20 acres (8 ha), with areas bordering the Sunset Hill Road zoned Single Family Residential (SR 13), minimum 13,000 square feet (1210 square meters) per site, and a strip along said arterial between Henderson Road and White Bluff Boulevard being zoned for commercial and/or office uses (CPD), with a minimum area required of 15,000 square feet (1 395 square meters) per site. Utilities available along Sunset Hill Road are Puget Power, West Yakima Water (Community System), PNB telephone, and sewers are by individual septic systems (soils percolate adequately). There appears to be minimal demand for new commercial development along Sunset Hill Road.

Traffic along the Sunset Hill Road is heavy during the rush hour. Hence, the proposed project is to widen this arterial to four traffic lanes with a dual-left turn lane in the center. A traffic light is planned at the intersection of Henderson Road. The project will be at present grade and will include curbing. Access points will be controlled at existing locations. The right of way needed is a 20-foot (6-meter) strip of fee land from each side of Sunset Hill Road between Henderson Road and White Bluff Boulevard.

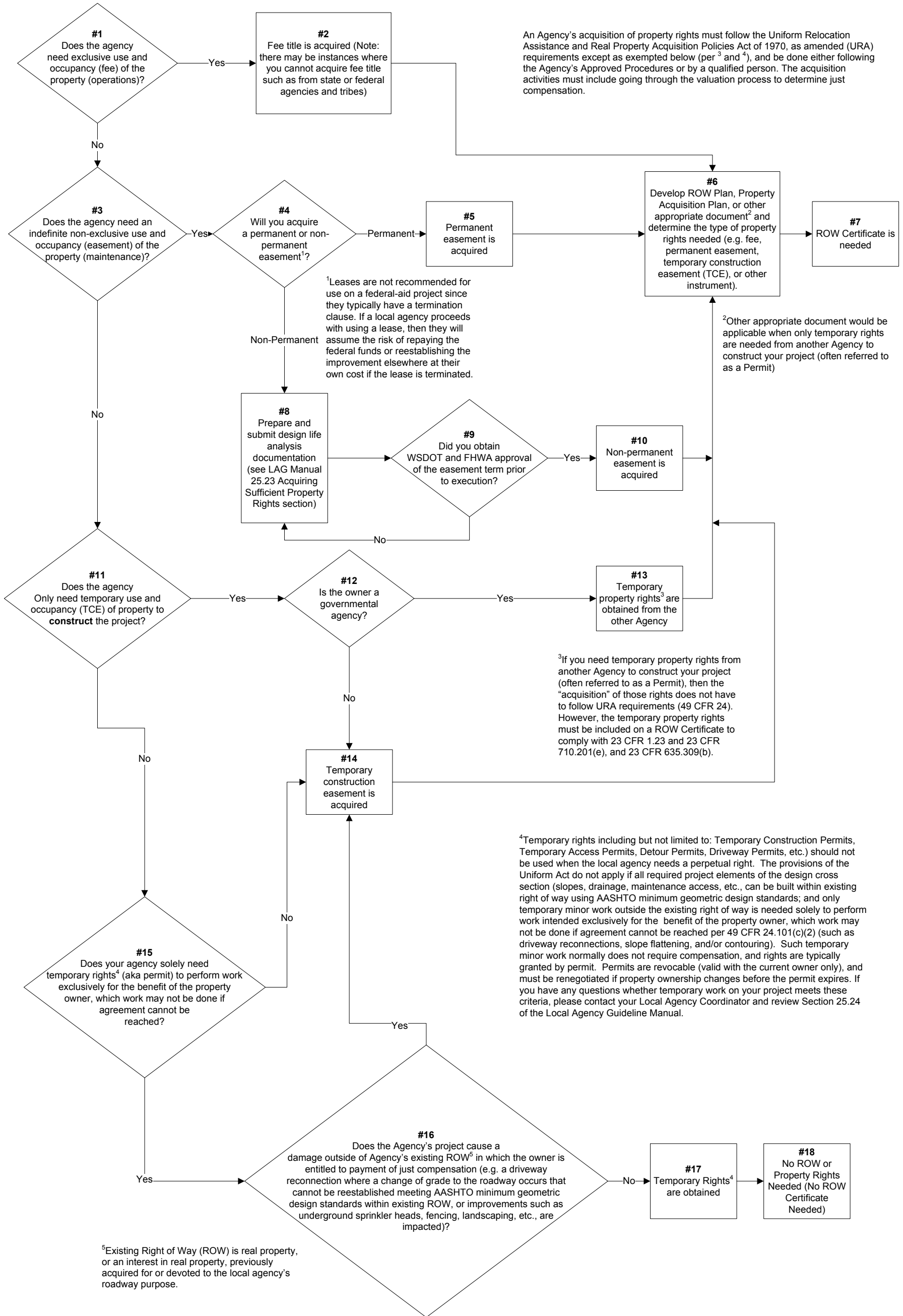
Eleven parcels will be affected: seven homes, a tree farm (2,000 acres (810 ha) in size), one convenience store, a small wholesale lumber mill, and a new professional (medical) office complex. One of the residences is partially in the take and possibly will require relocating the owner-occupant family. A machine shed on the lumber mill site is partially in the take and it contains tenant-owned equipment. The convenience store's gasoline dispensers and canopy are partially in the take. About 10 of the 40 parking stalls for the medical office are in the taking, possibly resulting in loss of one tenant. The project should generally benefit the neighborhood by improving traffic flow during the rush hour. The neighborhood should continue to moderately change from agricultural to single family uses, with no major zoning changes immediately foreseeable, since neighborhood commercial services should remain adequate for the next five or more years.

3/23/15



3/23/15

You may have a parcel or multiple parcels that fits more than one of these situations.



Appendix 25.176 No ROW Needed Verification Checklist

This verification checklist is a tool to be used during the completion of the Design Approval Documentation process ([Chapter 43](#)) to aid in determining if Right of Way (**ROW**) or property rights (**PR**) are needed for your project. Please complete both Sections A and B to determine if your project has ROW/PR needs. Refer to Sufficient Property Rights Flowcharts [Appendix 25.174](#) and [Appendix 25.175](#) for additional guidance.

Section A: Existing ROW/PR	YES	NO
Does your agency already own ALL of the land and/or property rights necessary to construct, operate and maintain the proposed project? If the answer is “Yes”, move to the next question below. If the answer is “No”, move to Section B.		
Did your agency come into ownership of the existing ROW by any of the following methods?		
1. ROW acquisition occurred prior to July 1, 1971/the Uniform Act ;		
2. ROW was certified under a previous federal aid project ;		
3. ROW was purchased for a purpose other than this project , and is no longer needed for its original purpose; and/or		
4. ROW was obtained through normal dedication or exaction procedures (there was no unconstitutional taking).		
<p>If you checked “Yes” to the initial question and “Yes” to any of the four subsequent questions above in Section A you have confirmed your agency owns the existing ROW and your project will not need to be certified. You are finished and do not need to complete the remainder of the form.</p> <p>If you checked “Yes” to the initial question and “No” to all of the four subsequent questions above you do have ROW/PR needs and a ROW certificate is needed.</p> <p>Continue to Sections B and C.</p>		
Section B: Temporary Rights (aka Mutual Benefit Permits)	YES	NO
Does your agency solely need temporary rights to perform work exclusively for the benefit of the property owner and does not cause compensable damage , which work may not be done if agreement cannot be reached?		
<p>If you checked “Yes” to the question above in Section B you have confirmed your agency solely needs temporary rights to perform work exclusively for the benefit of the property owner so those property rights will not need to be certified. If you checked “No” then your agency will need to acquire temporary easement and a ROW certificate is needed. Continue to Section C.</p>		
Section C: Other ROW/PR Considerations	YES	NO
Early acquisition – Did your agency purchase land and/or property rights early - prior to NEPA approval - specifically for this project after July 1, 1971 (post-URA)?		
Does your agency plan to purchase land and/or property rights early – prior to NEPA approval - specifically for this project ?		
Environmental Mitigation – Will the project use land your agency previously purchased for wetland banking, natural habitat, or other environmental related purposes?		
Are there any environmental mitigation commitments required for your project that involves property the agency doesn’t currently own?		

Section C: Other ROW/PR Considerations	YES	NO
Donation – Did a property owner donate land and/or property rights specifically for this project ?		
Do you anticipate a property owner donating land and/or property rights specifically for this project ?		
Rights from Private Property Owners – Does your agency need to obtain any interest in, or possession of, real property (including temporary uses: easements, access rights, air rights and/or airspace) to construct, operate, and maintain the proposed project ?		
Rights from Another Agency – Does your agency need land and/or property rights, including access and temporary permits from another Agency to construct, operate, or maintain your project ?		
Encroachments – Are real property improvements encroaching into the existing ROW and/or airspace ?		
If you checked “Yes” to any of the above questions/situations in Section C, the property rights will need a ROW certificate. Please consult with your LPE and/or LAC for guidance. If you checked “No” to ALL of the above, you do not have ROW/PR needs for your project for the situations addressed in this section. Continue to Final ROW Determination.		
Final ROW Determination: If the answer in section A is “No”, your agency does not own all of the land and/or property rights, and the answers to Section B is “Yes”, and Section C are all “No”, you have confirmed your project has no ROW/PR needs and does not require ROW certification; otherwise, please consult with your LPE and/or LAC for guidance. Please keep a copy of this checklist in your project file.		

Right of Way and Property Rights Definitions:

Access rights mean the right of ingress to and egress from a property that abuts a street or highway.

Acquiring agency means a State agency, other entity, or person acquiring real property for title 23 of the United States Code purposes.

Acquisition means activities to obtain an interest in, and possession of, real property.

Air rights mean real property interests defined by agreement, and conveyed by deed, lease, or permit for the use of airspace.

Airspace means that space located above and/or below a highway or other transportation facility’s established grade line, lying within the horizontal limits of the approved right-of-way or project boundaries.

Damages means the loss in value attributable to remainder property due to severance or consequential damages, as limited by State law, that arise when only part of an owner’s property is acquired.

Donation means the voluntary transfer of privately owned real property for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

Early acquisition means acquisition of real property by State or local governments in advance of Federal authorization or agreement.

Easement means an interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property.

Environmental Mitigation means work required as part of an agency's project to take care of environmental impacts caused by the project.

Program or project means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal Funding Agency guidelines.

Property Right means possession of or an interest in land of another, whether temporary or permanent.

Real property means land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the rights to control use, leasehold, and leased fee interests.

Right-of-way means real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility funded under title 23 of the United States Code.

Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), and the implementing regulations at [49 CFR part 24](#)

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Early Acquisition (EA) Options & Requirements
(23 CFR 710.501)

Acquiring ROW Options	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimbursement/ Credits	Comply w/ Federal Law*	Subject to Condemnation	Requirements
1) State-funded early Acquisition without Federal Credit or Reimbursement 23 CFR 710.501(b) 23 USC 108(c)(1)	NO	No, if the State wishes to maintain Federal eligibility for future Federal assistance on any part of the transportation project.	When legally permissible by State Law.	N/A	Yes, if the project maintains Federal eligibility.	YES, if State law allows	A State may carry out early acquisition entirely at its expense. However, a State may maintain eligibility for future Federal assistance on a project. To maintain eligibility, early acquisition must comply with the following requirements of 23 CFR 710.501(c)(1)-(5): <ul style="list-style-type: none"> • Property lawfully obtained by the State agency; • Not 4F property; • Acquisitions and relocations comply with the Uniform Act; • State agency complies with Title VI of the Civil Rights Act; • FHWA concurs with the State that the Early Acquisition did not influence the NEPA decision for the proposed project including: <ul style="list-style-type: none"> – The need to construct, – The consideration of alternatives, or – The selection of design or location.
2) State-funded Early acquisition eligible for future credit 23 CFR 710.501(c)	NO	NO	When legally permissible by State law.	Request credit for the portion of the property after incorporated in the Federal-aid project	YES	YES, if State law allows	<ul style="list-style-type: none"> • Property lawfully obtained by the State agency; • Not 4F property; • Acquisitions and relocations comply with the Uniform Act; • State agency complies with Title VI of the Civil Rights Act; • FHWA concurs with the State that the Early Acquisition did not influence the NEPA decision for the proposed project including: <ul style="list-style-type: none"> – The need to construct, – The consideration of alternatives, or – The selection of design or location; • Property is incorporated in the project to which the credit will be applied; and • The amount of the credit may be current fair market value or historic acquisition cost to acquire; however, this credit must be applied consistently within the project. 23 U.S.C. 323(b)(2).
3) State-funded Early Acquisition Eligible for future reimbursement 23 CFR 710.501(d) 23 USC 108(c)	NO	NO	When legally permissible by State law.	After NEPA is completed and real property interests are incorporated in a Title 23 project and all applicable requirements are met.	YES	YES, if State law allows	<ul style="list-style-type: none"> • Property lawfully obtained by the State agency; • Not 4F property; • Acquisitions and relocations comply with the Uniform Act; • State agency complies with Title VI of the Civil Rights Act; • FHWA concurs with the State that the Early Acquisition did not influence NEPA for the proposed project including: <ul style="list-style-type: none"> – The need to construct, – The consideration of alternatives, – The selection of design or location; • State has a mandatory, comprehensive, and coordinated land use, environmental, and transportation planning process under State law, and the Governor has determined in advance that the acquisition is consistent with the State transportation planning process; • The State actually selects the alternative for which the real property interest is acquired pursuant to NEPA; • Prior to approval for Federal participation, NEPA is completed; and • Reimbursement is based on the usual costs to acquire—23 CFR 710.203(b)(1).

**Early Acquisition (EA) Options & Requirements
(23 CFR 710.501)**

Acquiring ROW Options	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimbursement/ Credits	Comply w/ Federal Law*	Subject to Condemnation	Requirements
4) Federally funded Early Acquisition (Stand-alone project) 23 CFR 710.501(e) 23 USC 108(d)	YES, NEPA decision required for the early acquisition, stand- alone project only (not the transportation project). (Usually a CE)	NO	After NEPA is complete for the Early Acquisition Project	This is a reimbursable, stand- alone, Federal-aid Project based on FHWA authorization to proceed with acquisition	YES	NO	<ul style="list-style-type: none"> State certifies and FHWA concurs that the following requirements have been met: <ul style="list-style-type: none"> State has authority to acquire under State law; Is for a Title 23 eligible transportation project and does not involve 4F properties; Will not cause significant adverse environmental impacts as a result of the EA project or from cumulative effects of multiple EA projects; Will not limit the choice or otherwise influence the NEPA decision of FHWA; Will not prevent the lead agency from making an impartial decision as to alternatives; Is consistent with the State transportation planning process under 23 U.S.C. 135; Complies with other applicable Federal laws (including regulations); Will be acquired through negotiation, without the threat or use of condemnation. Will not reduce or eliminate relocation benefits under the Uniform Act and Title VI of the Civil Rights Act; The Early Acquisition project is in the Transportation Improvement Plan; and NEPA for the Early Acquisition project is complete and approved by FHWA. Real property interests acquired cannot be developed in anticipation of the transportation project until a NEPA decision for that transportation project has been completed. No development activity related to demolition, site preparation, or construction that is not necessary to protect health or safety may be undertaken. If reimbursement is made and the real property interests are not incorporated in a project within 20 years, FHWA must offset the amount against Federal-aid funds apportioned to the State. Eligibility for Relocation Assistance—a person is considered displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest. Options to purchase and similar agreements do not create an immediate commitment and do not create eligibility. <p>Note: The “Option” to purchase the property at a later day allows the property to remain occupied limiting the risk of blight in the neighborhood due to vacant buildings.</p>

**Advance Acquisition (AA) Options & Requirements
(23 CFR 710.503)**

Acquiring ROW Options	Require NEPA Decision	Allow 4F Properties	Start Acquisition	Request Reimbursement/ Credits	Comply w/ Federal Law*	Subject to Condemnation	Requirements
1) Protective Buying 23 CFR 710.503	**Yes typically a CE. See 23 CFR 771.117(d)(12)	Yes, if consultation is completed on 4F.	Usually during the NEPA process.	After property is incorporated in the Federal-aid project.	YES	YES, if State law allows	Development of the property is imminent.
2) Hardship Acquisition 23 CFR 710.503	**Yes typically a CE. See 23 CFR 771.117(d)(12)	Yes, if consultation is completed on 4F.	Usually during the NEPA process.	After property is incorporated in the Federal-aid project.	YES	YES, if State law allows. See comment	A request for hardship acquisition based on a property owner’s written submission. Note: While the agency may condemn if a settlement cannot be reached on a hardship acquisition, great care should be taken to ensure that the decision is warranted both for the property owner and the agency.

*Relevant Federal Law includes the Uniform Act, Title VI Civil Rights Act, and Federal Regulations (primarily, 23 CFR Part 710).

**Note: Protective Buying and Hardship Acquisitions usually occur during the transportation project’s NEPA phase. However, prior to approving an AA, NEPA clearance is necessary for the AA parcels. This requires the AA parcels to be carved out from the overall project so that NEPA clearance provided on those parcels, typically in the form of a CE.



Federal Aid Requirement Checklist

Informational Only

Agency: [Click here to enter text.](#) Region: [Click here to enter text.](#) Date: [Click here to enter text.](#)

Project Federal Aid Number: [Click here to enter text.](#)

Project Name: [Click here to enter text.](#)

Federal Funds Will Be Used For:

PE: [Click here to enter text.](#) R/W: [Click here to enter text.](#) CONST.: [Click here to enter text.](#)

Persons Will Be Displaced: Yes No

Right of Way Acquired for This Project: Yes No

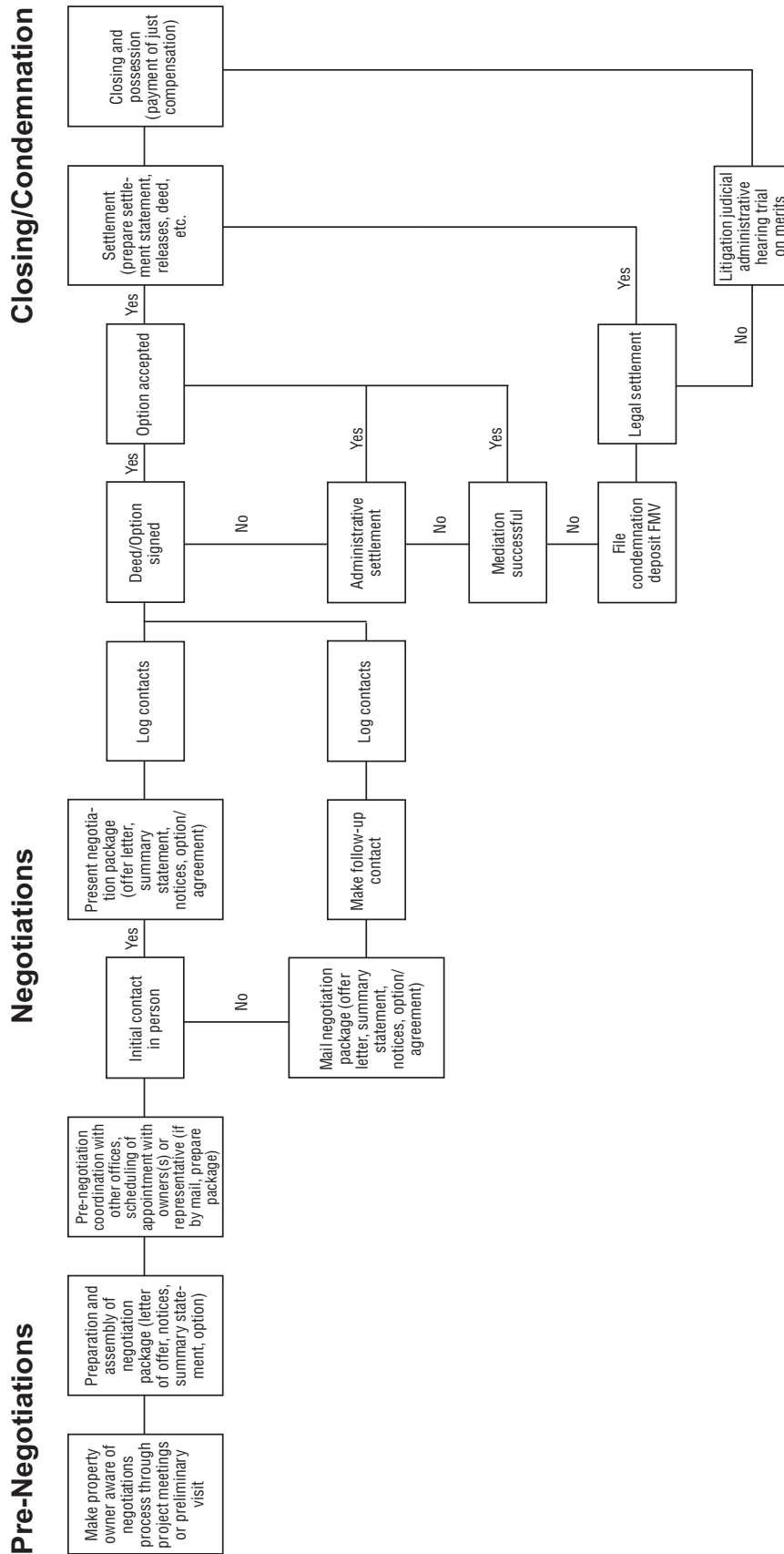
Reminders	Comments
1. Real property must be appraised before initiation of negotiations with the owner, per 49 CFR 24.102(c) and 24.108.	Click here to enter text.
2. Owners must be given an opportunity to accompany each appraiser during his inspection of the property, per 49 CFR 24.102(c).	Click here to enter text.
3. The acquiring agency must establish just compensation before initiation of negotiations with the owners, per 49 CFR 24.102(d).	Click here to enter text.
4. No increase or decrease in the FMV due to the project except physical deterioration, is to be considered in the valuation of the property, per 49 CFR 24.103(d).	Click here to enter text.
5. Appraisals are not to give consideration nor include any allowance for relocation assistance benefits.	Click here to enter text.
6. The owner is not to be left with an uneconomic remnant that the acquiring agency did not offer to acquire, per 49 CFR 24.102(k).	Click here to enter text.
7. The owner is to be given a written statement of the amount offered as just compensation, and where appropriate, the compensation for real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated in the written statement, per 49 CFR 24.102(e).	Click here to enter text.

<p>8. No owner shall be required to surrender possession before the agreed purchase price has been paid or the approved amount of compensation has been paid into the court, per 49 CFR 24.102(j).</p>	<p>Click here to enter text.</p>
<p>9. No lawful occupant shall be required to move unless the occupant has been given at least 90 days advance written notice of the earliest date by which the occupant may be required to move, per 49 CFR 24.203(c).</p>	<p>Click here to enter text.</p>
<p>10. The rental amount charged to owners and/or tenants permitted to occupy the property subsequent to acquisition must not exceed the fair rental value for such occupancy, per 49 CFR 24.102(m).</p>	<p>Click here to enter text.</p>
<p>11. No action must be taken to advance condemnation, defer negotiations or condemnation or taken any other action coercive in nature in order to compel an agreement on the price to be paid for the property, per 49 CFR 24.102(h).</p>	<p>Click here to enter text.</p>
<p>12. The acquiring agency must acquire an equal interest in all buildings, etc., located upon the real property acquired, per 49 CFR 24.105.</p>	<p>Click here to enter text.</p>
<p>13. The acquiring agency must pay recording fees, transfer taxes, etc.; penalty costs for pre-payment of a pre-existing mortgage and the pro rata share of real property taxes paid subsequent to vesting title in the acquiring agency, per 49 CFR 24.106.</p>	<p>Click here to enter text.</p>
<p>14. No property owner can voluntarily donate his property prior to being informed of his right to receive just compensation.</p>	<p>Click here to enter text.</p>
<p>15. Provisions have been made for rodent control should it be necessary.</p>	<p>Click here to enter text.</p>
<p>16. No owner was intentionally required to institute legal proceedings to prove the fact of the taking of his real property.</p>	<p>Click here to enter text.</p>

Prepared by: [Click here to enter text.](#)

Title: [Click here to enter text.](#)

Acquisition Process



Appendix 25.180

LPA Certification Worksheet – Certificate 1 Sample

Certificate No. 1
 Agency: ABC County
 Project Title: NW Gold Trail Project F.A. No.: STPU 2145(001)

R/W Plan Sheet #	ACQUISITION										RELOCATION							
	Parcel Number	Owner	Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	None	Res.	Bus.	Farm	NPO	PPD
106	022605-9000	Norris		X								1/21/15						X
	022605-9215												X					
106	022605-9216	Money	X	X		P		2/1/15	8/30/15			2/1/15						
	022605-9325																	
107	022605-9326	Big Blue Diner		X	X	P		2/1/15	8/30/15			2/1/15			X			
108	022605-9456	Strand	X	X	X							3/1/15						
109	022605-9165	State Parks				N	4/30/45					4/30/15	X					
111	022605-8500	Dreamy		X								4/1/15		1				
			2	5	1	3	1	2		0				3	1	0	0	1
	6																	

Easement Key
P=Permanent/perpetual
N=Non-Permanent (defined term)*
L=Lease*

*Non-permanent easements and leases subject to FHWA approval

**Certificate 1 Worksheet
Instructions to Complete Form**

Worksheet Format:

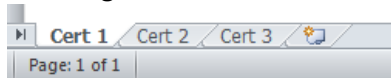
Please do not alter the form by adding or deleting columns as it will affect formulas that automatically compute based on data entered into the spreadsheet. Rows can be added or deleted based on need. It is recommended that adding or removing rows occur between row 4 and row 23.

Creating a List within a Cell:

GENERAL		
R/W Plan Sheet #	Parcel Number	Owner
106	022605-9000	Norris
	022605-9215	
106	022605-9216	Money
	022605-9325	
	022605-9326	
107	022605-9327	Big Blue Diner

A list of information can be added to a single cell by clicking the “Alt” key at the same time and clicking on the “Return” key.

Selecting Correct Form:



The excel spreadsheet is set up as a single workbook with tabs at the bottom left corner of the screen. Select the Cert 1 tab to complete the worksheet.

Electronic Worksheet Instructions:

R/W Plan Sheet #	Parcel Number	Pre-NEPA Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires

Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.

RES-397a – Instructions for Certificate 1 Worksheet
Created 6/2015

The electronic instructions to complete the worksheet are embedded in each title cell of row 3. Either hover the mouse of the title cell or left click in the cell and the instructions will appear. Once you remove the mouse or click on another cell the instructions will disappear.

Header:

Certificate No. 1
 Agency: Name of Agency
 Project Title: Project Title F.A. No.: Federal Aid No.

Agency Name: Enter acquiring agency name.
Project Title: Enter complete project title which was used on the STIP.
F.A. No.: Enter the federal aid number for the project.

General Section:

GENERAL		
R/W Plan Sheet #	Parcel Number	Owner

R/W Plan Sheet #: Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.

Parcel Number: The parcel numbers should be listed in the order shown on the ROW plans. Enter the parcel number as identified on the Right of Way Plan. If there are multiple parcels numbers making up the larger parcel determination, they should be shown as a single entry on one line to ensure the parcel count is accurate(use Alt enter function). Please note ROW Plans should be consistent with the certification worksheet.

Owner: Enter the owner name (last name, first name or business name). If there are multiple owners, they should be shown as a single entry on one line to ensure the parcel count is accurate(use Alt enter function).

Acquisition Section:

ACQUISITION									
Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired

Pre NEPA: If an offer was made on a parcel prior to environmental approval (NEPA), place an “X” in cell. For all offers made on parcels after environmental approval this field should be left blank.

Fee: If fee simple rights (exclusive use and occupancy) were acquired from any portion of the parcel, place an “X” in the cell.

Access Rights: Access rights apply to limited access facilities (such as interstate, WSDOT access breaks). If access rights (including light, view, and air) were acquired from any portion of the parcel, place an “X” in the cell.

Esmt.* P/N/L: If a permanent (perpetual), non-permanent (defined term), or lease was acquired from any portion of the parcel, place an “P” for permanent easement, or an “N” for non-permanent easement, or an “L” for lease in cell. *If something less than a permanent easement is acquired FHWA approval is required.

Date Esmt.* N/L Expires: If you have FHWA approval to acquire a non-permanent easement or lease, enter the expiration date identified in the easement/lease in this cell. This column is not used in the case of a permanent easement.

Effective Date TCE: If a temporary easement is acquired for construction purposes on any portion of the parcel, enter the start date of the TCE. This is normally the same date as the date acquired. This is the date the agency has legal and physical possession, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. In the case of donations, the effective date is the possession date.

Date TCE Expires: Enter the date the temporary construction easement expires as specified in the temporary easement. Agencies should always use a specific expiration date to avoid clouding a property owner’s title.

Effective Date Permit or Right of Entry: Permits or right of entries are obtained for any portion of the parcel from other agencies to perform work on their property and normally without payment of compensation, such as tying into another jurisdiction’s road. Situations that involve temporary work between agencies, does not have to follow the URA process. If a permit or right of entry was obtained for construction activities required for the project, enter the start date of the permit or right of entry. This is normally the same date as the date acquired. Preliminary testing or studies in advance of construction activities are not required to be certified since the work is not part of the PS&E. Also, “beneficial” permits from private property owners are not required to be certified since the work is not required for the project itself and can be eliminated from the contract if the owner were to revoke the permit.

Date Permit or Right of Entry Expires: Enter the date the permit or right of entry expires as specified in the permit or right of entry.

Date Acquired: Date acquired is the date the agency has legal and physical possession, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. If the payment is mailed, the agency should add 5 days to the mailing date. In the case of donations, the effective date is the possession date. Enter the date the property was acquired. This must be filled in for each acquisition listed (on a Cert 1) even if the same date appears in other columns.

NOTE: Refer to the Sufficient Property Rights flow chart (Appendix 25.174 & 25.175) for actual definition of property rights.

Relocation Section:

RELOCATION					
Non-Residential					
None	Res.	Bus.	Farm	NPO	PPO

- None:** If there was no relocation on the parcel place "X" in cell. Even in situations where projects have no relocation, the cell should not be left blank.
- Res:** If your project displaced a residential owner or tenant occupant from the parcel place an "X" in the cell. If there are multiple displaced persons for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.
- Bus.:** If your project displaced a business, including qualifying residential landlords (not to be confused with a business that has to relocate personal property only), place an "X" in the cell. If there are multiple displaced businesses for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.
- Farm:** If your project displaced a farm, place an "X" in the cell. If there are multiple displaced farms for one parcel number, type in the number and change the formula in the total row to auto sum.
- NPO:** If your project displaced a Non-Profit Organization (NPO), place an "X" in the cell. If there are multiple displaced NPOs for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.
- PPO:** If your project displaced Personal Property Only (PPO), place an "X" in the cell. If there are multiple PPO displacements for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.

Calculated Totals Section:

GENERAL			ACQUISITION										RELOCATION					
R/W Plan Sheet #	Parcel Number	Owner	Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry Expires	Date Permit or Right of Entry Expires	Date Acquired	None	Res.	Bus.	Farm	NPO	PPO
	0		0	0	0	0	0	0		0			0	0	0	0	0	0

Column Totals: Each column has a formula at the bottom that will "count" the box if it has data in it. The calculations will happen automatically so there is no need to alter or enter information in this section. The totals should be reconciled with the ROW plan to ensure all rights were acquired.

If you have multiple displacements for one parcel you will need to type in the number of displacements in the appropriate column and then change the formula in the total row from a "CountA" to an "Auto Sum".

Example:

Certificate No. 1
 Agency: ABC County
 Project Title: NW Gold Trail Project F.A. No.: STPU 2145(001)

R/W Plan Sheet #	GENERAL		ACQUISITION								RELOCATION								
	Parcel Number	Owner	Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	Non-Residential						
													None	Res.	Bus.	Farm	NPO	PPD	
106	022605-9000	Norris		X								1/21/15	X						X
	022605-9215																		
106	022605-9216	Money	X	X		P		2/1/15	8/30/15			2/1/15	X						
	022605-9325																		
	022605-9326																		
107	022605-9327	Big Blue Diner		X		P		2/1/15	8/30/15			2/1/15			X				
108	022605-9456	Strand	X	X	X							3/1/15		2					
109	022605-9165	State Parks				N	4/30/45					4/30/15	X						
111	022605-8500	Dreamy		X								4/1/15		1					
	6		2	5	1	3	1	2		0			3	1	0	0	0	1	

Easement Key
 P=Permanent/Perpetual
 N=Non-Permanent (defined term)*
 L=Lease*
 *Non-permanent easements and leases subject to FHWA approval

Best practices:

ROW Plan – for ease of certification it is recommended that you do not rely solely on Tax Identification numbers as they do not define a parcel acquisition. It is better to assign a parcel number that will identify the entire acquisition which could encompass multiple tax parcel numbers.

If your agency uses both tax parcel numbers and assigned numbers, the use of numbers must be consistent between the ROW plan, ROW certification, parcels, and all file documents.

Appendix 25.181

LPA Certification Worksheet – Certificate 2 Sample

Certificate No. 2
 Agency: ABC County
 Project Title: NW Gold Trail Project F.A. No.: STPU 2145(001)

R/W Plan Sheet #	Parcel Number	Owner	Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	Possession Date (P&U Only)	RELOCATION							
														None	Res.	Bus.	Non-Residential				
														None	Res.	Bus.	Farm	NPO	PPO		
106	022605-9000	Norris		X								1/21/15		X						X	
106	022605-9215	Money	X	X		P		2/1/15	8/30/15			2/1/15		X							
107	022605-9326	Big Blue Diner		X		P		2/1/15	8/30/15			2/1/15			X						
108	022605-9456	Strand	X	X	X							3/7/15									
109	022605-9165	State Parks		X		N	4/30/45					4/30/15									
111	022605-8500	Dreamy		X								4/1/15			1						
112	022605-7852	Kort		X									3/6/15								
	6		2	5	1	3	1	2		0					3	1	0	0	0	1	

Easement key
 P=Permanent/perpetual
 N=Non-Permanent (defined term)
 L=Lease*

*Non-permanent easements and leases subject to FHWA approval

**Certificate 2 Worksheet
Instructions to Complete Form**

Worksheet Format:

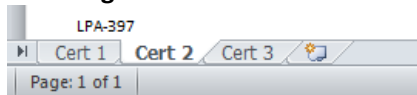
Please do not alter the form by adding or deleting columns as it will affect formulas that automatically compute based on data entered into the spreadsheet. Rows can be added or deleted based on need. It is recommended that adding or removing rows occur between row 4 and row 23.

Creating a List within a Cell:

GENERAL		
R/W Plan Sheet #	Parcel Number	Owner
106	022605-9000	Norris
	022605-9215	
106	022605-9216	Money
	022605-9325	
	022605-9326	
107	022605-9327	Big Blue Diner

A list of information can be added to a single cell by clicking the “Alt” key at the same time and clicking on the “Return” key.

Selecting Correct Form:



The excel spreadsheet is set up as a single workbook with tabs at the bottom left corner of the screen. Select the Cert 2 tab to complete the worksheet.

Electronic Worksheet Instructions:

R/W Plan Sheet #	Pre-NEPA Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires

Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.

The electronic instructions to complete the worksheet are embedded in each title cell of row 3. Either hover the mouse of the title cell or left click in the cell and the instructions will appear. Once you remove the mouse or click on another cell the instructions will disappear.

Header:

Certificate No. 2
 Agency: Name of Agency
 Project Title: Project Title F.A. No.: Federal Aid No.

Agency Name: Enter acquiring agency name.
Project Title: Enter complete project title which was used on the STIP.
F.A. No.: Enter the federal aid number for the project.

General Section:

GENERAL		
R/W Plan Sheet #	Parcel Number	Owner

R/W Plan Sheet #: Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.
Parcel Number: The parcel numbers should be listed in the order shown on the ROW plans. Enter the parcel number as identified on the Right of Way Plan. If there are multiple parcels numbers making up the larger parcel determination, they should be shown as a single entry on one line to ensure the parcel count is accurate(use Alt enter function). Please note ROW Plans should be consistent with the certification worksheet.
Owner: Enter the owner name (last name, first name or business name). If there are multiple owners, they should be shown as a single entry on one line to ensure the parcel count is accurate(use Alt enter function).

Acquisition Section:

ACQUISITION										
Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	Possession Date (P&U Only)

Pre NEPA: If an offer was made on a parcel prior to environmental approval (NEPA), place an "X" in cell. For all offers made on parcels after environmental approval this field should be left blank.
Fee: If fee simple rights (exclusive use and occupancy) were acquired from any portion of the parcel, place an "X" in the cell.

RES-397b – Instructions for Certificate 2 Worksheet
 Created 6/2015

Access Rights: Access rights apply to limited access facilities (such as interstate, WSDOT access breaks). If access rights (including light, view, and air) were acquired from any portion of the parcel, place an “X” in the cell.

Esmt.* P/N/L: If a permanent (perpetual), non-permanent (defined term), or lease was acquired from any portion of the parcel, place an “P” for permanent easement, or an “N” for non-permanent easement, or an “L” for lease in cell. *If something less than a permanent easement is acquired FHWA approval is required.

Date Esmt.* N/L Expires: If you have FHWA approval to acquire a non-permanent easement or lease, enter the expiration date identified in the easement/lease in this cell. This column is not used in the case of a permanent easement.

Effective Date TCE: If a temporary easement is acquired for construction purposes on any portion of the parcel, enter the start date of the TCE. This is normally the same date as the date acquired. This is the date the agency has legal and physical possession, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. In the case of donations, the effective date is the possession date.

Date TCE Expires: Enter the date the temporary construction easement expires as specified in the temporary easement. Agencies should always use a specific expiration date to avoid clouding a property owner’s title.

Effective Date Permit or Right of Entry: Permits or right of entries are obtained for any portion of the parcel from other agencies to perform work on their property and normally without payment of compensation, such as tying into another jurisdiction’s road. Situations that involve temporary work between agencies, does not have to follow the URA process. If a permit or right of entry was obtained for construction activities required for the project, enter the start date of the permit or right of entry. This is normally the same date as the date acquired. Preliminary testing or studies in advance of construction activities are not required to be certified since the work is not part of the PS&E. Also, “beneficial” permits from private property owners are not required to be certified since the work is not required for the project itself and can be eliminated from the contract if the owner were to revoke the permit.

Date Permit or Right of Entry Expires: Enter the date the permit or right of entry expires as specified in the permit or right of entry.

Date Acquired: Date acquired is the date the agency has legal and physical possession and reached final settlement, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. If the payment is mailed, the agency should add 5 days to the mailing date. In the case of donations, the effective date is the possession date. Enter the date the property was acquired. This must be filled in for each parcel acquired except in the case where final settlement has not been reached (see possession date below) even if the same date appears in other columns.

Possession Date (P&U Only): The possession date is the date the agency has the right to occupy and use the portion of the parcel needed for the project. Enter the date the agency obtained possession and use of the property. Possession cannot occur prior to payment to the property owner. In the case of a negotiated P&U, if the payment is mailed, the agency should add 5 days to the mailing date. If the payment is deposited into the court in the case of stipulated P&U, enter the date of receipt by the court clerk’s office. This is only applicable in situations in which all necessary rights of way have not been acquired because final settlement has not been reached.

NOTE: Refer to the Sufficient Property Rights flow chart (Appendix 25.174 & 25.175) for actual definition of property rights.

Relocation Section:

RELOCATION					
Non-Residential					
None	Res.	Bus.	Farm	NPO	PPO

None: If there was no relocation on the parcel place “X” in cell. Even in situations where projects have no relocation, the cell should not be left blank.

Res: If your project displaced a residential owner or tenant occupant from the parcel place an “X” in the cell. If there are multiple displaced persons for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.

Bus.: If your project displaced a business, including qualifying residential landlords (not to be confused with a business that has to relocate personal property only), place an “X” in the cell. If there are multiple displaced businesses for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.

Farm: If your project displaced a farm, place an “X” in the cell. If there are multiple displaced farms for one parcel number, type in the number and change the formula in the total row to auto sum.

NPO: If your project displaced a Non-Profit Organization (NPO), place an “X” in the cell. If there are multiple displaced NPOs for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.

PPO: If your project displaced Personal Property Only (PPO), place an “X” in the cell. If there are multiple PPO displacements for one parcel number, type in the number (you will need to change any other cells in the column marked with an “x” to a number) and change the formula in the total row to auto sum.

Calculated Totals Section:

GENERAL			ACQUISITION										RELOCATION								
R/W Plan Sheet #	Parcel Number	Owner	Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	Possession Date (P&U Only)	None	Res.	Bus.	Farm	NPO	PPO		
	0		0	0	0	0	0	0		0				0	0	0	0	0	0	0	0

Column Totals: Each column has a formula at the bottom that will “count” the box if it has data in it. The calculations will happen automatically so there is no need to alter or enter information in this section. The totals should be reconciled with the ROW plan to ensure all rights were acquired.

If you have multiple displacements for one parcel you will need to type in the number of displacements in the appropriate column and then change the formula in the total row from a “CountA” to an “Auto Sum”.

Example:

Certificate No. 2
Agency: ABC County
Project Title: NW Gold Trail Project F.A. No.: STPU 2145(001)

R/W Plan Sheet #	GENERAL		ACQUISITION										RELOCATION							
	Parcel Number	Owner	Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	Possession Date (P&U Only)	None	Res.	Non-Residential				
																Bus.	Farm	NPO	PPD	
106	022605-9000	Norris		X								1/21/15		X					X	
106	022605-9215																			
106	022605-9216	Money	X	X		P		2/1/15	8/30/15				2/1/15	X						
	022605-9325																			
	022605-9326																			
107	022605-9327	Big Blue Diner		X		P		2/1/15	8/30/15				2/1/15			X				
108	022605-9456	Strand	X	X	X								3/1/15		2					
109	022605-9165	State Parks				N	4/30/45						4/30/15	X						
111	022605-8500	Dreamy		X									4/1/15		1					
112	022605-7852	None		X									3/6/15							
	6		2	5	1	3	1	2					0			3	1	0	0	1

Easement Key
 PPermanent/Perpetual
 NNon-Permanent (defined term)*
 LLease*
*Non-permanent easements and leases subject to FHWA approval

Best practices:

ROW Plan – for ease of certification it is recommended that you do not rely solely on Tax Identification numbers as they do not define a parcel acquisition. It is better to assign a parcel number that will identify the entire acquisition which could encompass multiple tax parcel numbers.

If your agency uses both tax parcel numbers and assigned numbers, the use of numbers must be consistent between the ROW plan, ROW certification, parcels, and all file documents.

**Certificate 3 Worksheet
Instructions to Complete Form**

Worksheet Format:

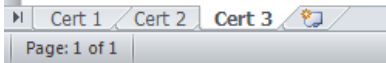
Please do not alter the form by adding or deleting columns as it will affect formulas that automatically compute based on data entered into the spreadsheet. Rows can be added or deleted based on need. It is recommended that adding or removing rows occur between row 4 and row 23.

Creating a List within a Cell:

GENERAL		
R/W Plan Sheet #	Parcel Number	Owner
106	022605-9000	Norris
	022605-9215	
106	022605-9216	Money
	022605-9325	
	022605-9326	
107	022605-9327	Big Blue Diner

A list of information can be added to a single cell by clicking the “Alt” key at the same time and clicking on the “Return” key.

Selecting Correct Form:



The excel spreadsheet is set up as a single workbook with tabs at the bottom left corner of the screen. Select the Cert 3 tab to complete the worksheet.

Electronic Worksheet Instructions:

R/W Plan Sheet #	Parcel Number	Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires

Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.

The electronic instructions to complete the worksheet are embedded in each title cell of row 3. Either hover the mouse of the title cell or left click in the cell and the instructions will appear. Once you remove the mouse or click on another cell the instructions will disappear.

Header:

Certificate No. 3
 Agency: Name of Agency
 Project Title: Project Title F.A. No.: Federal Aid No.

Agency Name: Enter acquiring agency name.
Project Title: Enter complete project title which was used on the STIP.
F.A. No.: Enter the federal aid number for the project.

General Section:

GENERAL		
R/W Plan Sheet #	Parcel Number	Owner

R/W Plan Sheet #: Enter the ROW plan sheet number on which the parcel is shown. Parcels should be listed in sequential order according to the ROW plans.
Parcel Number: The parcel numbers should be listed in the order shown on the ROW plans. Enter the parcel number as identified on the Right of Way Plan. If there are multiple parcels numbers making up the larger parcel determination, they should be shown as a single entry on one line to ensure the parcel count is accurate(use Alt enter function). Please note ROW Plans should be consistent with the certification worksheet.
Owner: Enter the owner name (last name, first name or business name). If there are multiple owners, they should be shown as a single entry on one line to ensure the parcel count is accurate(use Alt enter function).

Acquisition Section:

ACQUISITION											
Pre-NEPA	Fee	Access Rights	Esmt.* P/N/L	Date Esmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	Possession Date (P&U) Only	Estimated Possession Date

Pre NEPA: If an offer was made on a parcel prior to environmental approval (NEPA), place an "X" in cell. For all offers made on parcels after environmental approval this field should be left blank.
Fee: If fee simple rights (exclusive use and occupancy) were acquired from any portion of the parcel, place an "X" in the cell.

Access Rights: Access rights apply to limited access facilities (such as interstate, WSDOT access breaks). If access rights (including light, view, and air) were acquired from any portion of the parcel, place an “X” in the cell.

Esmt.* P/N/L: If a permanent (perpetual), non-permanent (defined term), or lease was acquired from any portion of the parcel, place an “P” for permanent easement, or an “N” for non-permanent easement, or an “L” for lease in cell. *If something less than a permanent easement is acquired FHWA approval is required.

Date Esmt.* N/L Expires: If you have FHWA approval to acquire a non-permanent easement or lease, enter the expiration date identified in the easement/lease in this cell. This column is not used in the case of a permanent easement.

Effective Date TCE: If a temporary easement is acquired for construction purposes on any portion of the parcel, enter the start date of the TCE. This is normally the same date as the date acquired. This is the date the agency has legal and physical possession, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. In the case of donations, the effective date is the possession date.

Date TCE Expires: Enter the date the temporary construction easement expires as specified in the temporary easement. Agencies should always use a specific expiration date to avoid clouding a property owner’s title.

Effective Date Permit or Right of Entry: Permits or right of entries are obtained for any portion of the parcel from other agencies to perform work on their property and normally without payment of compensation, such as tying into another jurisdiction’s road. Situations that involve temporary work between agencies, does not have to follow the URA process. If a permit or right of entry was obtained for construction activities required for the project, enter the start date of the permit or right of entry. This is normally the same date as the date acquired. Preliminary testing or studies in advance of construction activities are not required to be certified since the work is not part of the PS&E. Also, “beneficial” permits from private property owners are not required to be certified since the work is not required for the project itself and can be eliminated from the contract if the owner were to revoke the permit.

Date Permit or Right of Entry Expires: Enter the date the permit or right of entry expires as specified in the permit or right of entry.

Date Acquired: Date acquired is the date the agency has legal and physical possession and reached final settlement, which is also referred to as the payment available date. Possession cannot occur prior to payment to the property owner. If the payment is mailed, the agency should add 5 days to the mailing date. In the case of donations, the effective date is the possession date. Enter the date the property was acquired. This must be filled in for each parcel acquired except in the case where final settlement has not been reached (see possession date below) even if the same date appears in other columns.

Possession Date (P&U Only): The possession date is the date the agency has the right to occupy and use the portion of the parcel needed for the project. Enter the date the agency obtained possession and use of the property. Possession cannot occur prior to payment to the property owner. In the case of a negotiated P&U, if the payment is mailed, the agency should add 5 days to the mailing date. If the payment is deposited into the court in the case of stipulated P&U, enter the date of receipt by the court clerk’s office. This is only applicable in situations in which all necessary rights of way have not been acquired because final settlement has not been reached.

Estimated Possession or Clear Date: This column is only used if there are parcels excepted from the certification which are shown at the bottom of the spreadsheet highlighted in orange. Enter the date the agency estimates they will obtain possession or the date the parcel will be cleared for certification (occupants relocated, improvements cleared from the right of way, cost to cures completed).

NOTE: Refer to the Sufficient Property Rights flow chart (Appendix 25.174 & 25.175) for actual definition of property rights.

Relocation Section:

RELOCATION					
Non-Residential					
None	Res.	Bus.	Farm	NPO	PPO

- None:** If there was no relocation on the parcel place "X" in cell. Even in situations where projects have no relocation, the cell should not be left blank.
- Res:** If your project displaced a residential owner or tenant occupant from the parcel place an "X" in the cell. If there are multiple displaced persons for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.
- Bus.:** If your project displaced a business, including qualifying residential landlords (not to be confused with a business that has to relocate personal property only), place an "X" in the cell. If there are multiple displaced businesses for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.
- Farm:** If your project displaced a farm, place an "X" in the cell. If there are multiple displaced farms for one parcel number, type in the number and change the formula in the total row to auto sum.
- NPO:** If your project displaced a Non-Profit Organization (NPO), place an "X" in the cell. If there are multiple displaced NPOs for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.
- PPO:** If your project displaced Personal Property Only (PPO), place an "X" in the cell. If there are multiple PPO displacements for one parcel number, type in the number (you will need to change any other cells in the column marked with an "x" to a number) and change the formula in the total row to auto sum.

Calculated Totals Section:

GENERAL			ACQUISITION										RELOCATION							
R/W Plan Sheet #	Parcel Number	Owner	Pre-NEPA	Fee	Access Rights	Emt.* P/N/L	Date Emnt.* N/L Expires	Effective Date TCE	Date TCE Expires	Effective Date Permit or Right of Entry	Date Permit or Right of Entry Expires	Date Acquired	Possession Date (P&U) Only	None	Res.	Bus.	Farm	NPO	PPO	Estimated Possession Date
	0		0	0	0	0	0	0		0				0	0	0	0	0	0	

Column Totals: Each column has a formula at the bottom that will "count" the box if it has data in it. The calculations will happen automatically so there is no need to alter or enter

information in this section. The totals should be reconciled with the ROW plan to ensure all rights were acquired.

If you have multiple displacements for one parcel you will need to type in the number of displacements in the appropriate column and then change the formula in the total row from a "CountA" to an "Auto Sum".

Example:

Certificate No. 3
Agency: ABC County
Project Title: NW Gold Trail Project F.A. No.: STPU 2145(001)

GENERAL			ACQUISITION										RELOCATION					Estimated Possession or Clear Date		
R/W Plan Sheet #	Parcel Number	Owner	Pre-NEPA	Fee	Access Rights	Easmt.* P/N/L	Date Easmt.* N/L Expires	Effective Date TCE	Date TCE Expires	Date Permit or Right of Entry Expires	Date Acquired	Possession Date (P&U Only)	None	Res.	Non-Residential					
															Bus.	Farm	NPO	PPD		
106	022605-9000	Norris		X								1/21/15							X	
106	022605-9215	Money	X	X		P		2/1/15	8/30/15			2/1/15		X						
	022605-9325																			
	022605-9326	Big Blue Diner			X		P		2/1/15	8/30/15			2/1/15			X				
107	022605-9456		Strand	X	X	X							3/1/15			2				
109	022605-9165	State Parks				N	4/30/45					4/30/15		X						
111	022605-8500	Dreamy			X							4/1/15			1					
112	022605-7852	Kort			X							5/2/15	3/6/15	X						
106 & 107	022605-9512	Blossom			X									X						10/15/15
108	022605-7256	Falkner			X		P							X						10/15/15
	6				2	5	1	3	1	2				0		3	1	0	0	1

Easement Key
 P=Permanent/Perpetual
 N=Non-Permanent (defined term)*
 L=Lease*
*Non-permanent easements and leases subject to FHWA approval

Excepted Parcels

Best practices:

ROW Plan – for ease of certification it is recommended that you do not rely solely on Tax Identification numbers as they do not define a parcel acquisition. It is better to assign a parcel number that will identify the entire acquisition which could encompass multiple tax parcel numbers.

If your agency uses both tax parcel numbers and assigned numbers, the use of numbers must be consistent between the ROW plan, ROW certification, parcels, and all file documents.

26.1 General Discussion

A 10 percent National aspirational goal was established by U.S. DOT for the participation of Disadvantaged Business Enterprises (DBEs) in transportation contracting, as a tool to evaluate equal opportunity in the award and administration of U.S. DOT-assisted contracting and address the effects of past and current discrimination. Requirements of the DBE Program, as prescribed in [49 CFR Part 26](#) and USDOT's official interpretations (i.e. Questions and Answers), apply to all recipients (and subrecipients) of highway, transit, and airport funds.

A local agency, when participating in programs funded in whole or in part with federal funds made available by the Washington State Department of Transportation (WSDOT), must adhere to WSDOT's DBE Participation Plan.

While WSDOT's Office of Equal Opportunity (OEO) has the overall responsibility for administration and implementation of WSDOT's DBE Program, local agencies (as subrecipients) also have an important role to ensure that their federally-assisted contracts are administered in accordance with [49 CFR Part 26](#) and the state's approved DBE Program Participation Plan, which is available on WSDOT's website.

WSDOT's OEO, in coordination with Local Programs, will conduct compliance reviews of the local agency's administration of the DBE Plan. Local agencies found to be in noncompliance may be subject to formal enforcement action (suspense or loss of federal funds and/or CA status). A finding of noncompliance will result from the failure to comply with the requirements of WSDOT's DBE Plan.

The following assurance statement shall be included in all federally-assisted advertisements, agreements, contracts, and all subcontracts:

- *The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages, or (4) Disqualifying the contractor from future bidding as non-responsible.*

26.2 Procedures

1. **Local Agency DBE Liaison Officer** – The local agency is responsible for ensuring program compliance and monitoring its contractor's and/or Consultant's DBE activities. To accomplish this, a DBE liaison officer must be appointed by the Local Agency. This liaison officer must be an administrator responsible to the chief executive of the agency. This administrator should have the authority to delegate the responsibility to the people who perform the contractor compliance function. The liaison officer's duties are to ensure compliance with the DBE Plan by the local agency and by their contractors/consultants.

2. **DBE Firm(s) Certification** – The Washington State Office of Minority and Women’s Business Enterprise (OMWBE) is the sole authority in the State of Washington to perform certification of all minority business enterprises, women business enterprises, and socially and economically disadvantaged business enterprises for programs administered by any State, local, or Federal agency. This statutory authorization extends to and binds all USDOT DBE Program recipients in the State of Washington. In order to count as DBE participation by prospective bidders on federally funded projects, firms must be currently, certified by OMWBE. The directory of currently certified DBE firms is available on the OMWBE’s website. The directory list can be accessed via OMWBE’s website at omwbe.diversitycompliance.com (Diversity Management and Compliance System - DMCS) or by calling 360-664-9770 or toll free (866) 208-1064. Firms not listed in the OMWBE’s database will not count towards DBE participation on new contracts.

3. **UDBE Firm(s) Certification** – WSDOT is required to maintain a narrowly tailored DBE Program, which means that only groups which face discrimination can participate in the race or gender-conscious portion of the program.

Based on the results of WSDOT’s 2012 DBE Disparity Study, and subsequent waiver, participation by non-minority women owned DBEs cannot be counted towards race/gender-conscious DBE goals. Non-minority women-owned DBE firms do, however, remain part of the overall DBE program and can be counted as race/gender-neutral participation.

While the waiver is in place, all other certified DBE firms are being referred to as Underutilized Disadvantaged Business Enterprises (UDBE). UDBE firms are a subset of the DBE certification. To determine if a firm is a UDBE (and therefore able to count towards race/gender conscious UDBE goals), refer to OMWBE’s DBE Directory of Certified Firms (e.g., Search Certified Firm Directory, then Search by Reference at bottom of page). UDBE firms count as participation towards the COA goals for federally funded contracts awarded after June 1, 2017.

4. **Establishment of Project UDBE Goals** – The Local Programs Project Development Engineer will review each construction project or consultant agreement to determine if it involves work or scope elements that are conducive to UDBE participation. To initiate this review, the local agency must submit an engineer’s estimate for a construction project or a detailed scope and cost estimate for a consultant agreement with their suggested UDBE goal, to the Region Local Programs Engineer when the contract work or consultant agreement scope is determined. The estimate must show the item quantities or scoping costs of the project.

- Construction funding will NOT be obligated prior to the project review and determination of UDBE goals.
- PE costs will be obligated, but the Local Agency CANNOT advertise for Consultant Services, prior to a UDBE goal determination for the agreement.

For alternate construction contracting delivery (such as Design-Build), Local Agencies shall request approval from Region Local Programs Engineer. If a local agency has any other projects tied to a federally funded project that utilizes one set of bid documents, the total of both projects are considered as a federal aid project for UDBE goal setting purposes.

The goals for federal aid projects will be set under one of the following categories based on the projected participation level during the year to achieve WSDOT's overall goal:

- Mandatory Goal
- Voluntary Goal

The Local Programs Project Development Engineer will then establish a UDBE goal for the construction contract or consultant agreement. The elements considered by WSDOT in determining state and local agency project contract or consultant goals are as follows:

A. Elements

- a. Geographical location of the project;
- b. Type(s) of work included in the project, i.e., structure, roadway, new construction;
- c. Availability of UDBE firms certified to perform the type(s) of work;
- d. Potential subcontractable items.
- e. Total dollar value of the contract.

The attainment accomplished through this analysis will be reviewed periodically to determine the appropriateness of the method of setting goals.

B. Goal Setting Process

- a. Review the department's overall UDBE goal and the means to meet the goal.
- b. If the contract includes federal funds, a UDBE goal is considered.
- c. If the total agreement or contract amount is under \$100,000.00 then a Mandatory goal is not assigned. However, a Voluntary goal of 10% will apply to the agreement or contract. (Shown in DMCS as FSBE goal of 10%.)
- d. Review the bid items and determine which scopes of work that the prime contractor/consultant is likely to perform (i.e., the prime contractor is required to perform at least 30% of the project total, while it is recommended for a prime consultant). Typically, grouped types of work that exceed 30% are considered as possible prime contractor/consultant work and are not considered when evaluating for UDBE goal calculation.
- e. Evaluate the remaining bid items and determine which items are typically grouped for subcontracting (e.g. traffic control, electrical, guardrail, etc.).
- f. Of these items, determine which ones lend themselves to UDBE participation. In other words, are there UDBEs shown in OMWBE's Directory of Certified Firms that are certified to perform the types of work likely to be subcontracted.
 - i. Mobilization is not an item considered when determining which items a prime contractor will subcontract to another contractor. This is not to say that subcontractors (UDBE or non-UDBE) do not include mobilization costs in their quotes, or that they are not paid for mobilization – only that mobilization is not considered a subcontract item when determining a UDBE goal.

- ii. Force Account work will be considered at 50%
 - g. No UDBE goal shall be set at less than 2%.
4. **DBE Provisions in the Plans, Specifications, and Estimates (PS&E)** – After the mandatory or voluntary goals are determined, the applicable WSDOT General Special Provision (GSP), for the type of goal set, as outlined above shall be included in the PS&E. These GSPs are available on the WSDOT website or from the Region Local Programs Engineer. Only the WSDOT GSPs are approved for use on a FHWA funded project.

To complete the UDBE requirements in the PS&E one of the following applies. When a mandatory goal is established, DOT [Form 272-056U](#), UDBE Utilization Certification, DOT [Form 422-031U](#), UDBE Written Confirmation, DOT Form 272-058, Underutilized Disadvantaged Business Enterprise Trucking Credit Form **MUST** be included. These forms shall be included in the proposal given to each bidder. These forms are available from the Region Local Programs Engineer.

When a voluntary goal is established, the UDBE Utilization Certification and the UDBE Written Confirmation forms are not required. However, the contractor shall submit a SBE plan to Local Agency **PRIOR** to receiving notice to proceed. The Local Agency will forward the SBE plan to the Region Local Programs Engineer within **15 days** of contractor beginning work.

26.3 Contract Procedures

1. **Bid Opening** – Each bid proposal must be reviewed to determine if the bid is responsive. For a contract with goals, each proposal shall contain the UDBE Utilization Certification, UDBE and Written Confirmation form, and the UDBE Trucking Credit Form completed by the contractor. If the prime is proposing to use a UDBE broker they must also submit the broker agreement as part of the bid package.

Failure to accurately complete these forms will be considered as evidence that the proposal is nonresponsive and, therefore, is not eligible for award.

2. **Is the DBE/UDBE Firm Certified by OMWBE** – The UDBE firm named by the contractor in the bid proposal shall be certified as a UDBE firm by OMWBE and currently shown in the (DMCS) to be eligible for work on a FHWA funded project. To verify whether a firm is certified as a UDBE and eligible to perform work on a FHWA funded project, you must refer to OMWBE's Directory of Certified Firms which is available at www.omwbe.diversitycompliance.com and document your effort in the project file. Suspended DBE Firms will not be shown in DMCS. Firms that are suspended (and not shown) cannot be used to meet the condition of award goal nor be counted as DBE/UDBE participation on any new contracts issued subsequent to the date of suspension. Questions related to the content of the directory can be directed to OMWBE at 360-664-9770 or toll free 866-208-1064. To meet the goals for the project, DBE firms that are not certified or certified UDBE firms that are suspended at the time of bid opening will not be accepted by the local agency for participation, as a Condition of Award (COA) Contractor/Subcontractor on the project.

3. Selection of the Successful Bidder

A. Selection of Successful Bidder (when a mandatory goal is established)

- a. The successful bidder shall be selected on the basis of having submitted the lowest responsive bid and, in order to be responsive, making good faith efforts to meet the UDBE goal. The bidder can meet this requirement in either of two ways:
 1. Documenting that it has obtained enough UDBE participation (commitments) to meet the goal; or,
 2. Documenting that it has made adequate Good Faith Efforts (GFE) to meet the established UDBE goal. A bidder is required to submit GFE documentation with their proposal only in the event that the bidder's efforts to solicit sufficient UDBE participation were unsuccessful.

GFE means that the bidder must show that it took all necessary and reasonable steps to achieve the UDBE goal, and by their scope, intensity, and appropriateness to the objective, the bidder could reasonably be expected to obtain sufficient UDBE participation, even if the bidder was not fully successful in meeting the established UDBE goal. Efforts done as a matter of form or for the sake of appearance are not considered "good faith efforts" to meet the contract requirements for UDBE utilization.

- b. Should the low and otherwise responsive bidder fail to attain the goal and not provide adequate GFE documentation in the bid submittal, its bid will be determined to be nonresponsive, and the next low responsive bid will be reviewed for acceptance.

Agencies that have projects with mandatory UDBE goals, shall submit the bid tabs, the UDBE Utilization Certification, the UDBE Written Confirmation Document, the UDBE Trucking Credit form, and any broker agreements (as applicable) of the apparent low bidder, to the Region Local Programs Engineer (LPE) to obtain concurrence to award, **before** the contract is officially awarded to the apparent low bidder. Failure to gain LPE concurrence **prior to award** on every project with UDBE goals and subsequent award of a contract to a nonresponsive bidder will jeopardize the project's federal funding.

- c. If the apparent low bidder submits GFE documentation with the bid, the Local Agency will submit the documentation to Local Programs for approval action prior to awarding the project. GFE documentation must include copies of each UDBE and non-UDBE subcontractor quote submitted to the bidder when a non-UDBE subcontractor was selected over a UDBE for work on the contract.

- B. **After Award** – The Local Agency will request that the apparent low bidder submit a description of the specific bid items each UDBE subcontractor named in the UDBE Utilization Certification will perform, within five (5) working days following the award. This description, dollar amount, and name of the UDBE firm is identified in the award letter and made Condition of the Award (COA) of the contract.

- C. **Administrative Reconsideration** – If Local Programs determines that the apparent successful bidder failed to meet the UDBE goal and that GFE was inadequate, the bidder will have the right to request reconsideration. The Bidder must request within 48 hours of notification of being nonresponsive or forfeit the right to reconsideration.
- a. WSDOT’s decision on reconsideration shall be made by an official who did not take part in the original determination that the bidder failed to meet the goal (as described above).
 - b. The bidder shall have the opportunity to meet in person with said official to discuss their good faith effort package. The bidder’s position must be based on its bid submittal. The bidder may provide further explanation/clarification of the information and materials in the bid submittal, but no new material or information will be considered by the official in reaching a decision on reconsideration.
 - c. WSDOT shall send the bidder a written decision on reconsideration, explaining the basis for their findings.
 - d. The result of the reconsideration process is not administratively appealable to the USDOT.
- D. **Brokering** – If the apparent low bidder selects an UDBE Broker (or a service provider for providing a bona fide service) to meet part of the established UDBE goal, a UDBE Broker Agreement is required to be submitted as part of the Proposal or as a Supplement to the Bid. To be considered responsive, the Broker Agreement shall document the fees or commissions charged. The fee/commission shall be reasonable as determined by WSDOT.
- E. **Trucking** – When a UDBE Trucking firm is used to meet the established UDBE goal, the UDBE Trucking Credit Form (DOT Form 272-058) is required to be submitted as part of the Proposal or as a Supplement to the Bid. The Form shall identify the items to be hauled, the type of trucks to be used, and the number of trucks currently owned by the UDBE firm.
4. **Condition of Award Letter** – The condition of award letter carries the same contractual obligation as the contract specifications and is only required when a mandatory goal is established for a project. An example of a zero goal award letter appears in [Appendix 46.43](#) and an example of a mandatory goal award letter appears as [Appendix 46.44](#). The information contained in the body of these examples must be included in the local agency award letter. If a portion of an item is sublet to a UDBE and the remainder is done by the contractor or another subcontractor, the UDBE’s work must be shown in detail. Also, any UDBE suppliers and manufacturers shall be shown.

Send a copy of this letter, a copy of the “Underutilized Disadvantaged Business Enterprise Utilization Certification and a copy of the “UDBE Written Confirmation Document” to the Region Local Programs Engineer as a part of the award documentation submittal explained in [Chapter 46](#).

Attach a copy of the letter to the contract papers that you send to your contractor for signature. The Region Local Programs Engineer shall be provided information on subletting by UDBE contractors.

5. **Between Award and Execution** – The contractor shall provide all of the information described in the GSPs including a bidders’ list for all categories (zero and mandatory goals). The list shall include all firms (names and addresses) that submitted a bid or quote (successful and unsuccessful) in an attempt to participate on the project. The local agency shall immediately notify the Region Local Programs Engineer by email with the name and address of the successful contractor for forwarding to the OEO’s contract compliance officer.

Similarly, the Local Agency shall provide WSDOT with a list of all bidders (successful and unsuccessful) who submitted a bid on the prime contract.

6. **Monitoring DBEs During Construction** – The local agency must place special emphasis on the DBE requirements at the preconstruction conference. Changes to the work of a Condition of Award UDBE shall be handled in accordance with the GSP. All change orders affecting the work of DBEs shall be submitted to the Region Local Programs Engineer for concurrence prior to executing the change order.

Project diary documentation of the DBEs’ activities on the project must be performed in the same manner as is done on the prime contractor and any other subcontractor’s activities.

In order to receive credit for UDBE participation (count towards the contract goal) a DBE firm must be performing a Commercially Useful Function (CUF) on that contract. See GSPs for additional information on CUF.

Hence, in addition to the project diary, the local agency must document that each DBE working on the project is performing a Commercially Useful Function (CUF). The form “DBE On-Site Review” shall be used by the local agency for purposes of documenting CUF for each DBE contractor/consultant. See [Appendix 26.54](#) for the DBE On-Site form (and instructions) for Construction Subcontractors/Regular Dealers/Manufacturers; and [Appendix 26.55](#) for the DBE On-Site review form for Architect & Engineering/Professional Services Firms. DBE On-site reviews must be conducted:

- At the start of work, and/or
- At the peak period of work, and
- Whenever changes in the performance of the work warrants its completion.

The review should be completed per on-site observations, documentation review, and interviews of contractor’s personnel. If there is evidence that a DBE firm may not be performing a CUF, immediately contact your Region Local Programs Engineer.

This completed form becomes a part of the local agency’s project records and a copy of the completed form submitted to Region Local Programs Engineer within **14 days** of form completion.

The WSDOT GSP, Disadvantaged Business Enterprise Participation Plan, and [Chapter 1](#) of the *Construction Manual* M 41-01 shall be followed to ensure compliance with DBE Program requirements.

WSDOT’s Office of Equal Opportunity (OEO) may also perform in-depth CUF’s on DBE firms performing work on Federal-aid local agency projects (as OEO determines necessary/appropriate).

7. **Prompt Payment (Progress and Return of Retainage)** – Local agencies must comply with State and Federal prompt payment laws. In addition, local agencies are expected to monitor and enforce the prompt payment requirements under State Law (as well as [49 CFR Part 26.29](#)), as regards their contracts with prime contractors. Monitoring prompt payment requires the contracting agency to verify that payments to subcontractors are commensurate with the subcontractors’ work scope, and are processed/issued within the allowed timeframe. Prompt payment violations on Federal-aid contracts are a violation of the DBE program, which is considered a breach of contract. When violations are found to exist, local agencies must enforce the terms of the contract by taking appropriate enforcement action.

State law requires payment to subcontractor within ten days of receipt by the prime contractor. Refer to 2016 *Standard Specifications* Section 1-08, Prosecution and Progress along with [RCW 39.04.250](#), [RCW 39.76.011](#), [RCW 39.76.020](#), and [RCW 39.76.040](#) for more detailed “Prompt Payment” requirements.

8. **During Construction** – The prime contractor shall enter all payment information into the WSDOT DMCS (wsdot.diversitycompliance.com) each month for all federal aid projects and select state funded projects. The prime contractor shall enter the amounts, received from the agency and the amounts paid to all firms involved with the contract (Zero payments shall be marked accordingly). All firms shall confirm the payments amount received from the prime contractor each month and the local agency shall verify these entries in the WSDOT Diversity Compliance System. All payment information shall be entered monthly and include the actual date of the payment.
9. **Upon Completion** – The prime contractor will record in the system, when the final payment is made to each firm and when the final payment for the project is received from the agency. Subcontractor and firms must confirm the receipt of the final payment. The agency shall make notification of final project payment to the Local Programs Project Development Engineer at the completion of the project.

In addition, for each contract, local agencies must document (in the form of a Written Certification see [Appendix 26.56](#)) that it has reviewed the contracting records and monitored the work site and determined that work committed to the UDBEs at contract award (and subsequently) was actually performed by said UDBEs – See [Appendix 26.56](#).

10. **Records and Reports** – The local agency will maintain such records and provide such reports as necessary to ensure full compliance with WSDOT’s UDBE Participation Plan.

Upon request from the OMWBE, WSDOT, or the USDOT operating administrations (e.g., FHWA), the local agency shall submit the records deemed necessary for inspection, auditing, and review purposes.

26.4 Consultant Agreement Procedures

The consultant agreement procedures for the DBE administration differ somewhat from the construction contract approval process outlined above, as the agreement is negotiated after selection of the most qualified firm to perform the scope of work.

1. **Selection of the most qualified Firm** – After selection and negotiations with the most qualified firm and before contract execution, the Local Agency must submit the UDBE Plan and Good Faith Effort (GFE) documentation, if applicable, that was submitted by the successful firm to the Region Local Programs Engineer for concurrence. During this review, Local Programs will review the plan and GFE documentation to see if proposed UDBE firms are certified to perform the scope of work and any GFE documentation that was submitted as part of the UDBE Plan before concurrence to execute the agreement is given to the Local Agency.
2. **A Monitoring the DBE’s during the life of the Agreement** – The Local Agency must place a special emphasis on the approved UDBE Plan during the life of the agreement. The consultant shall report monthly (to the local agency) on its progress towards achieving the commitments outlined in the UDBE Plan. The agency must inquire and monitor the plan to make sure the consultant is on track to meet the planned goal and if any changes are needed to the plan to ensure that the approved goal is met. If changes are needed to the original UDBE plan the local agency must submit them to the Region Local Programs office for concurrence prior to documenting that approval with an executed supplement to the consultant agreement.

In order to receive credit for DBE participation (count towards the contract UDBE goal) a DBE firm must be performing a Commercially Useful Function (CUF) on that contract. Local agency must document that each DBE working on the project is performing a Commercially Useful Function (CUF). The form “DBE On-Site Review” shall be used by the local agency for purposes of documenting CUF for each DBE consultant. See [Appendix 26.55](#) for the DBE On-Site review form for Architect & Engineering/Professional Services Firms. DBE On-site reviews must be conducted:

- At the start of work, and/or
- At the peak period of work, and
- Whenever changes in the performance of the work warrants its completion.

If there is evidence that a DBE firm may not be performing a CUF, immediately contact your Region Local Programs Engineer.

This completed form becomes a part of the local agency’s project records. Additional forms are available from your Region Local Programs Engineer.

The WSDOT Local Agency Consultant Agreements and Underutilized Disadvantaged Business Enterprise Participation Plan shall be followed to ensure compliance with the DBE Program requirements.

WSDOT’s Office of Equal Opportunity (OEO) may also perform in-depth CUF’s on DBE firms performing work on Federal-aid local agency projects (as OEO determines necessary/appropriate).

3. **Prompt Payment (Progress Payment)** – Local agencies must comply with State and Federal prompt payment laws. In addition, local agencies are expected to monitor and enforce the prompt payment requirements under State Law (as well as 49 CFR Part 26.29), as regards their contracts with prime consultants. Monitoring prompt payment requires the contracting agency to verify that payments to subconsultants are commensurate with the subconsultants’ work scope, and are

processed within the allowed timeframe. Prompt payment violations on Federal-aid contracts are a violation of the DBE program, which is considered a breach of contract. When violations are found to exist, local agencies must enforce the terms of the contract by taking appropriate enforcement action.

State law requires payment to subconsultant(s) within ten days of receipt by the prime consultant. Refer to [RCW 39.04.250](#), [RCW 39.76.011](#), [RCW 39.76.020](#), and [RCW 39.76.040](#) for more detailed “Prompt Payment” requirements.

4. **During Contracting Period** – The prime consultant shall enter all payment information into the WSDOT DMCS ([wsdot.diversitycompliance.com](#)) each month for all federal aid projects and select state funded projects. The prime consultant shall enter the amounts, received from the agency and the amounts paid to all firms involved with the contract (Zero payments shall be marked accordingly). All firms shall confirm the payments amount received from the prime consultant each month and the local agency shall verify these entries in the WSDOT Diversity Compliance System. All payment information shall be entered monthly and include the actual date of the payment.

5. **Upon Completion** – The prime consultant will record in the system, when the final payments are made to each firm and when the final payment for the project is received from the agency. Subcontractor and firms must confirm the receipt of the final payment. The agency shall make notification of final project payment to the Local Programs Project Development Engineer at the completion of the project.

In addition, for each contract, local agencies must document (in the form of a Written Certification, see [Appendix 26.56](#)) that it has reviewed the contracting records and monitored the work site and determined that work committed to the UDBEs at contract award (and subsequently) was actually performed by said UDBEs – See [Appendix 26.56](#).

5. **Records and Reports** – The local agency will maintain such records and provide such reports as necessary to ensure full compliance with WSDOT’s UDBE Participation Plan.

Upon request from the OMWBE, WSDOT, or the USDOT operating administrations (e.g., FHWA), the local agency shall submit the records deemed necessary for inspection, auditing, and review purposes.

26.5 Appendices

- | | |
|-----------------------|--|
| 26.51 | Vacant |
| 26.52 | Underutilized Disadvantaged Business Enterprise Utilization Certification |
| 26.53 | UDBE Written Confirmation Document |
| 26.54 | DBE On-Site Review for Construction Subcontractors/Regular Dealers/Manufactures |
| 26.55 | Project Office DBE On-Site Review for Architect & Engineers/Professional Service Firms |
| 26.56 | Written Certification |

Instructions for Underutilized Disadvantaged Business Enterprise Utilization Certification Form

Box 1: Name of Bidder (Proposal holder) submitting Bid.

Box 2: Name of the Project.

Column 1: Name of the Underutilized Disadvantaged Business Enterprise (UDBE). UDBE Firms can be found using the search tools under the Firm Certification section of the Diversity Management and Compliance System web page <https://wsdot.diversitycompliance.com> Repeat the name of the UDBE for each Project Role that will be performed.

Column 2: The Project Role that the UDBE will be performing as follows;

- Prime Contractor
- Subcontractor
- Subcontractor (Force Account)
 - Work sublet as Force Account must be listed separately.
- Manufacturer
- Regular Dealer
 - Work sublet to a Regular Dealer must be listed separately.
 - Regular Dealer status must be approved prior to Bid submittal by the Office of Equal Opportunity, Washington State Department of Transportation, on each Contract.
- Broker
 - Work sublet to a Broker must be listed separately.

List each project role to be performed by a single UDBE individually on a separate row(s). The role is used to determine what portion of the amount to be subcontracted (Column 4) may be applied toward meeting the goal (column 5).

Column 3: Provide a description of the work to be performed by the UDBE. The work to be performed must be consistent with the Certified Business Description of the UDBE provided at the Diversity Management and Compliance System web page <https://wsdot.diversitycompliance.com>

- A Bidder subletting a portion of a bid item shall state “**Partial**” and describe the Work that is included.
 - For example; “Electrical (Partial) – Trenching”.
- “Mobilization” will not be accepted as a description of Work.

Column 4: List the total amount to be subcontracted to each UDBE for each Project Role they are performing.

Column 5: This is the dollar amount for each line listed in the certification that the prime intends to apply towards meeting the COA Contract goal. It may be that only a portion of the amount subcontracted to a UDBE in Column 4 is eligible to be credited toward meeting the goal **See Note 1, Note 2, Note 3**. The Contracting Agency will utilize the sum of this column (Box 4) to determine whether or not the bidder has met the goal. In the event of an arithmetic error in summing column 5 or an error in making appropriate reductions in the amounts in column four, **See Note 1, Note 2, Note 3**, then the mathematics will be corrected and the total (Box 4) will be revised accordingly.

Note 1: For Work sublet as Force Account the bidder **may only claim 50%** of the amount subcontracted (Column 4) towards meeting the goal (Column 5). This information will be used to demonstrate that the UDBE contract goal is met at the time that the bidder submits their bid. For example; amount sublet as force account = \$100,000 (Column 4) equates to $(\$100,000 \times 50\%) = \$50,000$ (Column 5) to be applied towards the goal.

Note 2: For Work sublet to a Regular Dealer the bidder **may only claim 60%** of the cost of the materials or supplies (Column 4) towards meeting the goal (Column 5). For example; Material cost = \$100,000 (Column 4) equates to $(\$100,000 \times 60\%) = \$60,000$ (Column 5) to be applied towards the goal

Note 3: For Work sublet to a Broker the bidder **may only claim the fees** paid to a Broker towards meeting the goal (Column 4). For example; amount sublet to a broker = \$100,000 (Column 4) equates to $(\$100,000 \times \text{reasonable fee \%}) = \$$ (Column 5) to be applied towards the goal.

Box 3: Box 3 is the COA Contract goal which is the minimum required UDBE participation. The goal stated in the Contract will be in terms of a dollar amount or a percentage in the Contract. When expressed as a percentage you must multiply the percentage times the sum total of all bid items as submitted in the Bidder’s Proposal to determine the dollar goal and write it in Box 3. In the event of an error in this box, the Contracting Agency will revise the amount accordingly.

Box 4: Box 4 is the sum of the values in column 5. **This value must equal or exceed the COA Contract goal amount written in Box 3 or;**

Box 5: Check Box 5 if insufficient UDBE Participation has been achieved and a good faith effort is required. Refer to the subsection titled, *Selection of Successful Bidder/Good Faith Efforts (GFE)* in the Contract.

See the Disadvantaged Business Enterprise Participation specification in the Contract for more information.



Underutilized Disadvantaged Business Enterprise Utilization Certification

To be eligible for Award of this Contract the Bidder shall fill out and submit, as a supplement to its sealed Bid Proposal, an Underutilized Disadvantaged Business Enterprise (UDBE) Utilization Certification. The Contracting Agency shall consider as non-responsive and shall reject any Bid Proposal that does not contain a UDBE Utilization Certification which properly demonstrates that the Bidder will meet the UDBE participation requirements in one of the manners provided for in the proposed Contract. **Refer to the instructions on Page 2 when filling out this form or the Bid may be rejected. An example form has been provided on Page 3.** The successful Bidder's UDBE Utilization Certification shall be deemed a part of the resulting Contract.

Box 1: A Plus Construction Company certifies that the UDBE firms listed below have been contacted regarding participation on this project. If this Bidder is successful on this project and is awarded the Contract, it shall assure that subcontracts or supply agreements are executed with named UDBEs. (If necessary, use additional sheets.)

Box 2: US 395, Spokane City Limits to Stevens County Line - Paving and Safety

Column 1 Name of UDBE (See instructions)	Column 2 Project Role (See instructions)	Column 3 Description of Work (See instructions)	Column 4 Dollar Amount Subcontracted to UDBE (See instructions)	Column 5 Dollar Amount to be Applied Towards Goal (See instructions)
A Plus Construction Company	Prime	Asphalt and concrete paving, asphalt milling, preleveling and pavement repair	N/A	900,000
In the Line Services, Inc.	Subcontractor (Force Account)	Crack sealing	20,000	10,000
In the Line Services, Inc.	Subcontractor	Guideposts, joint seal, pavement markers, temporary signage, construction sign installation	200,000	200,000
The Everything Guys, LLC	Regular Dealer	Rental and sales of highway construction and related equipment and materials	100,000	60,000
Optimus Prime Trucking, Inc.	Subcontractor	Dump Trucking	50,000	50,000
Metalheads, Inc.	Manufacturer	Dowel Bars	75,000	75,000
Erosion Under Control Co.	Broker	Erosion control blankets, straw bales and wattles, sand bags	15,000	250

EXAMPLE

Underutilized Disadvantaged Business Enterprise Condition of Award Contract Goal 356,968.16 Box 3 Total UDBE Commitment Dollar Amount 1,295,250 Box 4

5 By checking Box 5 the Bidder is stating that their attempts to solicit sufficient UDBE participation to meet the COA Contract goal has been unsuccessful and good faith effort will be submitted in accordance with Section 1-02.9 of the Contract

DOT Form 272-056U
Revised 02/2018



Underutilized Disadvantaged Business Enterprise (UDBE) Written Confirmation Document

See Contract Provisions: UDBE Document Submittal Requirements Disadvantaged Business Enterprise Participation

THIS FORM SHALL ONLY BE SUBMITTED TO A UDBE THAT IS LISTED ON THE CONTRACTOR'S UNDERUTILIZED DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION CERTIFICATION.

THE CONTRACTOR SHALL COMPLETE PART A PRIOR TO SENDING TO THE UDBE.

PART A: To be completed by the bidder

The entries below shall be consistent with what is shown on the Bidder's Underutilized Disadvantaged Business Enterprise Utilization Certification. Failure to do so will result in Bid rejection.

Contract Title: _____

Bidder's Business Name: _____

UDBE's Business Name: _____

Description of UDBE's Work: _____

Dollar Amount to be Applied Towards UDBE Goal: _____

Dollar Amount to be Subcontracted to UDBE*: _____
*Optional Field

PART B: To be completed by the Underutilized Disadvantaged Business Enterprise

As an authorized representative of the Underutilized Disadvantaged Business Enterprise, I confirm that we have been contacted by the Bidder with regard to the referenced project for the purpose of performing the Work described above. If the Bidder is awarded the Contract, we will enter into an agreement with the Bidder to participate in the project consistent with the information provided in Part A of this form.

Name (printed): _____

Signature: _____

Title: _____

Address: _____ Date: _____

DBE On-Site Review for Construction

Appendix 26.54 Subcontractors/Regular Dealers/Manufacturers



DBE On-Site Review for Construction Subcontractors/Regular Dealers/Manufacturers

This document provides guidelines for reviewing Construction Subcontractors Disadvantaged Business Enterprise (DBE) firms to verify compliance with the Commercially Useful Function (CUF) requirements of 49 CFR 26.55 which states in part:

“A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying-out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation...:

WSDOT/Local Agency will perform DBE Onsite Reviews on DBE construction subcontractors. Project owner staff is required to perform a minimum of one review for each DBE firm for each project, for each construction season, and for each primary scope of work.

Note: If the DBE firm is a Regular Dealer/Manufacturer and is not located on the project site or is out of state, then this review needs to be accomplished by telephone.

1. Prime Contractor:			2. Federal Aid Number:	
3. DBE Subcontractor/Regular Dealer/Manufacturer:			4. Contract Number:	
5. Project Engineer:			6. Region/Local Agency:	
7. Project Title:				
SECTION #1 - SUBCONTRACTORS				
8. Bid Item Number	9. Bid Item Approximate % Complete	10. Actual Work Being Performed (Note partial items)	11. Force Account	12. DBE Dollar Amount
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
13. Have you checked the Office of Minority & Women's Business Enterprises Website (www.omwbe.wa.gov) to ensure firm is certified in the above work? If no, please explain:				<input type="checkbox"/> Yes <input type="checkbox"/> No
14. DBE Subcontractor's Start Date		15. Contract Percent Complete	16. DBE Anticipated Completion Date	
DBE INTERVIEWEE QUESTIONS				
17a. First Name		17b. Last Name	17c. Phone Number	
18. Who does the DBE's Site Supervisor report to within his/her organization? Name: _____ Title: _____				
19. Is the DBE Interviewee exclusively employed by the DBE? If no, please explain				<input type="checkbox"/> Yes <input type="checkbox"/> No

DOT Form 272-052
Revised 10/2017

20. Is the DBE Interviewee shown on the DBE Payroll? (Review Payroll)				<input type="checkbox"/> Yes <input type="checkbox"/> No
21. List names and crafts of the DBE's crew as observed (Use additional sheets, if needed)				
Name	Craft			
22. Are any DBE crew members on the prime or any other project subcontractor's payroll(s)? If yes, please explain:				<input type="checkbox"/> Yes <input type="checkbox"/> No
23. List the DBE's Major Equipment (self-propelled). Use additional sheets if necessary				
Make/Model/Year	Owned/Leased	Condition	Logo Markings	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
24. If the equipment is leased, is there a formal agreement identifying the terms and parties? If no, please explain:				<input type="checkbox"/> Yes <input type="checkbox"/> No
PERFORMANCE				
25. Does the DBE effectively manage the job site (their work) without interference from the prime contractor or other subcontractors? If no, please explain:				<input type="checkbox"/> Yes <input type="checkbox"/> No
26. Does the DBE have the personnel, equipment, and resources to perform the work on this project? If no, please explain:				<input type="checkbox"/> Yes <input type="checkbox"/> No
27. Do DBE personnel have the knowledge and skills for the work they are performing? If no, please explain:				<input type="checkbox"/> Yes <input type="checkbox"/> No
28. Has another contractor performed, work for the DBE? If yes, please explain?				<input type="checkbox"/> Yes <input type="checkbox"/> No
29. Has the DBE Owner been present on the Job Site? If yes how often?				<input type="checkbox"/> Yes <input type="checkbox"/> No
30. Are the personnel and equipment under direct supervision of the DBE Site Supervisor?				<input type="checkbox"/> Yes <input type="checkbox"/> No

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SECTION #2 - REGULAR DEALERS/MANUFACTURERS NOTE:31 THROUGH 35 ONLY APPLY TO REGULAR DEALER/MANUFACTURER

31. Per the DBE sub-contract, indicate the project specific materials/equipment being provided.

Material Name	Material Quantity	Material Costs

32. For Regular Dealers, have you checked with the WSDOT Office of Equal Opportunity Regular Dealer List to ensure the firm is listed as an approved Regular Dealer specifically to this project? Yes No

33. If the material being supplied is a bulk item (i.e., aggregates, petroleum, etc.), does the DBE have its own distribution equipment? If no, please explain: Yes No

34. Has the project office validated that only 60% of the total material cost is being counted as participation? If no, please explain: Yes No

35. Has a copy of the material invoice been provided to the project office? If no, please explain Yes No

TRUCKING COMPANIES ONLY

36. How many DBE truck(s) are on the Job Site, including other DBE firms working under subject firm scope?

37. Do all DBE truck(s) have company markings? Yes No

38. How many DBE truck(s) are subcontracted, leased, owner operators, or another company? (Trucks not owned by subject firm)

39. Who is supervising the subject firm DBE truck operators?
 Name: _____ Firm: _____

40. Additional comments/observations

Note: Attach any documents important to the review, i.e., Invoices, Photos, Daily Reports, Correspondence, etc.

41. Review Conducted By (Print Name) _____ 42. Title (Print) _____

43. Signature _____ 44. Date of This Review _____

45. Date Project Engineer approved Request to Sublet: _____

This form must be completed in its entirety and submitted to WSDOT Office of Equal Opportunity within two (2) weeks of its completion. If the form is submitted with missing/incomplete information, it will be returned to the PE Office for completion.

DOT Form 272-052
 Revised 10/2017

Project Office DBE On-Site Review for Architect Appendix 26.55 & Engineering/Professional Services Firms



Project Office DBE On-Site Review for Architect & Engineering/Professional Services Firms

This document provides guidelines for reviewing Architect & Engineering (A & E)/Professional Services Disadvantage Business Enterprise (DBE) firms to verify compliance with the Commercially Useful Function (CUF) requirements of 49 CFR 26.55 which states in part:

“A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying-out its responsibilities by actually performing, managing, and supervising the work involved...A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation....”

WSDOT/Local Agency will perform onsite reviews on DBE A & E Consultants, and Professional Services firms. Project owner staff are required to perform a minimum of one review for each DBE for each project, for each construction season (Calendar Year) and for each primary scope of work.

NOTE: If the DBE firm is not located on the project site or is out of state, then this review needs to be accomplished by telephone.

1. Prime Contractor/Consultant:		2. Federal Aid Number:	
3. DBE Firm:		4. Contract Agreement Number:	
5. WSDOT Project Engineer:		6. WSDOT Region/Local Agency:	
7. Project Title:			
INDICATE THE DBE WORK OBSERVED THIS DATE			
8. Scope of Work	9. Approximate % Complete	10. Actual work being performed. <i>If more lines are needed use a continuation sheet</i>	11. DBE Dollar Amount
12. Have you checked the Office of Minority & Women's Business Enterprises Website (www.omwbe.wa.gov) to ensure firm is certified in the above work? If no, please explain:			<input type="checkbox"/> Yes <input type="checkbox"/> No
13. DBE Firms' Start Date:	14. WSDOT Contract Percent Complete:	15. DBE Anticipated Completion Date:	
DBE PROJECT MANAGER/SUPERVISOR			
16. First Name:		17. Last Name:	18. Phone Number:
19. Is the DBE Project Manager/Site Supervisor exclusively employed by the DBE? If no, please explain:			<input type="checkbox"/> Yes <input type="checkbox"/> No
20. Is the DBE Project Manager/Site Supervisor shown on the monthly invoice or Certified Payroll:			<input type="checkbox"/> Yes <input type="checkbox"/> No
21. Is the DBE Project Manger/Site Supervisor shown on any other firms' invoice? If yes, please explain:			<input type="checkbox"/> Yes <input type="checkbox"/> No
22. Who does the DBE's Project Manager/Site Supervisor report to within his/her organization?			
Name:		Title:	

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23. Does the work described in block #10 match the type of work listed on the executed contract/agreement?		<input type="checkbox"/> Yes <input type="checkbox"/> No
24. Who is paying this DBE firm?		
24(a). What are the negotiated rates?		
25. Are any of the DBE firm's employees assigned to this project working for any other firm's on this project? If yes, please explain:		<input type="checkbox"/> Yes <input type="checkbox"/> No
26. Has another firm performed work in place of the DBE for the scope of work identified exclusively for the DBE? Is yes, please explain:		<input type="checkbox"/> Yes <input type="checkbox"/> No
27. Is the DBE owner personally involved in the day to day operations of the company?		<input type="checkbox"/> Yes <input type="checkbox"/> No
28. Does the DBE firm appear to have control over their contracted scope of work?		<input type="checkbox"/> Yes <input type="checkbox"/> No
29. Review Conducted By (Print Name):	30. Title (Print):	
31. Signature	32. Date of this Review:	
<p>This form must be completed in its entirety and submitted to WSDOT Office of Equal Opportunity within two (2) weeks of its completion. If the form is submitted with missing/incomplete information, it will be returned to the PE Office for completion.</p>		

DOT Form 272-051
Revised 10/2017



**Washington State
Department of Transportation**

Final DBE Utilization Plan Report

Project Number	Federal-Aid Project Number	Region/Agency
----------------	----------------------------	---------------

Contract Title

Agency's Certification

I certify that the contracting records have been reviewed and the on-site performance have been monitored. I determined that work committed to the listed DBE's under this contract was actually performed by the listed DBE's.

X _____
Project Manager or Engineer Signature Required

Printed Signature Name

Business Phone Number

Date of Signature

A final report of DBE Contract Payment Reports must be attached in order to certify that the contracting records and on-site performance of the Disadvantaged Business Enterprises has been monitored in compliance with 49 CFR 26.37.

WSDOT Contract Original to:

Temporary Final Project Records/Project Engineer

Copies to:

Region OEO File

Local Agency Original to:

Project Record

Copies to:

WSDOT Local Programs Project Manager or Project Engineer

DOT Form 272-055
Revised 10/2017

Title VI Plan for Agencies Over 100,000 Population

_____ Agency
Federally Funded Transportation Program
TITLE VI PLAN

_____ Agency Commissioners

_____ Agency Administrator

_____ Public Works Director

Prepared by: _____

Grants & Compliance Manager
(Title VI Coordinator)
Office of Budget and Information Services

Appendix III Lease/Deed Provisions 18

I. Policy Statement, Authorities, and Citations

- A. **Policy of Nondiscrimination** – _____
 Agency assures that no person shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987 (P.L. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any Agency sponsored program or activity. _____
 Agency further assures every effort will be made to ensure non-discrimination in all of its programs and activities, whether those programs and activities are federally funded or not.
- In the event _____ Agency distributes federal aid funds to another entity, _____
 Agency will include Title VI language in all written agreements and will monitor for compliance.
- Title VI compliance is a condition of receipt for federal funds. Assurance of compliance, therefore, falls under the proper authority of the Board of Agency Commissioners pursuant to its budgetary authority and responsibility. The Agency Administrator and Title VI Coordinator are authorized to ensure compliance with provisions of this policy and with the law, including the requirements of 23 Code of Federal Regulation (CFR) 200 and 49 CFR 21.

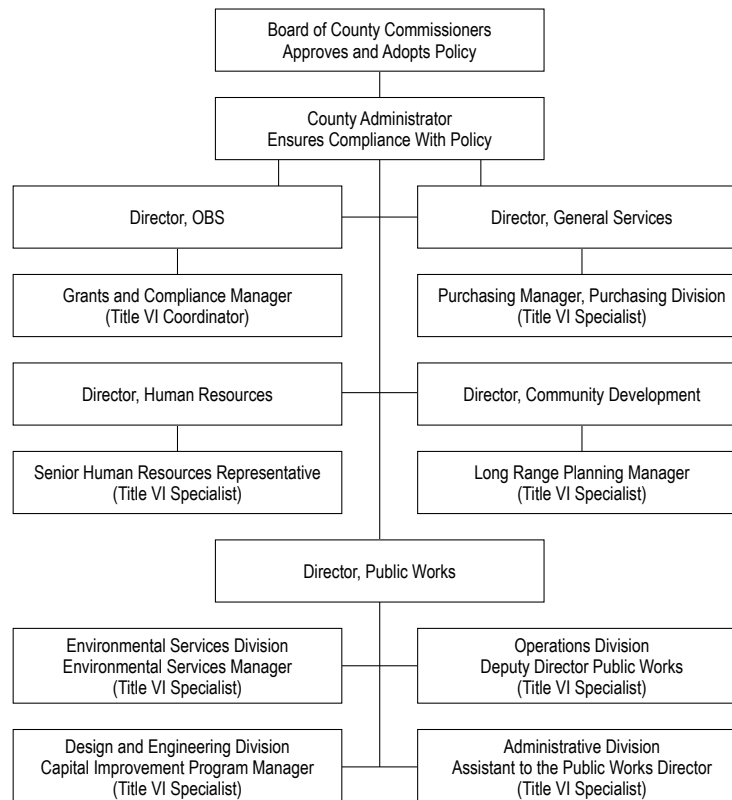
 Agency Administrator

 Date

- B. **Authorities** – Title VI of the 1964 Civil Rights Act provides that no person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.
- The Civil Rights Restoration Act of 1987 broadened the scope of Title VI coverage by expanding the definition of terms “programs or activities” to include all programs or activities of federal aid recipients, subrecipients, and contractors, whether such programs and activities are federally assisted or not (Public Law 100-259 [S. 557] March 22, 1988).
- C. **Additional Citations** – Title VI of the Civil Rights Act of 1964; 42 USC 2000d to 2000d-4; 42 USC 4601 to 4655; 23 USC 109(h); 23 USC 324; DOT Order 1050.2; EO 12250; EO 12898; 28 CFR 50.3

II. Organization, Staffing, and Structure

A. Organizational Chart – Reporting Relationships



B. Staffing and Structure

Agency Administrator – The Agency Administrator is authorized to ensure compliance with provisions of the Agency’s policy of nondiscrimination and with the law, including the requirements of 23 CFR Part 200 and 49 CFR Part 21. The Agency’s grants compliance function and Title VI coordination shall be performed under the authority of the Agency Administrator.

Title VI Coordinator – _____ Agency has created a position of Grants and Compliance Manager to perform the duties of the Title VI Coordinator (Coordinator) and ensure implementation of the Agency’s Title VI Federally Funded Transportation Program. The Grants and Compliance Manager has other duties and responsibilities in addition to Title VI. Although the Grants and Compliance Manager reports to the Director of the Office of Budget and Information Services (OBIS), their direct supervisor, this position shall have an indirect reporting relationship and access to the Agency Administrator.

Title VI Specialists – Additionally, the Agency has designated Title VI Specialists (Specialists) in departmental special emphasis program areas. The Specialists, designated below, shall work in concert with the Title VI Coordinator. These key programs or department areas are subject to receiving federal assistance through grants or other types of transportation related funding, or are responsible for implementing Agency directives and policies to ensure civil rights compliance and equal opportunity. The Specialists will work with the Coordinator to ensure their respective departments and programs comply with Title VI regulations and assurances, meet the objectives of the Title VI Plan, meet federal and state reporting requirements, and provide adequate training opportunities for applicable staff.

Title VI Specialists will work with the Coordinator to ascertain Title VI compliance by contractors, subcontractors, consultants, suppliers and other subrecipients under federally funded projects or programs. Specialists will ensure applicable Title VI provisions and requirements are included in contractual agreements to prime contractors and subrecipients. Specialists will work with the Coordinator to obtain statistical data on race, color, national origin, handicap/disability, age and sex of participants in, and beneficiaries of federally funded _____ Agency transportation programs.

Each of the Specialists will maintain data relative to their respective special emphasis program area, designated below. The Coordinator shall use the data to complete annual Title VI reports and for other administrative needs.

Public Works Design and Engineering – Capital Improvement Program Manager

Environmental Services Environmental Services Manager

Operations – Deputy Director Public Works

Administration – Assistant to the Public Works Director

Community Development – Long Range Planning Manager

Human Resources – Senior Human Resources Representatives

General Services Purchasing – Purchasing Manager

III. Title VI Plan Implementation and Program Administration

Title VI Coordinator’s Responsibilities and Program Administration – As authorized by the Agency Administrator, the Title VI Coordinator is responsible for initiating, monitoring, and ensuring _____ Agency’s compliance with Title VI requirements as follows:

- A. **Program Administration** – Administer the Title VI program and coordinate implementation of the plan. Ensure compliance with the assurances, policy, and program objectives. Perform Title VI program reviews to assess administrative procedures, staffing, and resources; provide recommendations as required to the Agency Administrator and Director of OBIS.
- B. **Complaints** – Review written Title VI complaints that may be received by _____ Agency following the adopted procedural guidelines (see Section V – Complaint Procedures). Ensure every effort is made to resolve complaints informally at the local or regional level.

- C. **Data Collection** – Review the statistical data gathering process performed by Title VI Specialists periodically to ensure sufficiency of data for meeting the requirements of Title VI program administration. (See Section VII – Special Emphasis Program Areas.)
- D. **Environmental Impact Statements** – Ensure that available census data are included as a part of all Environmental Impact Statements/Assessments (EIS/EIA) conducted by Public Works (PW) for projects receiving Federal Highway Administration or other federal assistance.
- E. **Training Programs** – Conduct or facilitate training programs on Title VI issues and regulations for Agency employees; and facilitate Title VI training for appropriate staff, contractors and subrecipients. A summary of training conducted will be reported in the annual update.
- F. **Title VI Plan Update** – Review and update the _____ Agency Transportation Program, Title VI Plan as needed or required. Present updated plan to the Agency Administrator for approval; submit amended Plan to WSDOT.
- G. **Annual Accomplishment Report** – Prepare an annual report of Title VI accomplishments and changes to the program in the preceding federal fiscal year; identify goals and objectives for the upcoming year as required; and submit by October 15.
- H. **Public Dissemination** – Work with Agency staff to develop and disseminate Title VI program information to _____ Agency employees and subrecipients, including contractors, subcontractors, consultants, and subconsultants and beneficiaries, as well as the general public. Public dissemination may include postings of official statements, inclusion of Title VI language in contracts or other agreements, website postings, and annual publication of the Agency’s Title VI Policy Statement in newspaper(s) having a general circulation, and informational brochures. Ensure public service announcements or notices are posted of proposed projects, hearings, meetings, or formation of public advisory boards, in newspapers or other media reaching the affected community. Ensure the full utilization of available minority publications or media; and, where appropriate, provide written or verbal information in languages other than English.
- I. **Elimination of Discrimination** – Work with the Public Works Department, Human Resources, and other Agency offices to establish procedures for promptly resolving deficiencies, as needed. Recommend procedures to identify and eliminate discrimination that may be discovered in any Agency processes.
- J. **Maintain Legislative and Procedural Information** – Federal laws, rules, and regulations, WSDOT guidelines, the current _____ Agency Title VI Plan, Annual Accomplishment Reports, and other resource information pertaining to the implementation and administration of the Agency’s Title VI program will be maintained and updated by the Coordinator. Information will be made available to other Agency departments or the public as requested or required.

IV. NHI Education and Title VI Training

In keeping with adopted _____ Agency policy of nondiscrimination, departmental procedures will be established or followed for Public Works employees to have equal access to applicable educational and training opportunities. Public Works staff will maintain program administration documentation and data necessary for preparation of annual Title VI reports, and will routinely supply the necessary data to the Title VI Coordinator.

- A. **National Highway Institute (NHI) Education** – The Coordinator will be notified when training for the National Highway Institute courses or workshops become available to Agency Public Works employees. The Director of the Department of Public Works will establish policy for the selection of participants interested in taking part in the National Highway Institute Training workshops to ensure that no one is denied participation or subjected to discrimination on the basis of race, color, national origin or sex. A report will be completed and forwarded to the Coordinator upon completion of each educational seminar or course throughout the course of the year, which shall include the name of each participant, their title, division, sex and ethnicity for use in completing the annual Title VI accomplishment report.
- B. **Title VI Training** – The Coordinator is responsible for overall Title VI related training and staff development for Title VI Specialists and other Agency employees. The Coordinator will organize or conduct a minimum of one internal Title VI training session annually. The Coordinator will organize and facilitate the provision of Title VI training sessions for consultants, contractors, and subcontractors periodically. WSDOT’s Office of Equal Opportunity Internal and External Civil Rights Branch and the Contract Compliance Office may be asked to provide applicable training.
- C. **Selection of Instructors** – The Coordinator will collaborate with the Agency’s Purchasing Division to ensure Agency policy is followed in the selection of instructors for _____ Agency Public Works training courses/ workshops, and ensure equal opportunity in the selection process for all training contracts. Per adopted policy, the Agency will provide accessibility to Minority/Women/Disadvantage Business Enterprise consulting and training firms to compete for training contracts.

V. Complaint Procedures – Allegations of Discrimination in Federally-Assisted Programs or Activities

- A. **Overview** – These procedures cover all complaints filed under Title VI of the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973, Civil Rights Restoration Act of 1987, and the Americans with Disabilities Act of 1990, relating to any program or activity administered by _____ Agency, as well as to subrecipients, consultants, and contractors. Intimidation or retaliation of any kind is prohibited by law.

The procedures do not deny the right of the complainant to file formal complaints with other state or federal agencies or to seek private counsel for complaints alleging discrimination. Every effort will be made to resolve complaints informally at the Agency and subrecipient level. The option of informal mediation meeting(s) between the affected parties and a designated mediator may be utilized for resolution.

B. Procedures

1. Any individual, group of individuals, or entity that believes they have been subjected to discrimination prohibited by nondiscrimination requirements may file a written complaint with _____ Agency Human Resources, Public Works or Board of Agency Commissioners. A formal complaint must be filed within 180 calendar days of the alleged occurrence. The Agency will not officially act or respond to complaints made verbally.
2. Upon receiving the written complaint, _____ Agency will determine its jurisdiction, acceptability, need for additional information, and the investigative merit of the complaint. In some situations, the Agency may request the Washington State Department of Transportation (WSDOT) Office of Equal Opportunity conduct the investigation. In the event WSDOT handles the investigation, they will follow their adopted procedures for investigating discrimination complaints, per their current State Title VI Plan.
3. If the complaint is against a subrecipient, consultant, or contractor, under contract with the Agency the appropriate division and/or agency shall be notified of the complaint, within 15 calendar days.
4. Once the Agency decides its course of action, the complainant and the respondent will be notified in writing of such determination within five calendar days. The complaint will be logged into the records of the Title VI Coordinator, and the basis for the allegation identified including race, color, national origin, handicap/disability, age, or sex.
5. In cases where _____ Agency assumes investigation of the complaint, the Agency will provide the respondent with the opportunity to respond to the allegations in writing. The respondent will have ten calendar days upon receipt, to furnish the Agency with his/her response to the allegations.

6. Within 60 days of receipt of the complaint, the Coordinator or WSDOT investigator will prepare a written investigative report for the Agency Engineer and Agency Administrator. The report shall include a narrative description of the incident, identification of persons interviewed, findings and recommendations for disposition.
7. The recommendation shall be reviewed by the Prosecuting Attorney's office (PA). The PA may discuss the report and recommendations with the Coordinator and other appropriate departmental staff. The report will be modified as needed and made final for its release to the parties.
8. Once the investigative report becomes final, briefings will be scheduled with each party within 15 days. Both the complainant and the respondent shall receive a copy of the investigative report during the briefings and will be notified of their respective appeal rights.
9. A copy of the complaint and _____ Agency's investigative report will be issue to WSDOT's External Civil Rights Branch (or the appropriate oversight agency) within 60 calendar days of the receipt of the complaint.
10. If the complainant or respondent is not satisfied with the results of the investigation of the alleged discriminatory practice(s) he or she shall be advised of their rights to appeal the agency's decision to WSDOT, U.S. Department of Transportation or U.S. Department of Justice. The complainant has 180 calendar days after the appropriate agency's final resolution to appeal to USDOT. Unless new facts not previously considered come to light, reconsideration of the final determination by the investigating agency will not be available.
11. An annual Log of Complaints must be maintained by each agency. The Log of Complaints must contain the following information for each complaint filed:
 - The name and address of the person filing the complaint.
 - The date of the complaint.
 - The basis of the complaint.
 - The disposition of the complaint.
 - The status of the complaint.

Only qualified, well-trained investigators should conduct these investigations. No agency is allowed to investigate a complaint against itself.

VI. Subrecipient Review and Remedial Action Procedures

- A. **Title VI Review of Subrecipients of Federal Aid Highway Funds** – Public Works Specialists and the Coordinator will assist WSDOT to periodically conduct Title VI compliance reviews. Title VI Specialists and Public Works staff will review select recipients of federal aid highway or other federal funds, to ensure adherence to Title VI requirements (see Section VII). The Coordinator and Specialists will work cooperatively to periodically confirm operational guidelines provided to consultants, contractors, and subrecipients, including Title VI language, provisions, and related requirements, as applicable.
- B. **Post-Grant Reviews** – The Coordinator will collaborate with Specialists and Public Works staff to conduct periodic post grant reviews of select recipients of federal highway funds or other federal funds, for roads, sidewalks, bridges, municipal construction, etc. to ensure adherence to Title VI requirements (see Section VII). Appropriate staff will periodically confirm that operational guidelines provided to consultants, contractors and subrecipients include Title VI language and provisions and related requirements, where applicable.
- C. **Remedial Action** – When irregularities occur in the administration of federal aid highway programs at either the Agency or subrecipient levels, corrective action will be taken to resolve identified Title VI issues.

_____ Agency will seek the cooperation of the consultant, contractor or other subrecipient in correcting deficiencies found during periodic reviews. _____ Agency will provide technical assistance and guidance, upon request, to support voluntarily compliance by the subrecipient. When conducting Title VI compliance reviews, the Agency will reduce to writing any recommended remedial action agreed upon by the Agency and subrecipient, and provide a copy of the letter within a period not to exceed 45 days.

Subrecipients placed in a deficiency status will be given a reasonable time, not to exceed 90 days after receipt of the deficiency letter, to voluntarily correct deficiencies. When a subrecipient fails or refuses to voluntarily comply with requirements within the allotted time frame,

_____ Agency will submit to WSDOT and FHWA copies of the case file and a recommendation that the subrecipient be found in noncompliance.

A follow-up review will be conducted within 180 days of the initial review to ascertain if the subrecipient has complied with the Title VI Program requirements in correcting deficiencies previously identified. If the subrecipient refuses to comply, _____ Agency and WSDOT may, with FHWA's concurrence, initiate sanctions per 49 CFR 21.

VII. Title VI Implementation Activities in Special Emphasis Program Areas

A. Planning and Location Activities

1. **Planning Process** – The Agency Engineer has responsibility for providing long-range planning (through a service agreement with Community Development), program development, and capital programming necessary to provide efficient transportation services to Agency citizens. The Agency Engineer annually updates and coordinates _____ Agency’s six-year plan for transportation improvement programs and projects. The update also informs other _____ Agency jurisdictions of the current planning direction for transportation needs. Projects included in the update are the result of evaluation and prioritization of needs in various transportation areas. The evaluation process includes input from various divisions in the department, cities, local jurisdictions and organizations, citizen groups, and private individuals. All six-year plans must be consistent with the adopted Comprehensive Plan approved under the State’s Growth Management Act.
2. **Authorities** – _____ Agency Code; 23 CFR 450; [RCW 35.77](#); [RCW 36](#); [RCW 47.06](#); [RCW 47.80](#)
3. **Public Involvement in Planning Activities and Title VI**
 - a. Invite participation of a cross section of the populace from social, economic, and ethnic groups in the planning process by disseminating written program information to minority media and ethnic organizations, and providing public service announcements for all local media, when forming citizen advisory committees or planning board, and requesting involvement.
 - b. Public Works staff will obtain demographic statistics at applicable community meetings and public hearings involving transportation planning sessions. Data will be gathered through use of a voluntary self-reporting form which includes race, gender, and national origin. Copies of the completed forms will be provided to Title VI Coordinator after each meeting.
 - c. To ensure access to public meetings, evening meetings will be conducted in a variety of community buildings throughout the Agency, including those along transit routes, ensure translation services are available if anticipated, and ensure public meetings are held in predominantly minority communities when transportation projects will specifically impact those communities.

B. Consultant Contracts Activities

1. **Consultant Contracts Administration** – The D&E Division is responsible for recommending consultant firms to the Agency Engineer for final selection, negotiation and award. The Division administers awarded consultant contracts.
2. **Authorities** – _____ Agency Ordinance 90-81; WSDOT *Local Agency Guidelines*; 48 CFR 31; 23 CFR 172
3. **Consultant Selection Process** – Public Works staff will request qualifications from consulting engineering firms specializing in various aspects of civil engineering which may relate to public works projects and the development of construction plans and special provisions for roads and bridges, design work associated with structures, performing environmental studies or preparing NEPA or SEPA documents for public works projects.

Consultant selection from the certified list maintained by the Purchasing Division adheres to Washington State regulations (RCWs) and is consistent with _____ Agency vendor policies.

4. Title VI Assurances and Provisions

- a. Include applicable Disadvantaged Business Enterprise (DBE) goals in designated projects, and seek to proactively achieve the goal(s).
- b. Include Title VI assurance and provision language in all federally funded consultant contracts. Periodically review documents and language to ensure compliance with current laws and regulations. Provide a copy of the form of the contract to the Coordinator, and any amendments or updates that may occur over time.
- c. A Public Works Specialist will maintain updated demographic data on the utilization of women-and minority-owned consulting firms. As they occur, a copy of the award letter will be provided to the Coordinator for use in preparing the Annual Update Accomplishment Report.

C. Design and Engineering/Environmental Activities

1. The Public Works Design and Engineering Division is responsible for the Capital Improvement Program (CIP) and environmental permitting for projects. Studies are performed to assess various environmental factors as they relate to the implementation of the Agency's Annual Road Program, including evaluating demographic data.
2. **Authorities** – _____ Agency Ordinance; WSDOT *Local Agency Guidelines*; *Standard Plans* WSDOT/APWA - M 21-01; Title 23, USC 109(d), 14(a), 217, 315 and 402(a); 23 CFR 1204.4; 23 CFR 771; EO 12898; 49 CFR 1.48(b)(33) and 1.48(c)(2); National Environmental Policy Act of 1969, 42 USC 4321; 40 CFR Part 1500; 49 CFR Part 622; *Environmental Procedures Manual* M 31-11; EO 12898

3. Design/Environmental Review Process and Title VI

- a. Depending on the scope, complexity, and impacts of a project, a National Environmental Policy Act (NEPA), NEPA Categorical Exclusion, NEPA Environmental Assessment, State Environmental Policy Act (SEPA) checklist, SEPA Determination of Non Significance, or NEPA and/or SEPA Environmental Impact Statement will be completed.
- b. Monitor compliance with Title VI requirements in all aspects of conducting Environmental Impact Statements or Assessments. Provide a comprehensive summary of the demographic and environmental data elements to be considered by the EIS/EIA process to the Coordinator; including updated summary lists as applicable. Incorporate into the review process, adequate.
- c. Time for the Coordinator to review and comment, as applicable, on the draft EIS/EIA to ensure there are no violations of the Federal Civil Rights Act, as amended, as a result of the agency's federal aid highway activities.
- d. In order to ensure dissemination of information and foster participation from affected populations, the Public Works staff will place public notices in applicable general and minority media; select accessible locations and times for public hearings or meetings, and arrange for translation services as needed; particularly in projects impacting predominantly minority communities. Ensure the public has information pertaining to their rights to call or write the department to view plans and discuss environmental problems.
- e. Public Works staff will obtain demographic data at community meetings and public hearings pertaining to the transportation design phase. Data will be gathered through use of a voluntary sign-up form which includes race, gender, and national origin. Copies of the voluntary self-reporting forms will be provided to the Coordinator after each meeting.
- f. Public Works staff shall provide a copy of the Annual Construction Report to the Title VI Coordinator in or around April of each year. The Coordinator shall work with the Agency GIS Department to generate a map of the federally funded transportation projects to include demographic data of the neighborhoods affected by the projects.

D. Right of Way Activities

1. **Real Property Services** – The Local Programs Right of Way section oversees the appraisal and acquisition of real property and relocation assistance services for federally funded public works projects. The right of way acquisition process entails appraisal of property, negotiation of terms and conditions for acquisition, and assistance in the relocation of displaced individuals, businesses, farm operations, nonprofit organizations, and property management. The Real Estate Services Office is located in the Development Division.
2. **Authorities** – *Right of Way Manual* M 26-01; 23 CFR 130; 49 CFR 24; RCW 8.26; RCW 47; WAC 468-100

3. Right of Way Activities and Title VI

- a. Ensure equal opportunity in all aspects of procuring real estate service contracting and appraisal agreements. Follow adopted Agency vendor procurement policies in the acquisition of contracted services.
- b. Utilize current OMWBE directories identifying fee appraiser organizations and the Washington State Department of Transportation's list of certified fee appraisers when seeking services. Maintain data on awards to minority and female appraisers, and provide data to the Title VI Coordinator on a quarterly basis.
- c. Follow the guidelines in the *Right of Way Manual* M 26-01 for property acquisition as well as applicable laws and regulations, including Title VI and Section 504.
- d. Adhere to departmental policy of appraising affected property owners, tenants, and others involved in right of way acquisition of their rights and options regarding negotiation, relocation, condemnation and other aspects of the acquisition process.
- e. Provide copies of the relocation assistance literature produced by WSDOT and a copy of the _____ Agency Title VI Compliance brochure to all affected parties.
- f. Incorporate Title VI language and assurance statements in all brochures that are provided to property owners and tenants impacted by a highway transportation project. Monitor all program functions for compliance with Title VI provisions throughout real estate acquisition process.
- g. Ensure that appraised values and communications associated with the appraisal and negotiation operations result in equitable treatment.
- h. Ensure comparable replacement dwellings are available and assistance is given to all displaced persons and entities by the property acquisition process.
- i. Maintain statistical data including race, color, national origin, and sex on all relocatees affected by federally funded projects, and provide detailed demographic data quarterly to the Title VI Coordinator.

E. Construction and Maintenance Activities

1. **Construction Management Section** – This section is located in the Design and Engineering Division, and is responsible for administration of all new construction contracts and inspecting bridges. The D&E Division is responsible for oversight and the administration of transportation construction projects, as set forth by policy decisions and supervision of the Agency Engineer.
2. **Authorities** – *Construction Manual* M 41-01; *Maintenance Manual* M 51-01; *Local Agency Guidelines* M 36-63; *Standard Specifications for Road, Bridge, and Municipal Construction* M 41-10.

3. **Maintenance** – The Operations Division is responsible for the efficient program for maintaining Agency roads, bridges, and parks/grounds by economically utilizing the resources of contractors, equipment, and materials.
4. **Authorities** – *Maintenance Manual* M 51-01; *Construction Manual* M 41-01; *Standard Specifications for Road, Bridge and Municipal Construction* M 41-10; Clark Agency Road Standards
5. **Construction and Maintenance Activities and Title VI**
 - a. Review all federally funded projects for application of DBE goals. As appropriate, include DBE provisions in those projects with designated goals. Include Title VI language in bid announcements and applicable construction documents, as stipulated in the Agency’s Title VI Policy Statement (p. 2) and Assurances (Addendum 2, p. 14-15) herein.
 - b. Award construction contracts on the basis of lowest responsive bidder, as well as meeting DBE requirements. Include Title VI language in prime contract award letters to encourage utilization of DBE subcontracts and vendors.
 - c. Ensure that prime contractors with DBE requirements award contracted work to qualified DBEs which perform commercially useful functions.
 - d. Monitor all maintenance and construction operations to ensure nondiscrimination throughout all operations.
 - e. Coordinate the gathering of maintenance and construction information regarding DBE participation for the Annual Title VI Report; and provide to the Coordinator.

Exhibit 1 – _____ Agency Title VI Notice to the Public

_____ Agency hereby gives public notice that it is the Agency’s policy to assure full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and related statutes and regulations in all programs and activities. Title VI requires that no person shall, on the grounds of race, color, sex, or national origin be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any Federal Aid Highway program or other activity for which _____ Agency receives federal financial assistance.

Any person who believes they have been aggrieved by an unlawful discriminatory practice under Title VI has a right to file a formal complaint with _____ Agency. Any such complaint must be in writing and filed with the _____ Agency Title VI Coordinator within one hundred, eighty (180) days following the date of the alleged discriminatory occurrence. Title VI Discrimination Complaint Forms may be obtained from the Human Resources office at no cost to the complainant by calling xxx-xxx-xxxx.

Exhibit 2 – _____ Agency Title VI Assurances

The Agency of _____ in the State of Washington, (hereinafter referred to as the “Recipient”), HEREBY AGREES THAT as a condition to receiving any federal financial assistance from the U.S. Department of Transportation will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d--42 USC 2000d--4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations), and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives federal financial assistance through the Washington State Department of Transportation, including the U.S. Department of Transportation and Federal Highway Administration, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This Assurance is required by Subsection 21.7(a)(1) of the Regulations.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances to its Federal Aid Highway Program:

1. That the Recipient agrees that each “program” and each “facility” as defined in Subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a “program”) conducted, or will be (with regard to a “facility”) operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations made in connection with the Federal Aid Highway Program, and in adapted form in all proposals for negotiated agreements:

_____ Agency in accordance with Title VI of the Civil Rights Act of 1964 and 78 Stat. 252, 42 USC 2000d--4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

3. That the Recipient shall insert the clauses of Appendix 1 of this Assurance in every contract subject to the Act and the Regulations.

4. That the Recipient shall insert the clauses of Appendix 2 of this Assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
5. That where the Recipient receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives federal financial assistance in the form, or for the acquisition of real property, or an interest in real property, the Assurance shall extend rights to space on, over or under such property.
7. That the Recipient shall include the appropriate clauses set forth in Appendix 3 of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under the Federal Aid Highway Program; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under the Federal Aid Highway Program.
8. That this Assurance obligates the Recipient for the period during which federal financial assistance is extended to the program, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the Assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation, or the official to whom s/he delegates specific authority to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial endorsement with regard to any matter arising under the Act, the Regulations, and this Assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts or other federal financial assistance extended after the date hereof to the Recipient by the U.S. Department of Transportation under the Federal Aid Highway Program and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants in the Federal Aid Highway Program. The person whose signature appears below is authorized to sign this Assurance on behalf of the Recipient.

**Exhibit 2A – _____, _____
Agency Administrator Date**

**1 – Title VI Assurances For Consultants, Contractors, Subcontractors, Suppliers,
and Manufacturers**

_____ Agency will insert or add the following clauses into every contract subject to the Act and Regulations associated with the receipt of federal financial assistance:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance With Regulations** – The contractor shall comply with the Regulations Relative to Nondiscrimination in Federally-Assisted Programs of the Department of Transportation (hereinafter DOT), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination** – The contractor, with regard to the work performed during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, including Procurement of Materials and Equipment** – In all solicitations either by competitive bidding or negotiations made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.
4. **Information and Reports** – The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by _____ Agency or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to _____ Agency, or the Washington State Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance** – In the event of the contractor’s noncompliance with the nondiscrimination provisions of this contract, _____ Agency and the Washington State Department of Transportation shall impose such contract sanctions as it, or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or;
 - b. Cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions** – The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as _____ Agency or the U.S. Department of Transportation, Federal Highway Administration, may direct as a means of enforcing such provisions including sanctions for noncompliance.
- Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request _____ Agency enter into such litigation to protect the interests of the Agency and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Exhibit 2B – Granting and Habendum Clauses

When _____ Agency is the recipient of real property, structures or improvements thereon, or interest therein from the United States, the following clauses shall be included in any and all deeds affecting or recording the transfer of property:

GRANTING CLAUSE

NOW, THEREFORE, _____ Agency, as authorized by law, will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of Federal Aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally-Assisted Programs of the Department of Transportation (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252:42 USC 2000d to 2000d--4) does hereby remise, release, quitclaim, and convey unto _____ Agency all the right, title, and interest of the Department of Transportation in and to said land described in Exhibit A attached hereto and made a part thereof.

HABENDUM CLAUSE

TO HAVE AND TO HOLD said lands and interests therein unto _____ Agency, and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on _____ Agency, its successors, and assigns.

_____ Agency, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (,) and¹ (2) that _____ Agency, shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination of Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (,) and (3) that in the event of breach of any of the above mentioned nondiscrimination conditions, the Agency shall have a right to reenter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.

¹ Reverter Clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of Civil Rights Act of 1964.

Exhibit 2C – Lease/Deed Provisions

Upon receipt of federal financial assistance to construct a facility or part of a facility, the Recipient agrees to include these clauses in all future deeds, licenses, leases, permits, or similar instruments entered into by _____ Agency pursuant to the provisions of Title VI Assurances, item 7:

The LESSEE, for himself or herself, his or her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease, for a purpose for which a US Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally-Assisted Programs of the U.S. Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the Agency shall have the right to terminate the lease, and to reenter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by _____ Agency pursuant to the provisions of Title VI Assurances, Item 7.

The LESSEE, for himself or herself, his or her personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person, on the grounds of race, color, sex, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and furnishing of services thereon, no person on the grounds of race, color, sex, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the LESSEE shall use the premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally-Assisted Programs of the U.S. Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the Agency shall have the right to terminate the lease, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

To be eligible for reimbursement of Federal Highway Administration (FHWA) funds for payments to a consultant, the procedures in this chapter must be followed. If a Local Agency elects to retain the consultant at its own cost, state law must be followed.

This chapter covers agreements for architects, landscape architects, land surveying, and engineering services outlined in [RCW 39.80](#) (see [Section 31.1](#)). The definitions of these four professions are described in [RCW Chapters 18.08, 18.43, and 18.96](#). These will be referred to as architectural and engineering (A&E) services, or engineering services, in this chapter. These include:

- Professional services of an architectural or engineering nature that are required to be performed or approved by a person licensed, registered, or certified to provide the service needed.
- Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property.
- Professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering profession perform services, including but not limited to studies, investigations, surveying and mapping, value engineering, construction phase services, soils engineering, and other related services.

This chapter also covers Non-A&E Professional Service agreements. Examples of professional services typically include, but are not limited to:

- Material testing (as long as the consultant is delivering test results only, not performing an analysis or producing a discipline report).
- Financial and economic analyses.
- Environmental planning—as opposed to environmental engineering.
- Legal services.
- Management consulting not related to A&E projects.
- Media and public involvement; marketing services.
- Research.
- Scientific studies.
- Appraisal services not related to A&E projects.
- Real Estate activities including acquisition, relocation, appraisal, appraisal review, and property management
- Expert witness services for litigation.

Throughout this chapter the term “project” means the work to be undertaken by the consultant.

The basic steps for entering into a consultant agreement are:

1. Determine the need for services.
2. Advertise the need for services.
3. Evaluate the applicants’ qualifications.

4. Select the most qualified firm.
5. Negotiate with the most qualified firm.
6. Execute the contract (Agreement, Exhibits, and Supplements – see appendices).

31.1 A&E Services Consultants

A&E consultant services include the following:

1. Professional or technical expertise to accomplish a specific study, project, task, or other work statement.
2. Any phase of project development, as well as special studies or other assignments within any phase.
3. Periodic examination and consultation or full-time technical inspection during the construction phase.
4. Consultant design and preparation of plans, specifications, and estimates is common when an Agency's staff is small or when an Agency needs additional expertise.

Consultant services do not include purchased services provided by a vendor to accomplish routine, continuing, and necessary services. These may be acquired through use of purchased service agreements. Purchased services include services for equipment maintenance and repair, operation of a physical plant, security, computer hardware and software maintenance, data entry, key punch services, computer time-sharing, contract programming, and analysis ([RCW 39.26](#)).

Section 319 of Public Law 101-121 prohibits federal funds from being expended by consultants or subconsultants who receive a federal contract, grant, loan, or cooperative agreement to pay, any person for influencing or attempting to influence a federal Agency or Congress in connection with awarding any of the above.

11. Determine the Need for A&E Consultant Services – Before an Agency advertises for A&E consultant services, Agencies must have a clear definition of the work to be accomplished. This includes identification of:

1. The nature and scope of effort required.
2. The technical requirements and qualifications of the consultant services needed.
3. The level of funding resources available.
4. The time frame for performing the work.
5. The expected results and products to be received (deliverables).
6. An independent agency cost estimate (see [Appendix 31.94](#)).
7. The establishment of consultant contract DBE goal.

If assistance is needed in describing the desired scope of work, the Agency should seek information from the Region Local Program Engineer or from other Local Agencies that have had similar projects.

Selection of the most qualified consultant firm is based on evaluations, therefore Agencies must develop clear selection guidelines (see [Section 31.13](#)). The selection criteria should enable the Agency to identify and select the consultant best qualified

to meet the Agency's needs and ensure that the selected consultant understands and provides services for the Agency's needs in the most cost-effective manner.

The three agreement types are lump sum, cost plus fixed fee, and negotiated hourly rates (see [Section 31.42](#)). The Agency should determine the type of agreement to be developed with the consultant (though this may be modified during negotiations with the selected consultant). Consultant agreements are available at www.wsdot.wa.gov/localprograms.

Consultant selection shall provide for maximum open and free competition and should provide opportunities for small and disadvantaged business enterprises to obtain an equitable share of the work, consistent with the project scope and capabilities of available small and disadvantaged owned firms.

A&E consultants may be solicited for:

1. A specific project.
2. A specific stage of a project (i.e., Design Report).
3. Engineering services (i.e., supporting services of an Agency's staff in studies, design).
4. For more than one project (i.e., several small bridge design projects) or multiple phases of a single project.
5. Or a combination of the above.

.11a Multi-Phase Projects – In the case of projects covering two or more distinct phases, when the cost for the second phase depends on decisions reached during the first phase, the agreement should cover only the first phase. The agreement for preliminary engineering should state that the consultant may be considered for subsequent phases provided this option was identified in the advertised solicitation. The consultant's engagement to complete subsequent phases depends upon the consultant's satisfactory performance on prior work and upon negotiation of an agreement for the subsequent phase(s). The Agency is not obligated to use the same consultant firm for all phases. Separate consultant agreements may be considered for each phase (e.g., one for preliminary engineering and another for construction engineering).

.11b Environmental Assessment/Environmental Impact Statement/Environmental Classification Summary – The first agreement would include preliminary engineering through final approval of the environmental documents. Preparation of the PS&E could be under a separate agreement with continuation of the original consultant at the option of the Agency, provided this was stated in the original advertisement.

.11c Engineering Management Consultants – While an engineering management consultant may assist an Agency in fulfilling its responsibilities, the Agency cannot delegate these responsibilities to a consultant or to another Agency. A consultant serving in a management role for an Agency, and then managing consultant agreements with its own firm, is a conflict of interest.

.12 Advertise the Need for A&E Consultant Services – State law, [RCW 39.80](#), requires that each Agency must advertise that Agency's requirement(s) for architectural services, land surveying services, or engineering services. An Agency can comply with these requirements by publishing an announcement on each occasion when A&E consultants are required by the Agency.

The need for consultant services must be advertised at least one day per week for two consecutive weeks (14 day minimum) in the area newspaper used for publication of legal notices. A three week minimum response time from the initial date of publication should be provided to consultants. These advertisements may be supplemented by additional advertisements in special interest publications such as the Daily Journal of Commerce, trade magazines, or publications utilized by disadvantaged business enterprises.

Agencies may also publish an announcement for emergent need contracts. There are four disciplines in which an agency may advertise for and award contracts to multiple firms to assist agencies if unexpected needs arise during construction. These disciplines include:

- **Geotechnical** – Investigations include the assessment of the risk to humans, property and the environment from natural hazards such as earthquakes, landslides, sinkholes, soil liquefaction, debris flows and rockfalls.
- **Hydraulics** – These activities include roadways threatened by a river and/or the occurrence of scour.
- **Archeological** – Investigations include surveying the construction site and analyzing any findings if construction activities caused disturbance to potential cultural resources or human skeletal remains.
- **Environmental** – These activities involve contacting resource agencies, documenting all construction activities that may require mitigation and monitoring in-water work activities

Agencies would award contracts to several firms that meet the required criteria. Agencies will then rotate work through all of the firms selected. These agreements will be for a **one year** period of time and will include a “not to exceed” dollar amount. An agency may extend the agreement for one additional year provided the original dollar amount was not exceeded.

.12a Advertisement Content – The advertisement should contain the following information (see [Appendix 31.91](#) for an advertisement example):

1. A project title and estimated start and end date.
2. The scope and nature of the project, including technical requirements for which services are required and the address of a representative of the Agency who can provide further details.
3. Solicitations of qualification statements, referred to as Requests for Qualifications (RFQ) from consultants, must incorporate a clear and accurate description of the technical requirements for the service to be procured, including any special conditions or certifications required. (Example Submittal Information Forms to obtain consultant qualifications for Prime and Subconsultants are contained in [Appendix 31.92\(a\)](#) and [31.92\(b\)](#), respectively.)
4. Solicitations must clearly set forth sufficient detail on how applicant qualifications will be evaluated. These may include but are not limited to key personnel, firm experience, ability to meet schedule, past performance, in-house expertise, familiarity with WSDOT/FHWA standards, and DBE approach and commitment.

5. Nonengineering service applicants should be asked to provide estimates for the man-hours and classifications needed to complete the project.
6. In the event that a project covers multiple phases (see [Section 31.11a](#)), the Agency is not obligated to utilize the original consultant for subsequent phases. If the Agency desires this option, the advertisement must state the possibility of a multi-phase agreement at the discretion of the contracting Agency.
7. All prospective consultants must be advised that federally funded projects will be held to Federal EEO requirements.
8. Consultants will also be held to ADA and Civil Rights language for the employing Agency.
9. **Local Agencies must be in compliance with Chapter 28 and their Title VI Agreement. Therefore, when advertising for Consultant Services, the following Title VI language must be included in advertisement:**

“The (Local Agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin or sex in consideration for an award.”
10. Response due date.
11. Publication dates.

Specific project cost estimates shall not be requested until a consultant has been selected.

.13 A&E Consultant Evaluation and Selection Process – The Local Agency must establish guidelines for technical evaluation of the qualifications received, determination of finalists for the purpose of written or oral discussions, and selection for agreement award. Consultants will be selected based upon the qualifications they present. For A&E related services, fees for services cannot be considered during the selection process.

One of the following must be utilized as part of the consultant selection process:

1. **“Live” Interviews and Presentation of the RFQ by Consultant Individuals or Teams** – This provides interaction with the Agency and showcases the consultant’s presentation skills. This approach is best for larger, more complex projects, but does increase travel time and costs to the applicant. Video presentation or teleconferencing may be considered as an alternative to reduce travel costs.

2. **Telephone Interviews** – This provides for interaction but eliminates travel time and cost. This approach is useful for smaller projects.
 - A. Exceptions to the competitive process used for consultant selection:
 1. **Subsequent Phasing** – Selection of a consultant to perform subsequent project phases may only occur if this option was advertised originally (i.e., Phase 1 Preliminary Engineering, Phase 2 Right of Way, Phase 3 Construction Engineering).
 2. **Contract Amendments** – Amendments that do not significantly alter the scope of work can be renegotiated with the existing consultant. However, this should not be used to avoid the responsibility of providing competition for consultant selection.
 3. **Emergency** – To address a set of unforeseen circumstances beyond the Agency’s control which present a real, immediate threat to the proper performance of essential functions, or may result in the material loss or damage to property, bodily injury, or loss of life if immediate action is not taken (see [Chapter 33](#)).
 4. **Sole Source** – Sole source agreements may be requested from Local Programs when the consultant provides professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The Local Agency must provide the Region Local Programs Engineer written justification (see [Appendix 31.93](#)) for requesting this option based upon:
 - a. The unique nature of the services and/or the unique qualifications, abilities, or expertise of the consultant to meet the Agency’s needs (e.g., are they highly specialized or one-of-a-kind? What is their past performance, their cost effectiveness (learning curve), and/or the follow-up nature of the required services?).
 - b. Other special circumstances that may be relevant such as confidential investigations, copyright restrictions, or time constraints.
 - c. Availability of consultants in the location required. Local Programs must approve all consultant procedures that are exceptions to the competitive process
 - B. **Documentation of Selection** – Following consultant selection, the Local Agency shall retain the following documentation in the project file:
 1. The names of a minimum of three consultants considered for the work (excluding exceptions detailed above).
 2. Consultant selected and reasons why this consultant was chosen over the others.

3. Prior to executing an agreement agencies must verify consultant status with the *System for Award Management (SAM)* at www.sam.gov/portal/public/sam to determine if the consultant has been excluded from bidding on a federal aid contract. SAM is the electronic version of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs (Lists), which identifies those parties that have been suspended, debarred, or otherwise excluded from bidding on federal procurement and nonprocurement contracts. Consultant agreements awarded to firms listed on the Excluded Parties Listing will not be eligible for federal aid reimbursement.

31.2 Non-A&E Professional Services Consultants

Professions outside the fields described in [RCW 39.80](#) may provide such consulting services such as long range planning and studies, economic analyses, and real estate activities. These consulting services are provided through professional services agreements ([RCW 39.26](#)). The basic difference between professional services and A&E consultants is that consultant fees may be considered in selecting professional services consultants, but cannot be considered in selecting A&E services consultants.

Real Estate consulting activities include acquisition, relocation, appraisal, appraisal review and property management and can be contracted under a Non A&E professional services agreement under authority of [RCW 39.26](#).

The Local Agency is to work with Local Programs Real Estate section on right of way non-A&E professional services agreements.

.21 Determine the Need for Professional Services Consultants – Before an Agency advertises for a professional services consultant, the agency must have a clear definition of the work to be accomplished. This includes identification of:

1. The nature and scope of effort required.
2. The technical requirements and qualifications of the consultant services needed.
3. The level of funding resources available.
4. The time frame for performing the work.
5. The expected results and products to be received.
6. An independent agency cost estimate (see [Appendix 31.94](#)).
7. The establishment of consultant contract DBE goal.

If assistance is needed in describing the desired scope of work, the Agency should seek information from the Region Local Program Engineer or from other Local Agencies that have had similar projects.

The Agency should develop selection guidelines for all to understand, because selection of the most qualified consultant firm is based upon evaluations by the Agency. The selection criteria should enable the Agency to identify and select the consultant best qualified to meet the Agency's needs and ensure that the selected consultant understands and provides the Agency's needs in the most cost-effective manner.

The Agency should determine the type of agreement to be developed with the consultant. (This may be modified during negotiations with the selected consultant.) The basic agreement types are lump sum, cost plus fixed fee and negotiated hourly rates, (see [Section 31.42](#)).

Consultant selection shall provide for maximum open and free competition and should provide opportunities for small and disadvantaged business enterprises to obtain an equitable share of the work, consistent with the project scope, and capabilities of available small and disadvantaged owned firms.

Professional Services consultants may be solicited for:

1. A specific study (i.e., Economic Study).
2. A specific project (i.e., Acquisition of Real Estate).
3. A specific task (i.e., Real Estate negotiations).
4. Or a combination of the above.

.22 Advertise the Need for Professional Services Consultants – State law ([RCW 39.26](#)) requires that each Agency must competitively solicit that Agency’s requirement for professional services. An Agency can comply with these requirements by using a competitive solicitation process that provides an equal and open opportunity to qualified parties.

The need for consultant services must be advertised at least one day per week for two consecutive weeks (14 day minimum) in the area newspaper used for publication of legal notices. A three week minimum response time from the initial date of publication should be provided to consultants. These advertisements may be supplemented by additional advertisements in special interest publications such as the Daily Journal of Commerce, trade magazines, or publications utilized by disadvantaged business enterprises.

.22a Advertisement Content – The advertisement should contain the same information listed in [Section 31.12a](#) (see [Appendix 31.91](#) for an advertisement example).

.23 Professional Services Consultant Evaluation and Selection Process – The Local Agency must establish guidelines for technical evaluation of the qualifications received, determination of finalists for the purpose of written or oral discussions, and selection for agreement award. Consultants will be selected based upon the qualifications they present. Fees may be considered as an evaluation factor in the professional services selection process, but it is not a “low-bid” consultant selection where the low bidder wins the contract automatically.

One of the following is required as part of the consultant selection process:

1. **Written Response Only to the Request for Qualifications (RFQ)** – This approach is best for smaller, clearly defined projects, or projects which are heavily reliant upon their written presentation such as environmental reports.
2. **“Live” Interviews and Presentation of the RFQ by Consultant Individuals or Teams** – Provides for interaction with the Agency and showcases the consultant’s presentation skills. This approach is best for larger, more complex projects but does increase travel time and costs to the applicant. Video presentation or teleconferencing may be considered as an alternative to reduce travel costs.

3. **Telephone Interviews** – Provides for interaction but eliminates travel time and cost. This approach is useful for smaller projects.

Exceptions to the competitive process used for consultant selection:

4. **Sole Source** – Sole source agreements may be requested from Local Programs when the consultant provides professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The Local Agency must provide the Region Local Programs Engineer written justification (see [Appendix 31.93](#)) for requesting this option based upon:
 - A. The unique nature of the services and/or the unique qualifications, abilities, or expertise of the consultant to meet the Agency's needs (e.g., are they highly specialized or one-of-a-kind? what is their past performance, their cost effectiveness (learning curve), and/or the follow-up nature of the required services?).
 - B. Other special circumstances that may be relevant such as confidential investigations, copyright restrictions, or time constraints.
 - C. Availability of consultants in the location required.
5. **Emergency** – To address a set of unforeseen circumstances beyond the Agency's control which present a real, immediate threat to the proper performance of essential functions or may result in the material loss or damage to property, bodily injury, or loss of life, if immediate action is not taken (see [Chapter 33](#)).
6. **Contract Amendments or Added Scope (beyond the original advertisement)** – Amendments that do not significantly alter the scope of work can be renegotiated with the existing consultant. However, this should not be used to avoid the responsibility of providing competition for consultant selection.

Local Programs must approve consultant procedures that are exceptions to the competitive process.

.24 Document Selection – Following consultant selection, the Local Agency shall retain the following documentation in the project file:

1. The names of a minimum of three consultants considered for the work (excluding exceptions detailed above); and
2. Justification for the consultant selected, including the reasons why this consultant was chosen over the others.

Prior to executing an agreement agencies must verify consultant status with the System for Award Management (SAM) at www.sam.gov/portal/public/sam to determine if the consultant has been excluded from bidding on a federal aid contract. SAM is the electronic version of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs (Lists), which identifies those parties that have been suspended, debarred, or otherwise excluded from bidding on federal procurement and nonprocurement contracts. Consultant agreements awarded to firms listed on the Excluded Parties Listing will not be eligible for federal aid reimbursement.

31.3 Establishment of Consultant Roster

To efficiently obtain consultant services, a process for developing and maintaining a consultant “Roster” is necessary. Agencies may establish and maintain a continuous “Roster” to which interested and qualified firms may apply. This “Roster” **must** be maintained annually.

Each agency must submit the “Roster” selection procedures to the Regional Local Program Engineer for review and approval. The “Roster” selection procedures must address the following:

1. Process of invitation to be included on the “Roster”.
2. Process of encouraging firms to submit or update qualifications and performance data.
3. Guidelines for technical evaluation and ranking of firms to establish the “Roster”.
4. Threshold and formal process for Second Tier competition (see WSDOT
5. *Consultant Service Manual* Appendix Y).
6. Nondiscrimination/equal opportunity for DBE consultants

When using the “Roster”, the federal aid project must be identified prior to the consultant selection process. No “Roster” consultant may be awarded more than one federal aid contract from the “Roster” at a time. When active contracts are complete, the consultant’s name will be returned to “available” status.

31.4 Negotiation With Selected Firm, A&E, and Non-A&E Professional Services

The Local Agency will notify the consultant of their selection in writing, meet with the consultant to reach a complete and mutual understanding of the scope of services, and begin negotiations on the terms of the agreement.

In this meeting with the selected consultant, the Local Agency should include key people with appropriate technical expertise within the Agency to ensure that their concerns are addressed. The following are typically discussed while developing an agreed upon scope of services:

1. A list of meetings the consultant is expected to attend, expected location of the meetings, and key personnel.
2. The anticipated design schedule. The Local Agency shall designate the basic premises and list criteria to be used in design development.
3. Any special services required.
4. Complexity of the design.
5. Safety and operational considerations.
6. Environmental considerations.
7. Survey and geotechnical testing requirements.
8. Inspection services during construction.
9. Quality control during construction.

10. Preparation of forms, letters, and documents.
11. Property map preparation.

.41 Agency Preparation for Negotiations – Following receipt of the consultant’s proposal, Agency responsibilities include:

Compare the consultant’s proposal with the Agency’s own estimate, examining the scope of work, work hours, and estimate of cost. (See [Appendix 31.94](#), Independent Estimate for Consulting Services, DOT Form 140-012.) The Agency is to prepare its independent cost estimate using:

1. The salary rates by position from the consultant’s Payroll Register.
2. Multiplying these by the Agency’s estimates of staff hours by position for work elements.
3. Apply the consultant’s overhead rate and profit/fixed fee (see below) to develop the total project staff cost estimate.

The Agency will use this independent estimate, along with estimates of nonsalary costs, to negotiate the agreement with the consultant.

1. Ensure the consultant has divided the project into work units and related time units in such a manner that the estimate can be readily reviewed for work hours, rates of pay, overhead, profit, and itemized direct nonsalary costs.
2. Request records to confirm the consultant’s rates (i.e., their Payroll Register, giving payroll rates by name and position of staff working on the project).
3. Request the consulting firm’s indirect cost rate from the WSDOT Consulting Services Office (see Section 31.6 for indirect cost rate details).
4. Calculate the consultant’s profit/fixed fee amount. WSDOT’s procedure for calculating this is described in [Consultant Services Manual M 27-50](#), Appendix AA. The fee is determined through evaluation of the following:
 - A. Degree of risk.
 - B. Relative difficulty of work.
 - C. Size of job.
 - D. Period of performance.
 - E. Assistance of agency.
 - F. Subconsulting.
 - G. An acceptable profit for a federally funded project may not exceed 15 percent of the total of direct labor plus overhead costs or the fixed fee/profit percentage may not exceed 35 percent of direct labor costs only. Maximum allowable profit percentage rates (20 to 35 percent) are reserved for the most difficult, complex, and risky projects. Mark-ups are not allowed on direct “nonsalary” costs.

H. A Management Reserve Fund (MRF) may be established to be used for:

1. Overruns of direct salary and overhead costs that might occur under the existing scope of work, or
2. The consultant to perform additional work that is outside the agreement or supplement's scope of work (but within the scope of the advertised project).

The maximum MRF set up at the beginning of the agreement is \$100,000 or 10 percent of the agreement, whichever is less. If the original MRF is less than \$100,000, the MRF may be increased by preparing a supplement to a total accumulative amount that cannot exceed \$100,000, (or exceed the cumulative 10 percent). An MRF cannot be included in a Lump Sum agreement. The Agency cannot authorize, and the consultant cannot utilize, the MRF until a task order is set up. To set up a task order, the Agency and consultant must negotiate the scope, schedule, and budget for the increase in direct salary and overhead costs, or the increase in additional work to use all or a portion of the MRF.

5. Record and retain an explanation of differences in work hours or costs between the Agency's independent estimate and the negotiated consultant fee.

.42 Agreement Types/Payment Options – The following are the types of agreements that contain acceptable methods of payment for FHWA funded projects. Consultant agreements are available at www.wsdot.wa.gov/localprograms.

1. **Lump Sum** – This type of agreement is only appropriate where the scope of work (quantity and type) can be clearly defined in advance. It is not recommended for construction engineering agreements. The agreement should state the exact service to be provided within a specific time frame, and when the lump sum payment is to be made. Payments may also be paid in installments as the work proceeds.
 - Scope of work changes and Management Reserve Funds are not allowed with this type of payment.
 - Lump sum payments are generally used for investigations, studies, and basic services on design projects. A qualified representative for the Agency must prepare, date, and sign an estimate detailing the hours required for each type of work, as well as the hourly rate. Lump Sum contracts cannot be supplemented.
2. **Actual Costs Plus a Fixed Fee** – This type of agreement is used when the extent, scope, complexity, character, or duration of the work cannot be reasonably determined in advance. The consultant is reimbursed for all eligible direct and indirect costs within defined limits, plus a predetermined amount as a fixed fee. The costs for methods 1-3 above are determined by:
 - A. Salaries of employees with time directly chargeable to the project and salaries of principals for the time they are productively engaged in work necessary to fulfill the terms of the agreement. Actual rates of pay for employees and principals actively involved in the project will be included in each agreement.
 - B. Direct nonsalary costs incurred in fulfilling the terms of the agreement. Travel costs, (excluding air, train, and rental car costs), shall be in accordance with the Agency's travel rules and procedures. Air, train and rental car costs shall be reimbursed in accordance with 48 CFR Part 31.205-46 "Travel Costs."

- C. The consultant's overhead schedule must be prepared in compliance with CFR Part 31. The indirect costs must be allowable, allocable, and properly segregated. "Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles." 23 CFR 172.11(b)(1)
- D. Management reserve funds are an Agency option and are to address overruns of direct salary and overhead costs that might occur under the existing scope of work or a need for additional work beyond the existing agreement scope of work, but within the advertised project scope of work.
- E. Profit/fixed fee is derived by considering the degree of risk, relative difficulty of work, size of job, period of performance, assistance by the Agency, and subconsulting assumed by the consultant at the time of the negotiations (see [Section 31.41](#)).

Shown as exhibits to the agreement are the consultant's estimate of work, direct labor rates, indirect cost rate and fixed fee.

- 3. **Specific Rates of Pay** – This type of agreement is based upon specific rates of pay for each class of employee and is appropriate for relatively minor items of work of indeterminable extent. This method requires constant and direct control of the time and class of employees used by the consultant. This rate of pay is established through:
 - A. **Negotiated Hourly Rate** – The rate of pay is established through use of the consultant firm's payroll register, the indirect cost rate obtained from WSDOT's Consultant Services Office, plus the calculation of the consultant's profit/fixed fee. (See [Section 31.41](#) for guidance in developing the independent estimates of these costs for use in negotiations with the consultant firm.) The following items also apply to negotiated hourly rate agreements.
 - 1. Direct nonsalary costs incurred in fulfilling the terms of the agreement. Travel costs, (excluding air, train, and rental car costs), shall be in accordance with the Agency's travel rules and procedures. Air, train, and rental car costs shall be reimbursed in accordance with 48 CFR Part 31.205-46 "Travel Costs." The consultant's overhead schedule must be prepared in compliance with 48 CFR Part 31. The indirect costs must be allowable, allocable and properly segregated.
 - 2. Profit/fee is derived by considering the degree of risk, relative difficulty of work, size of job, period of performance, assistance by the Agency, and subconsulting assumed by the consultant at the time of the negotiations (see [Section 31.41](#)). "Fixed fee means a sum expressed in U.S. dollars established to cover the consultant's profit and other business expenses not allowable or otherwise included as a direct or indirect cost." 23 CFR 172.3

Prime consultants cannot markup subconsultants contracts, however the fee (profit) should be negotiated to reflect a percentage of subcontracting relative to the percentage of work by the prime consultant. Subcontracting is then one of several considerations when determining a reasonable profit. Justification for the profit should be included in the record of contract negotiations.

.43 Agency/Consultant Negotiations – Negotiate an agreement with the selected consultant and retain a record of these negotiations (see [Appendix 31.95](#)). Negotiations may include the following:

1. The Agency negotiator and the consultant meet in person or by telephone and go over any significant areas of discrepancy between the Agency estimate and consultant proposal. Either the consultant satisfactorily explains differences or agrees to address concerns in a revised proposal.
2. The Agency reviews revised proposals and revises their detailed cost analysis accordingly. Steps 1 and 2 are repeated, if required.
3. The consultant submits a final fee proposal.
 - A. Provide a final offer in writing.
 1. The final agreement must specify the maximum amount payable.
 2. The basis for establishing the maximum amount should be documented.
 3. Procedures for adjustments to the maximum amount to accommodate changes in the work distribution or workload shall be explained.
 - B. When unresolved differences exist between the consultant and Local Agency, the Agency shall notify the Region Local Programs Engineer. The Local Programs Engineer will review and confirm that the Agency has followed all the required procedures and will notify the Agency of the finding. The Agency will then notify the consultant in writing that negotiations are terminated and proceed to the next highest ranked consultant to begin the negotiation process again. Negotiation steps and records will be repeated with the alternate consultant selected.

31.5 Consultant Agreements, Exhibits, and Supplements to Agreements, A&E, and Non-A&E Professional Services

When the **total cost** of consulting services (including supplements) is \$10,000 or more, Local Agencies must use the Local Agency Standard Consultant Agreements. (Consultant Agreement forms are available online at www.wsdot.wa.gov/localprograms. The agreement completion date establishes the last possible date the consultant may work, and be paid for that work, utilizing federal funds. **Any work performed after expiration of the agreement will be considered non-federally participating.** It is of the utmost importance that the Agency monitors the project completion date and extend the date by supplemental agreement, if appropriate, **prior** to the completion date.

The time period for completion of the agreement is dependent upon the complexity of the project's scope of work. The duration may vary from two years for a relatively simple project, to six or more years for a complex project having multiple phases of work.

.51 Vacant

.52 Supplements to the Agreements – An agreement shall be supplemented in writing when work that falls outside the scope of the original agreement is requested, when supplemental language to the consultant agreement is desired, or when there is a need for time extension or wage adjustment. This may be done by a supplemental agreement only when the agreement completion date has not expired. (Supplemental Agreement forms are available online at www.wsdot.wa.gov/localprograms.) The work in the supplement must have been included in the advertisement for consultant services regarding the original agreement.

The supplemental agreement should include:

1. A statement that the original agreement will be supplemented to add/change/amend conditions.
2. A scope of work described in sufficient detail to clearly outline what additional work the consultant is to do or what changes are authorized to the existing scope.
3. The method of payment, i.e., cost-plus-fixed-fee, specified hourly rate, daily rate, and any indirect cost. (*Note:* Always include a maximum amount payable.) Section V of the original agreement should be reviewed prior to negotiating any supplements.
4. A specific time for beginning/continuing work under the supplement and completing the project in calendar days or day and month of the year.
5. A summary of the estimated costs of the original agreement plus those of the supplement(s).
6. Provisions that give both parties of the agreement the authority to act.
7. Specific rates of pay shall be established for the supplemental agreement in the same manner as described in [Section 31.42](#), Agreement Types/Payment Options, Sub-Part d, Specific Rates of Pay.

.53 Patent or Royalty Rights – Agreements that involve research, developmental, experimental, or demonstration work may include patent or royalty rights. In this case, the Consultant Agreement should be supplemented by adding the appropriate language to account for this. The Region Local Programs Engineer is to be contacted for assistance in developing these supplemental agreements.

.54 Risk Management and Added Insurance Requirements – The Agency may change Section XII of the Consultant Agreement to reduce the requirement for the Consultant Professional Liability from one million dollars to the amount of the Agreement; whichever is the lesser of the two. This should be done for work that involves minimal risk, such as studies. For many consultant firms, covering the one million dollar liability would be an added cost to their overhead or directly to the project.

In the event the Agency determines that added liabilities or an insurance policy are warranted beyond the amount allowed in the consultant agreement, they should negotiate this with the Consultant after the selection process is complete. This ensures that engineering qualifications, rather than the ability to obtain insurance, is the criteria for selection.

The Agency will determine the sufficiency of insurance normally provided within the consultant's overhead costs, and will identify the costs beyond that amount on Exhibit H. This exhibit is not needed if the consultant agreement provisions are used.

These costs will be considered direct project costs, and will not be billed to an FHWA funded project. In the event that Exhibit H is warranted, it should be sent with the risk analysis to the Region Local Programs Engineer for approval, who will forward it to Headquarters for review, prior to execution by the Agency and the consultant.

The Agency risk analysis should show that the work warrants this added cost and that consideration has been given to less costly solutions, including assuming the risk; insuring the risk outside of the agreement as an Agency cost; or adding a third tier of engineering overview to check the work.

To calculate the risk requires an ability to judge the likely amount of a jury's award if liability is determined. A suggested method is to determine the number of comparative cases presently existing within this state and to develop the probabilities based upon historic awards.

31.6 Indirect Cost Rates

The Agency will utilize a consultant's Indirect Cost Rate (ICR) that is compliant with 48 CFR Part 31 of the Federal Acquisition Regulation (FAR), or has been approved through the Safe Harbor Indirect Cost Rate Pilot Program.

"Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles." 23 CFR 172.11(b)(1)

Once the ICR is established, "A consultant's accepted indirect cost rate for its 1-year applicable accounting period shall be applied to contracts; however, once an indirect cost rate is established for a contract, it may be extended beyond the 1-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the 1-year applicable period shall not be a condition or qualification to be considered for the work or contract award." 23 CFR 172.11(b)(3)(vi)

If a consultant does not have a FAR compliant ICR, it is their responsibility to review the eligibility requirements of the Safe Harbor program (www.wsdot.wa.gov/Audit/SafeHarbor.htm).

Consulting firms that use the Safe Harbor Rate will still be required to have an accounting system capable of accumulating and tracking direct labor and other direct costs by contract, segregating indirect costs, and removing unallowable costs. These basic accounting system functions are essential for accurate billing of costs under a cost-reimbursement contract. Additionally, the expectation will be for the firm to establish a cost history for the eventual development of a FAR compliant indirect cost rate for the firm, based on actual cost data.

Consultants who do not qualify or choose not to enroll in the Safe Harbor will be subject to a review by the WSDOT Consultant Service Office (CSO). CSO will utilize a risk assessment process to provide WSDOT the necessary assurance that the

consultant's accounting practices are FAR compliant. There are multiple tools that consultants may submit to assist CSO review such as the following:

- An audit conducted by another governmental agency that conforms to 48 CFR Part 31;
- An audit conducted by an independent CPA that conforms to 48 CFR Part 31
- A WSDOT approved ICR provided by the Internal Audit Office (IAO)

If the consultant does not have any of the above, the consultant may submit their ICR schedule to the CSO for review. The CSO will perform a review of the consultant's proposed rate using the 48 CFR part 31 to adjust line item costs on the ICR and determine a provisional ICR rate. The CSO will notify the consultant of these adjustments. The consultant will decide whether these adjustments are fair and reasonable and notify the CSO whether they agree or disagree with the determination.

If the consultant does not have an ICR, the CSO may establish a provisional ICR of 100% and a recommended fixed fee of 10% or less of direct labor and overhead. This rate would be effective from the end of the consultant's fiscal year plus 180 days.

During that time it is expected that the consultant will develop an ICR which would conform to the requirement outlined in 48 CFR Part 31. Each firm has the option of providing an Indirect Cost Rate or qualifying for the Safe Harbor program. Please choose one of those options listed below and provide the documentation listed with your request for a rate. Incomplete submission of documents for review will not be evaluated.

For the Safe Harbor Program

Documents needed include:

- Labor Checklist
- Examples of timesheets
 - For smaller firms – one for each person

Link to Safe Harbor: www.wsdot.wa.gov/Audit/SafeHarbor.htm

CSO review of an Indirect Cost Rate

Documents needed include:

- Indirect Cost Rate Schedule (ICR)
- FHWA Certification Document
- Consultant Information Worksheet
- Timesheet & Labor System Checklist

All requests for the Safe Harbor Program or for an Indirect Cost Rate review must be sent to ConsultantRates@WSDOT.WA.GOV, include the words "Local Programs" in the subject line of your email. The following information must also be included:

- Number of active local agency contracts, including the contract amount.
- Number of local agency contracts, including the contract amount for the previous fiscal year.

The documents listed above are available at www.wsdot.wa.gov/localprograms.

31.7 Submittal of Consultant Contract Data

After the execution of the consultant contract, the local agency must submit the following information to the Region Local Program Engineer:

- A signed copy of the Local Agency Consultant Agreement
- Exhibit B – DBE Participation
- Exhibit D – Prime Consultant Cost Computations
- Exhibit E – Sub-consultant Cost Computations

Failure to submit the above listed information will result in delay of reimbursement of the billed cost, until the information is received.

31.8 Oversight of the Agreement and Project Closure

The Local Agency shall assign one of its personnel as project administrator to work with the consultant. The project administrator's responsibilities are to:

1. Prepare supplements to existing agreements for services beyond the scope of the original agreement and include the Agency's independent estimate of the costs for the work involved.
2. Ensure that no work is done or costs incurred until the agreements and supplements are approved by the approving authority and executed by the proper parties.
3. Conduct regular meetings with the consultant to track progress, evaluate consultant's progress in achieving its commitments as identified in its DBE Participation Plan, and identify potential concerns.
4. Act as a liaison between the Agency and the consultant to assure compliance with the terms of the agreement, including OEO provisions and the use of mandatory forms.
5. Monitor the consultant's progress reports to ensure that problem areas are reported and corrective action taken.
6. Make sure that all work is within the agreement's scope of work.
7. Establish controls to monitor the time for completion of the agreement to ensure that the specified time limitations are not exceeded.
8. Ensure the accuracy of bills presented by the consultant and their consistency with the work performed.
9. Maintain cumulative cost records to assure that costs are allowable, allocable, and reasonable. Track bills to ensure compliance with agreement and fixed fees.
10. Review bills to ensure that the appropriate Indirect Cost Rate is being applied.
11. Establish controls to prevent overpayment of the agreement.
12. Enter monthly payments received from Local Agency and payments made to all firms into the WSDOT Diversity Management and Compliance System – DMCS (<https://wsdot.diversitycompliance.com>).

13. Monitor the DBE's for the duration of the agreement (i.e., conduct DBE on-site reviews). The Local Agency must comply with the requirements as described in Chapter 26. Termination or substitution of DBE's shall be submitted to the Region Local Program Engineer for concurrence prior to executing the contract supplement.
14. Ensure that all terms and conditions of the agreement have been met prior to final release of the consultant.

.81 Invoicing – The invoice will include the following:

1. All employees who worked on the project during the billing period;
2. The classification of each employee, the hours worked, the actual hourly payroll rate, and the amount billed; and
3. Direct nonsalary costs. Nonsalary costs should be supported for auditing purposes by copies of the invoice or billing instruments the consultant received for payment. Either the consultant or the Agency may retain these copies.

The Local Agency may disallow claimed cost, which are not adequately supported by documentation.

.82 Documentation – Original documents may include but are not limited to signed time sheets, invoices, payroll records, rental slips, and gasoline tickets that support the costs billed to WSDOT. In compliance with 48 CFR part 31, the consultant is responsible for maintaining records, including supporting documentation that costs claimed have been incurred and are allocable to the agreement. Time sheets should document hours worked, the billing rate of pay, and must be signed by the supervisor or his designee and the employee. Records will be retained for a period of three years after receipt of final payment.

.83 Closure – Upon completion of the work under the consultant agreement, the Agency will ensure that all terms, conditions of the agreement have been complied with and that all services to be performed under the agreement have been completed prior to final release of the consultant. The Local Agency should evaluate the consultant's performance and retain this in their records (see [Appendix 31.96](#)).

.84 Alleged Consultant Design Error – There may be times during a construction contract that a potential error or omission in the design is discovered. Other times an error or omission is discovered after the work is completed. [Appendix 31.97](#) establishes the procedures to follow if this occurs.

.85 Consultant Claim Procedures – Most contract claims are based on requests for additional payment beyond was agreed to when the consultant agreement was executed. There are two circumstances that usually lead to this request:

- The first is when the consultant's understanding of the consultant agreement expectations is different than that of the local agency.
- The second is when the consultant has been asked, or believes they have been asked, to perform work outside the original scope work.

[Appendix 31.98](#) outlines the procedures to be followed by both the consultant and the agency to consider a potential claim.

31.9 Appendices

- 31.91 Advertisement – Example
- 31.92(a) Submittal Information Form (Prime)
- 31.92(b) Submittal Information Form (Subconsultant)
- 31.93 Request for Sole Source Consultant Services
- 31.94 Independent Estimate for Consulting Services
- 31.95 Record of Negotiations – Example
- 31.96 Performance Evaluation Consultant Services
- 31.97 Alleged Consultant Design Error Procedures
- 31.98 Consultant Claim Procedures
- 31.99 Consultant Draft scope and Independent Cost Estimate example

**(AGENCY NAME) NOTICE TO CONSULTANTS FOR
(PROJECT NAME)**

The (AGENCY NAME) solicits interest from consulting firms with expertise in Civil and Structural Engineering Design. This agreement will be for approximately (TIME FRAME) in duration with the option for the (AGENCY NAME) to extend it for additional time and money if necessary. Consultants will be considered for the following project.

The (AGENCY NAME) reserves the right to amend terms of this “Request for Qualifications” (RFQ) to circulate various addenda, or to withdraw the RFQ at any time, regardless of how much time and effort consultants have spent on their responses.

Project Description

The work to be performed by the CONSULTANT consists of preparing preliminary engineering design for improvements to 36th Street East to Rainier Boulevard East. The proposed improvements include widening the road to accommodate four lanes of traffic, improving intersection radii, increasing left turn storage, revisions to existing signal systems in order to accommodate the proposed improvements, and construction of retaining walls to provide for roadway widening. This project has a mandatory 10% DBE goal. The major features of the project are as follows:

- Approximately 1.74 miles of widening for two additional lanes.
- Improving intersection radii to meet design standards.
- Environmental documentation and preparation of permit applications.
- Signal modifications and design.
- Structural design for retaining walls and culvert extensions/replacements.
- Determination of R/W needs and R/W plan preparation.

The (AGENCY NAME) reserves the right to retain the services of the successful firm(s) for any subsequent phases (R/W, CN) associated with this/these project(s).

Evaluation Criteria

Submittals will be evaluated and ranked based on the following criteria:

- 1) Qualification of Proposed Project Manager
- 2) Qualifications/Expertise of Firm
- 3) Ability to meet schedule
- 4) Approach to project
- 5) Familiarity with WSDOT/FHWA standards
- 6) Past Performance/References
- 7) Approach to meet the DBE goal (DBE Participation Plan)

Submittal

Submittals should include the following information: Firm name, phone and fax numbers; Name of Principal-in-Charge and Project Manager; and Number of employees in each firm proposed to project.

Please submit FOUR copies of your Statement of Qualifications to: (*AGENCY NAME, ADDRESS, and CONTACT PERSON*) no later than 10:00 a.m. on June 28, 2015. Submittals will not be accepted after that time and date. Any questions regarding this project should be directed to (*AGENCY CONTACT PERSON*), at (*AGENCY PHONE*).

Americans with Disabilities Act (ADA) Information

The (*AGENCY NAME*) in accordance with Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA), commits to nondiscrimination on the basis of disability, in all of its programs and activities. This material can be made available in an alternate format by emailing (*AGENCY CONTACT PERSON*) at (*EMAIL ADDRESS*) or by calling collect (*AGENCY PHONE*).

Title VI Statement

The (*AGENCY NAME*) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.”

Dates of publication in the (*NEWSPAPER of RECORD*): June 7, 2015, and June 14, 2015.

Submittal Information Form (Prime)

Project Name or Roster Category: Click here to enter text.

Prime

Firm Name: Click here to enter text.

Address: Click here to enter text.

Phone: Click here to enter text.

Fax: Click here to enter text.

Company Website: Click here to enter text.

Federal Tax ID Number: Click here to enter text.

Unified Business Identifier Number: Click here to enter text.

D/M/WBE Certification Number: Click here to enter text.

Year Firm Established: Click here to enter text.

SIC Code (Name): Click here to enter text.

NAICS Code (Name): Click here to enter text.

Contact Person Regarding This Submittal's Information: Click here to enter text.

Firm Type

- | | | |
|--|---|--|
| <input type="checkbox"/> Sole Proprietor | <input type="checkbox"/> Partnership | <input type="checkbox"/> C – Corp. |
| <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Subchapter S Corp. | <input type="checkbox"/> Limited Liability Company |

Annual Gross Receipt

- | | | |
|---|---|--|
| <input type="checkbox"/> \$0 to \$1 Million | <input type="checkbox"/> \$1 Million to \$5 Million | <input type="checkbox"/> \$5 Million to \$10 Million |
| <input type="checkbox"/> \$10 Million to \$15 Million | <input type="checkbox"/> Over \$15 Million | |

Firms Areas of Expertise

Click here to enter text.

Note:

Firm Name: Please ensure that the firm name listed is the same firm name that is legally assigned to the federal tax ID number. Please **do not** use: DBA's – Doing Business As; Combination names when two firms are working together; derivatives of your legal name; Acronyms; etc.

Unified Business Identifier (UBI) Number: If your firm does not have a UBI number for Washington State, please put pending in the box. You will be required to acquire a UBI Number if you are awarded the contract.



True Cost Parcel Worksheet

Project: Click here to enter text.

Parcel # Click here to enter text.

Notes: Click here to enter text.

Assessor's Tax Parcel Number(s): Click here to enter text.

Zone Size Min. = Click here to enter text.

Assessed Value Land = Click here to enter text.

A.V. Bldg.#1 = Click here to enter text. Bldg.#2 = Click here to enter text. Bldg.#3 = Click here to enter text.

Bldg.#4 = Click here to enter text.

Total Property Assessed Value = Click here to enter text.

R/W Map Info

Before Area = Click here to enter text. Fee Take = Click here to enter text. After Area = Click here to enter text.

Permanent Esmt Take = Click here to enter text.

Temporary Esmt Take = Click here to enter text.

Property Costs:

Total Take = Click here to enter text. (total property A.V. x 1.20) = \$ Click here to enter text.

Or

Partial Take:

Fee Land = Click here to enter text. @ \$Click here to enter text. (A.V. land per unit) x 1.20 = \$ Click here to enter text.

Yard/Site Improvements in Take @ Administrative Lump Sum = \$ Click here to enter text.

Major Building in Take @ (A.V. of Bldg. # Click here to enter text.) x 1.20 = \$ Click here to enter text.

Perm. Esmt. = Click here to enter text. @ \$ Click here to enter text. (A.V. land per unit) = \$ Click here to enter text.

Temp. Esmt. = Click here to enter text. @ \$ Click here to enter text. (A.V. land per unit) x 10% = \$ Click here to enter text.

TOTAL PROPERTY COSTS (put in column 2 of True Cost) = \$ Click here to enter text.

Administrative Costs (put in respective columns of True Cost):

- 1. Appraisal Fee = Click here to enter text.
- 2. Appraisal Review Fee = Click here to enter text.
- 3. Negotiation Fee = Click here to enter text.
- 4. Title and Escrow Fee = Click here to enter text.
- 5. Prop. Mgmt. Services = Click here to enter text.
- 6. Relocation Services = Click here to enter text.
- 7. Relocation Payments = Click here to enter text.
- 8. Condemn & Incidentals = Click here to enter text.

True Cost Estimate

1 Parcel Number	2 Just Compen (Offer)	3 Appraisal Fee Costs	4 Appraisal Review Fee Costs	5 Negotiation Fee Costs	6 Title, Escrow Costs	7 Prop. Mgmt. Service Costs	8 Relocation Service Costs	9 Relocation Payments	10 Condemn. and Incid. Costs	11 Total Parcel Costs
Total R/W Costs										

Project: Click here to enter text.

Date: Click here to enter text.

FA #: Click here to enter text.

Request for Sole Source Consultant Services

**Checklist for Submitting a Request for Sole Source Consulting Services
(Adapted in part from a WSDOT Memorandum:
Request for Consultant Services, A&E Services Project Specific Sole Source)**

The following checklist must be provided with requests to use sole source consultant services, rather than competitive bid procedures, on a project:

Agency: [Click here to enter text.](#)

Date: [Click here to enter text.](#)

Project Title: [Click here to enter text.](#)

Federal-Aid Number: [Click here to enter text.](#)

1. Checklist for a Supplement to an Existing Agreement

Description of the Existing Project:

Initials	Date or N/A	Checklist Items for a Supplement to an Existing Agreement
		Date the project was originally advertised.
		Date the original Agreement was executed.
		Completion date of the original Agreement.
		Total dollar amount of the original Agreement Click here to enter text.
		Date Supplemental Agreement Number 1 was executed.
		Completion date of Supplemental Agreement Number 1.
		Total dollar amount of Supplemental Agreement Number 1.
		Describe the reason(s) for Supplemental Agreement Number 1.

(*Note:* Using an electronic form of this checklist, provide the above information for each existing Supplemental Agreement, numbering the Supplements sequentially.)

2. Checklist for Both a New Agreement and Supplement to an Existing Agreement

Initials	Date or N/A	Checklist Items – New and Supplements to Agreements
		Describe the proposed project for the Sole Source Agreement: Click here to enter text.
		State the specific intended purpose of the Agreement and describe the services and/or deliverables that are needed: (<i>Note:</i> If two or more phases of work are anticipated, describe each phase separately.) Click here to enter text.
		Date that the sole source consulting services are desired. Click here to enter text.
		Duration of work/phase 1 of work Click here to enter text.

Initials	Date or N/A	Checklist Items – New and Supplements to Agreements
		<p><i>(Repeat this line for each phase of work, numbering them sequentially.)</i></p> <p>Describe the funding sources of the project (including participation percentages):</p> <p>Click here to enter text.</p>
		<p>Provide the estimated cost of the services that will be performed by the sole source consultant”:</p> <p>Click here to enter text.</p>
		<p>Provide the estimated cost of services to be provided by a subconsultant:</p> <p>Click here to enter text.</p>
		<p>Describe the work to be performed by a subconsultant:</p> <p>Click here to enter text.</p>
		<p>Provide justification for the use of sole source consultant services (i.e., how it was determined that competitive procurement is not appropriate for this project) by giving an explanation to the items listed below:</p> <p>Click here to enter text.</p>
		<p>Describe the unique nature of the services and/or the unique qualifications, abilities or expertise of the consultant to meet the agency’s needs (e.g., describe how they are highly specialized or one-of –a-kind, include other factors which may be considered, such as what is their past performance, cost effectiveness [learning curve], and /or the follow-up nature of the required services):</p> <p>Click here to enter text.</p>
		<p>Describe other special circumstances which may be relevant, such as confidential investigations, copyright restrictions or time constraints. If time constraints are applicable, identify when the agency was on notice of the need for the services and the entity that imposed the constraints, explain the authority (if not obvious) of the entity to impose them, and provide the timelines within which the work must be accomplished.</p> <p>Click here to enter text.</p>
		<p>Describe the availability of consultants in the location required (e.g., if the proposed consultant is the only source available in the geographical area, state the basis for this conclusion and the rationale for limiting the size of the geographical area selected):</p> <p>Click here to enter text.</p>
		<p>Disadvantaged Business Enterprise (DBE) goals may apply on a federally funded project. Explain reason(s) for waiving DBE participation goals:</p> <p>Click here to enter text.</p>

Agency

Signature of Agency Official

Date

Recommended Approval

Region Local Programs Engineer

Date

Approval

Local Programs

Date

Appendix 31.94

Independent Estimate for Consulting Services

Independent Estimate For Consultant Services Worksheet

Agency:	Federal Project No.:
Project Name:	
Prepared By:	Date:

Type of Services	Estimated Cost	Comments
Planning		
Surveying		
Project Management		
Geotechnical Engineering		
Geometrics / Hydraulics Engineering		
Structural Engineering		
Traffic Engineering		
Environmental & permitting		
Public Involvement		
Real Estates Services		
Architectural Services		
Mechanical / Electrical Engineering		
Construction Management		

Total \$0.00

Indirect Cost Rate Cost (in percent) _____ \$0.00
 Fix Fee (in percent) _____ \$0.00

Reimbursable

A. Travel and Per Diem _____
 B. Reproduction Expenses _____
 C. Computer Expense _____
 D. Communication _____
 E. Sampling and Testing _____
 F. Outside Consultants _____
 G. Other _____
 Total: \$0.00

Sub-Total \$0.00

*Contingencies _____ *Contingencies \$0.00

* Use only on Cost plus Fix Fee agreement **Grand Total \$0.00**

Appendix 31.95

Record of Negotiations – Example

Name and Job Title: John Doe, PW Contracts Manager

_____ (signature)

Action	Date
1. Consulting firm of Acme Consulting selected.	2/15/99
2. Independent cost estimate of \$953,000.00 prepared by agency to address the following*: Develop design for Timermann Rd. Realignment from MP 53 to MP 57; including pre-engineering services of biological assessment, & NEPA/SEPA documentation.	2/25/99
3. Meeting held with consultant to ensure thorough understanding of the scope of work.	2/20/99
4. Consultant provided scope of work; request for proposal solicited.	2/15/99
5. Consultant submitted proposal in the amount of \$1,203,000.00.	2/27/99
6. Agency compared proposal with independent estimate and negotiation objectives were established	3/3/99
7. Agency negotiator contacted/met with the consultant and identified the following as items which needed revision (i.e., excessive or insufficient principal/ management involvement, high overhead, unallowable costs). **Mark-ups on two subconsultants for environmental work not allowable; overhead rate of 35 percent too high based on nature of the work and degree of risk; consultant management and principal attendance redundant at meetings; subconsultant time excessive*	3/5/99
8. Agency revised detailed cost estimate based on negotiations.**	3/15/99
9. Consultant submitted revised proposal with following changes: ** Removed \$53,000 in subconsultant mark-ups; overhead rate reduced to 26 percent; reduced management attendance with principal to two meetings.*	3/20/99
10. Agency accepted final fee proposal of \$1,000,000.00 to address the following: Develop design for Timermann Rd. Realignment from MP 53 to MP 57; including pre-engineering services of biological assessment, and NEPA/SEPA documentation to be completed by Ace Engineering Services as subconsultant.*	3/23/99
11. (or alternately) Agency could not agree to final proposal and notified the consultant in writing of this fact.	3/23/99

The negotiations were conducted in good faith to ensure the fees were fair and reasonable. The procedures outlined in this manual were followed.

*Additional detail should be expanded upon with documentation.

**These steps should be repeated as often as necessary, with documentation.

This example has been simplified and does not include the level of detail typically found in a complete record of negotiations.



Performance Evaluation
Consultant Services

Consultant Name		Evaluation Type <input type="checkbox"/> Interim <input type="checkbox"/> Subconsultant <input type="checkbox"/> Final	
Consultant Address		Project Title	
		Agreement Number	
Type of Work <input type="checkbox"/> Study <input type="checkbox"/> Design <input type="checkbox"/> R/W <input type="checkbox"/> PS&E <input type="checkbox"/> Other (Specify Below):		Type of Agreement <input type="checkbox"/> Lump Sum <input type="checkbox"/> Hourly Rate <input type="checkbox"/> Cost Plus Fixed Fee <input type="checkbox"/> Other	
Complexity of Work <input type="checkbox"/> Difficult <input type="checkbox"/> Routine	Date Agreement Approved		
Amount of Original Agreement \$	Total Amount Modifications \$	Total Amount Agreement \$	
Completion Date Including Extensions	Actual Completion Date	Actual Total Paid \$	
Type and Extent of Subcontracting			

Performance Rating Scale (From Average Score Below)				
10	9	8	7	6
Superior		Above Reqmnts		Meets Reqmnts
				Below Reqmnts
				Poor
4	3	2	1	
Criteria		Comment		Score
1. Negotiations Cooperative and responsive.				
2. Cost / Budget Complete within agreement budget including supplements.				
3. Schedule Complete within agreement schedule including supplements.				
4. Technical Quality Met Standards.				
5. Communications Clear, Concise Communication (Oral, written, drawings).				
6. Management Team player. Managed subs. Accurate, timely invoices. <u>Appropriate, periodic, accurate progress reports</u>				
Total Score				
Average Score (Total Score / Number of criteria rated)				

Rated By (Project Manager Name and Title)	Project Manager Signature	Date
Rated By (Area Consultant Liaison Name and Title)	Area Consultant Liaison Signature	Date
Executive Review (Name and Title)	Executive Signature	Date

DOT Form 272-019 EF
Revised 3/2002

Distribution: Original: Consultant
Copies: Project Manager - Area Consultant Liaison - Consultant Services Office

Performance Evaluation Instructions

How

- Form should be reviewed and discussed with the Consultant prior to contract negotiations. Establish your expectations.
- Supplementary forms are available from the Consultant Services Office which expand the considerations for each criteria (e.g. "Schedule: A. Achieved schedule; B. Prompt response to review comments; C. Adapted to changes by WSDOT; D. Notified WSDOT early, regarding schedule impactors").
- If evaluation criterion number 7, "Other" is relevant (e.g. public involvement or volume of work) that criterion must be specified and mutually agreeable in advance.
- Score accurately. A "7" is respectable; "9" is exceptional, it should be rare.

When

Final Evaluation

- Always complete and distribute a performance evaluation at the point of termination of the agreement.
- See distribution at bottom of form.

Interim Evaluation

- Interim evaluations should be performed as follows:
 1. At phase transitions.
 2. When any project management changes occur.
 3. To alert a consultant to poor performance.
 4. Annually if none of the other conditions occur.
- Distribute as usual.

Subconsultant Evaluation

- For subconsultants with significant project participation (more than \$100,000) an evaluation is recommended. Ensure coordination and review with the prime consultant prior to distribution.
- Distribute similar to usual. Include prime consultant and subconsultant.

Why

- Scores from these evaluations factor into "Past Performance" ratings, which are used to help determine selection of future consultants. Meaningful evaluations help us hire the best.



Consultant Services Evaluation Supplement

Consultant Name	Evaluation Type <input type="checkbox"/> Interim <input type="checkbox"/> Subconsultant <input type="checkbox"/> Final
Consultant Address	Project Title
	Agreement Number
Performance Rating Scale (From Average Scores)	
$\frac{10}{\text{Superior}}$ $\frac{9}{\text{Above Reqmnts}}$	$\frac{8}{\text{Meets Reqmnts}}$ $\frac{7}{\text{Below Reqmnts}}$ $\frac{6}{\text{Below Reqmnts}}$ $\frac{5}{\text{Below Reqmnts}}$ $\frac{4}{\text{Below Reqmnts}}$ $\frac{3}{\text{Below Reqmnts}}$ $\frac{2}{\text{Poor}}$ $\frac{1}{\text{Poor}}$

Negotiation and Cost / Budget Criteria

1. Negotiations	
Sub-Criteria	Score
A. Adhered to WSDOT guidelines on fee.	
B. Met negotiation schedule.	
C. Open and honest communications.	
D. Willingness to compromise.	
E.	
F.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Comments	

2. Cost / Budget	
Sub-Criteria	Score
A. Finished within budget, including all supplements.	
B. Appropriate level of effort.	
C. Reasonable direct, non-salary expenses.	
D.	
E.	
F.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Comments	

Schedule and Technical Quality Criteria

Consultant Name	Agreement Number
-----------------	------------------

3. Schedule	
Sub-Criteria	Score
A. Achieved schedule (Including all supplements).	
B. Prompt response to review comments.	
C. Adapted to changes by WSDOT.	
D. Notified WSDOT early regarding schedule "impactors."	
E.	
F.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Comments:	

4. Technical Quality	
Sub-Criteria	Score
A. Work products meet standards; where "practical."	
B. Performed appropriate quality control.	
C. Responds to review comments in subsequent submission.	
D. Sought opportunities to incorporate innovative designs.	
E. Delivered "compatible" electronic files.	
F. Implemented procedures to control construction costs.	
G.	
H.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Comments:	

Communication and Management Criteria

Consultant Name	Agreement Number
-----------------	------------------

5. Communications	
Sub-Criteria	Score
A. Produced clear, concise oral and written communication.	
B. Demonstrates an understanding of oral and written instructions.	
C. Communicated at intervals appropriate for the work.	
D. Respects and uses lines of communications.	
E.	
F.	
G.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Comments:	

6. Management	
Sub-Criteria	Score
A. Provided creative cost control measures / ideas.	
B. Submitted appropriate, periodic, accurate progress reports.	
C. Accurate and timely invoicing.	
D. Conducted meetings efficiently.	
E. Limited the number of consultant-initiated contract modifications / supplements.	
F. Coordinated with WSDOT effectively; was a "team player."	
G. Responsive	
H. Managed subconsultants effectively.	
I.	
J.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Comments:	

The purpose of this appendix is to establish a procedure to determine if a consultant's alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

Step 1 Potential Consultant Design Error(s) is Identified by Agency's Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Local Programs Engineer should be informed and involved in these procedures. (*Note:* The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

Step 3 Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

Step 4 Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.
- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Step 5 Forward Documents to Local Programs

For federally funded projects all available information, including costs, should be forwarded through the Region Local Programs Engineer to LP for their review and consultation with the FHWA. LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, LP will request assistance from the Attorney General's Office for legal interpretation. LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

The purpose of this appendix is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This appendix will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will meet with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

Step 3 Preparation of Support Documentation Regarding Consultant's Claim(s)

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency's summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

Step 4 Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

Step 5 Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 Preparation of Supplement or New Agreement for the Consultant's Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.

Appendix 31.99

Consultant Draft scope and Independent Cost Estimate example

Independent Estimate For Consultant Services Worksheet

Agency:	Example	Federal Project No.:	xxxx(xxx)
Project Name:	Main Street Safety Improvements		
Prepared By:	Project Engineer	Date:	10/31/16

Draft Project Scope:

- Approximately 1.74 miles of widening for two additional lanes on Main Street
- Improving intersection radii to meet design standards and ADA
- Environmental documentation and preparation of permits
- Structural design for retaining walls
- Construction administration

Type of Services	Estimated Cost	Comments
Planning		
Surveying	\$3,600.00	2-person crew / one week
Project Management	\$15,740.00	10% of project
Geotechnical Engineering		
Geometrics / Hydraulics Engineering	\$90,000.00	3-person team / 15 weeks
Structural Engineering	\$9,600.00	Walls / 1-person 4 weeks
Traffic Engineering	\$2,200.00	WZTC - 1 person 1 week
Environmental & permitting	\$10,000.00	NEPA/Section 106/Permits
Public Involvement		
Real Estates Services		
Architectural Services		
Mechanical / Electrical Engineering		
Construction Management	\$42,000.00	1.75-person team / 60 days
Total	\$173,140.00	

Indirect Cost Rate Cost (in percent)	<u>170.00%</u>	<u>\$294,338.00</u>
Fix Fee (in percent)	<u>30.00%</u>	<u>\$51,942.00</u>

Reimbursable

A. Travel and Per Diem	<u>\$2,000.00</u>
B. Reproduction Expenses	<u>\$3,000.00</u>
C. Computer Expense	<u> </u>
D. Communication	<u> </u>
E. Sampling and Testing	<u> </u>
F. Outside Consultants	<u> </u>
G. Other	<u> </u>
Total:	\$5,000.00

Sub-Total \$524,420.00

*Management Reserve	<u>\$10,000.00</u>	*Management Reserve	<u>\$10,000.00</u>
---------------------	--------------------	---------------------	--------------------

* Use only on Cost plus Fix Fee agreement **Grand Total** **\$534,420.00**

34.1 General Discussion

The primary objective of the Local Bridge Program (LBP) is to ensure public safety through inspection, rehabilitation, and replacement of bridges that meet the requirements for inclusion in the National Bridge Inventory (NBI) as defined by the National Bridge Inspection Standards (NBIS). The bridges that would be eligible for rehabilitation and or replacement using federal funds are described in [Section 34.41](#).

This chapter describes the national requirements for bridge inspection programs and for selecting bridge projects to be funded using federal funds.

34.2 Bridge Condition Inspection Program

A methodical Bridge Inspection Program is required for agencies that want to qualify for LBP funds.

The Federal Highway Administration (FHWA) has set the national standards for the proper safety inspection and evaluation of bridges in a document called the National Bridge Inspection Standards (NBIS). These standards are located in the Code of Federal Regulations, Title 23 Highways Part 650, Subpart C. The latest electronic version of the NBIS can be found online at www.fhwa.dot.gov/bridge/. Information and guidance on bridge condition inspection in Washington State is located in the *Washington State Bridge Inspection Manual* (WSBIM) M 36-64. Reference these documents for additional information on the following subjects. In the event of conflicting information or requirements between the [WSBIM](#) and [Sections 34.2](#) and [34.3](#) of this manual, the [WSBIM](#) will govern.

.21 Delegation of Bridge Program Manager Status – Each State Transportation Department is required to have an Inspection Organization responsible to inspect, or cause to be inspected, all highway bridges located on public roads that are fully or partially within the State’s boundaries, except for bridges owned by Federal agencies. The WSDOT Local Agency Bridge Engineer has been delegated as the Program Manager for county and city owned bridges. The NBIS contains provisions to allow further delegation of bridge program functions identified in §650.307(c)(2) to qualified Local Agency bridge program personnel. See [Appendix 34.54](#).

.22 Bridge Inspection Types and Frequencies – Each structure in the National Bridge Inventory (NBI) shall receive a routine inspection at intervals not to exceed 24 months except as provided in the NBIS.

Inspection frequency requirements are listed in Section §650.311 of the NBIS. These requirements are also outlined in the flowchart in [Appendix 34.52](#) and are detailed in the [WSBIM](#). The Local Programs Bridge Inventory Engineer will perform quarterly reviews of the Local Agency Bridge Inventory to ensure that bridge inspections are being performed on time. Local Agencies will be provided with lists of bridges and the projected inspection dates to cross check with their own inspection list to ensure concurrence and identify any omissions. Bridges shall be inspected in the calendar month that is the result of the current inspection month plus the assigned inspection frequency in months. This usually means the inspection will happen in the same

calendar month for future inspection years. The inspection update should be entered into the inventory within 30 days. This allows Local Programs to monitor inspection progress and provides a record of inspection date compliance. Once inspections are performed, Local Agencies have 90 days to finish the inspections report and have the data released to the NBI.

Local Agencies will be notified of bridge records that do not have current inspection dates because the field inspection has not been done or because the information has not been released to the NBI. This notification will be first in the form of email or other correspondence with the Local Programs Bridge Office. If corrections are not made within 30 days of notification, the second notification will be a formal letter of noncompliance from the Local Programs Engineering Service Manager with a corrective action plan. Finally, failure to carry out the corrective action plan will result in formal notification from the Director, Local Programs that federal funds may be restricted until compliance is met.

.23 Qualification of Bridge Inspection Personnel – Federal regulations specify the requirements for two positions within a Bridge Inspection organization:

- Bridge Program Manager – hereafter Program Manager
- Bridge Inspection Team Leader – hereafter Team Leader

The Program Manager is the individual charged with managing a specific bridge program and who has been delegated the duties of ensuring timely bridge inspection and reporting and that bridge records are current and valid. The Program Manager provides overall leadership and guidance to bridge program personnel.

Minimum Qualifications for Program Manager are:

- Registered Professional Engineer or 120 months of bridge inspection experience
- Successful completion of FHWA approved Comprehensive Bridge Inspection Training Course

The **Team Leader** is the individual in charge of an inspection team and is responsible for planning, preparing, and performing bridge inspections. The Team Leader is required to be onsite for all condition inspection activities on NBI bridges, and is responsible for inspection reporting and for accurate inventory coding. Qualified Team Leaders are certified by WSDOT and are issued an inspector identification number. Noncertified bridge inspectors are not allowed to submit bridge inspection data for NBI bridges to the inventory.

Minimum Qualifications for Team Leader are:

- Qualified Program Manager
- Or, 60 months of bridge inspection experience and successful completion of FHWA approved Comprehensive Bridge Inspection Training Course
- Or, Certified Level III or IV NICET bridge safety inspector and successful completion of FHWA approved Comprehensive Bridge Inspection Training Course
- Or, BS degree in engineering, and successfully passed EIT, and 24 months Bridge Inspection experience, and successful completion of FHWA approved Comprehensive Bridge Inspection Training Course
- Or, Associates degree in engineering, and 48 months bridge inspection experience, and successful completion of FHWA approved Comprehensive Bridge Inspection Training Course

Program Manager and Team Leader qualification requirements are listed in Section §650.309 of the NBIS and are outlined in the chart in [Appendix 34.51](#). The time requirements listed for qualification are measured by the actual time spent performing the designated activity or related tasks not by calendar years.

All applications for Program Manager delegation and Team Leader certification will be reviewed and approved by Local Programs. Program Manager delegation is issued to an individual within a specific agency that meets the qualifications, not to the agency (see [Appendix 34.54](#) to review the Bridge Program Manager Agreement). If a Bridge Program Manager leaves agency employment, and the agency desires delegation of another Program Manager, delegation to another qualified person within the agency is required (see [Section 34.21](#)). Certification of Bridge Program Manager status will be sent by hard copy letter. Bridge Inspector Team Leader certification will be acknowledged through an email response and by activation of Certified Bridge Inspector privileges in the inspection software provided by WSDOT. Any bridge certification will become part of the “Staff Qualification” file required for all bridge program personnel and which will be checked on an annual basis and during Quality Assurance (QA) reviews.

WSDOT maintains a list of qualified inspection service consultants which is available through Local Programs. Private consultants wanting to provide in-service bridge inspection services must have bridge inspectors that have been certified by WSDOT staff.

.24 Continued Certification of Bridge Inspection Personnel – Each Program Manager and Team Leader must participate in a 40 hour continuing education program to maintain certification. This program requires the following during a five-year period:

- 40 hours of bridge related training including WSDOT sponsored bridge training, bridge conferences, and other NHI Bridge Training courses.
- An approved Bridge Inspector Refresher Training course.
- Field evaluation performed by WSDOT Local Programs during QA reviews or by an agency’s Bridge Program Manager with the approval of the WSDOT Local Programs Bridge Engineer (see [Section 34.3](#)).

The expiration date of Program Managers and Team Leaders privileges are listed under Account settings in the inspection software that are updated by Local Programs after verification that the continuing education requirements have been met. Qualification reviews are performed annually and as well as the formal process during the file review during the QA process outlined under [Section 34.3](#).

Visit the Local Programs Bridge Services website at www.wsdot.wa.gov/LocalPrograms/Bridge/Training.htm.

.25 Bridge Inspection Records and File Requirements – Bridge owners are required to maintain a complete and current official bridge file for each structure included in the NBI. This file is to be maintained throughout the life of the bridge. [Chapter 2](#) of the [WSBIM](#) and [Appendix 34.55](#) list the requirements for each official bridge file and detailed guidance on what to include. In addition, the latest version of the *American Association of State Highway and Transportation Officials (AASHTO) Manual for Bridge Evaluation (MBE)*, has been incorporated by reference in the NBIS. See NBIS Section §650.313(d).

Agencies must identify bridges requiring special attention and must keep these Master Lists with the official bridge files. Lists of bridges that require special inspections such as, Fracture Critical Member Inspections, Underwater Inspections, and Complex Bridge Inspections or are singled out for deficiencies such as Load Posting or having been determined Scour Critical should be included on Master Lists.

Additionally, each local agency is required to maintain a current file on each member of the Inspection staff detailing their experience and training.

.26 Bridge Load Ratings – All NBI bridges, including new structures, require load ratings which must be stamped and signed by the Professional Engineer charged with overall responsibility for the analysis. These ratings shall be performed in accordance with the guidelines within Chapter 6 of the AASHTO MBE and must be placed in the official bridge file as discussed in [Section 34.25](#). If the current load rating is suspect because of condition changes or added dead load, a new rating shall be performed and the bridge inventory updated within 90 days of the inspection. Bridges must be posted or restricted when the maximum load carrying capacity drops below the maximum unrestricted legal load. Additional load rating requirements are available in [Chapter 5](#) of the [WSBIM](#). Once it has been determined that an in-service bridge can no longer carry legal loads, load restriction signs shall be installed within 30 days including an update to the Local Agency Bridge Inventory with correct coding that reflects the diminished bridge capacity. The inventory update shall include a photo of the posting for confirmation purposes. Load ratings for new bridges are eligible for LBP funds and should be included in the contract for bridges funded under this program. Load Ratings shall be available for inclusion in the bridge inventory record no later than 90 days from the time the bridge is put in service.

.27 Bridge Scour Analysis – A scour evaluation is required for each bridge over water. [Chapter 5](#) of the [WSBIM](#) provides guidance on performing this evaluation. The scour analysis must also yield the federal scour code as detailed in [Chapter 2](#) of the [WSBIM](#) under the Washington State Bridge Inventory System (WSBIS) Item Number 1680. This evaluation becomes part of the official bridge file discussed in [Section 34.25](#).

Plans of action for monitoring as well as scour repair plans are required for all bridges determined to be “scour critical” or to have unknown foundations. A plan of action (POA) has these primary components:

1. Development and implementation of a monitoring program.
2. Instructions regarding the type and frequency of inspections to be made at the bridge.
3. A schedule for the timely design, and construction of scour countermeasures (e.g., riprap).

Each documented plan of action should address each of these components and explain why the preferred actions were chosen. (See [Chapter 5](#) of the [WSBIM](#) for more detailed information on what should be included in each POA).

.28 Critical Damage Bridge Repair Reports – A Critical Damage Bridge Repair Report must be completed whenever a bridge is identified as having significant structural damage causing emergency load restrictions, lane closure, bridge closure, or if a bridge has failed. See additional guidance for uses of Critical Damage Bridge Repair Reports in Chapter 6 of the WSBIM.

The WSDOT Local Programs Bridge Engineer must be notified by telephone or email within one working day of identification of a problem. This notification starts a series of reports that are ultimately forwarded to FHWA. This series of reports allows the local agency, Local Programs, and FHWA to track the status of critically damaged bridges until the damage is resolved by repair or replacement of the bridge. See [Chapter 6](#) of the [WSBIM](#) for contact information, timelines, forms and procedures.

34.3 Quality Assurance and Quality Control Reviews

Local Programs conducts Quality Assurance and Quality Control (QA/QC) reviews of local agency bridge programs statewide to:

- Verify that local agency bridge inspection programs maintain a high degree of accuracy and consistency.
- Identify future training needs.
- Ensure compliance with the NBIS.

Quality Assurance (QA) is defined per [23 CFR 650.305](#) as “the use of sampling and other measures to assure the adequacy of quality control procedures in order to verify or measure the quality level of the entire bridge inspection and load rating program.” A QA review must be done by someone outside the work group.

Quality Control (QC) is defined as “procedures that are intended to maintain the quality of a bridge inspection and load rating at or above a specified level.”

The Local Programs Bridge Inventory Engineer continually performs routine Quality Control reviews on the data contained in the Local Agency Bridge Inventory. Queries are run on all bridge inventory data for verification of data consistency and correct data field correlation. In addition, updated bridge inspection data prepared by the bridge owners receives an in-depth review and corrections are made before releasing new data to the bridge inventory. The remote aspect of the QC review process is extended to incorporate additional bridge file components as they become available electronically through the bridge inspection software. This process produces a more efficient and complete review of the Agency’s program during the actual field visits.

Quality Assurance reviews are a formal review that is conducted a minimum of once every five years. This formal review consists of both a bridge file review and the field review as detailed below. See [Appendix 34.57](#) for a copy of the checklist used by Local Programs for this review.

The detailed documented policies and procedures used by Local Programs for the QA/QC reviews are located in [Chapter 7](#) of the [WSBIM](#).

Local Agency Quality Control – Each agency that has been delegated Program Manager Responsibilities by WSDOT shall have written quality control procedures in place to ensure that data submitted to the Local Agency Bridge Inventory is accurate and complete. The agency’s quality control procedures must be on file and, at a minimum, comply with the QC requirements outlined in [Chapter 7](#) of the [WSBIM](#) and be approved by the WSDOT Local Programs Bridge Engineer..

34.4 Local Bridge Program Call for Projects

Counties and cities are invited to submit bridge projects to Local Programs in response to the Local Bridge Program Call for Projects. These bridge projects must meet the federal eligibility requirements in [Section 34.41](#).

The specific application requirements may vary from biennium to biennium and will be outlined in the actual Call for Projects.

.41 Local Bridge Program Eligibility – A bridge project must fulfill the following federal criteria to be eligible for funding:

1. The bridge must be more than 20 feet in length measured along the centerline.
2. It must be recorded in the Washington State Bridge Inventory System (WSBIS).
3. For replacement and rehabilitation, the bridge must be structurally deficient (SD) or functionally obsolete (FO) with sufficiency ratings as follow:
 - a. For Replacement: less than 50
 - b. For Rehabilitation: 80 or less
4. Seismic-Paint-Scour – Eligible activities may be funded for bridges regardless of sufficiency rating. However, bridges must be scour critical or have unknown foundations to be eligible for scour projects. Routine maintenance is not eligible for funding.
5. No replacement or rehabilitation projects can have been performed using funds in the past 10 years. There is no moratorium following Seismic-Paint-Scour projects, however, the intent of this funding is for the repair to last at least 10 years.
6. Bridges with structurally deficient decks (Deck Overall codes of 4 or less) are eligible for rehabilitation regardless of sufficiency rating. The 10-year moratorium will not disqualify the candidate. However, once the deck has been replaced or rehabilitated, the 10-year rule will apply.

The Federal Highway Administration (FHWA) has developed a formula that calculates sufficiency ratings and assigns SD or FO designations. This computation is performed by the WSBIS using inventory and inspection data submitted by state and local agency bridge inspectors. The sufficiency rating is based on four factors: structural adequacy and safety, serviceability and functional obsolescence, essentiality for public use, and special reductions. Ratings can range from 0 (worst) to 100 (best). Deteriorated bridges that are in poor condition are considered Structurally Deficient (SD) and bridges with geometric configurations that are below current standards for the route they serve are considered Functionally Obsolete (FO). A sufficiency rating generator is included as part of the Bridge Works Bridge Inspection software which is available for download at www.wsdot.wa.gov/localprograms/bridge/bridgeworks.htm.

.42 Bridge Replacement Design Standards – Bridges shall be designed in accordance with [Chapter 42](#) and the following criteria:

1. **Live Load** – Load and Resistance Factor Design (LRFD) HL 93.
2. **Vertical Clearances** – Clearance over roadways is a minimum 16.5 feet. Clearance over railroads is a minimum 23.5 feet.
3. **Design-Year ADT** – Will be determined per [Section 43.21](#).
4. **Bridge Length** – The length of the replacement bridge can be affected by one or both of the following factors:
 - a. The bottom of the superstructure will be 3 feet above the 100 year flood or as determined by field review.
 - b. The abutment and pier locations(s) of a new bridge generally reduce the existing backwater elevation. The acceptable rise in the backwater elevation should meet state or local jurisdictional regulations as applicable.
5. **Bridge Type** – The bridge type selected will be the most economical type for the span length needed, based on sound engineering judgment and/or economics.
6. **Bridge Foundation Type** – The type and depth of the foundation elements will depend on the results of the geotechnical and hydraulic analyses and shall be considered scour safe (WB76-80 coded 8 or 9).

Both a load rating and a scour analysis for a new bridge shall be provided for the official bridge file. The scour analysis will consist of a summary of the hydraulic design as justification for the scour safe code.

.43 Bridge Rehabilitation Criteria – To qualify as a rehabilitation project, the total rehabilitation costs shall not exceed 70 percent of the replacement costs. Rehabilitation projects will be subject to the following requirements:

1. Structural deficiencies will be removed.
2. Structure will be brought up to current standards.
3. Completed bridge must load rate at or above an H-15 inventory rating.

.44 Seismic-Paint-Scour – Project eligibility and priority ranking is based on the Washington State Bridge Management System (BMS) element data. See [Chapter 4](#) of the [WSBIM](#) for BMS information.

.45 Eligible Bridge Costs – The following are eligible bridge costs:

1. **Bridge Construction** – All items typically detailed by bridge designers (concrete, rebar, piling, barriers, expansion dams, etc.).
2. **Bridge Aesthetics** – Limited to the treatment required in the approved NEPA documents. Typically, paints or pigmented sealers and fractured fin finishes on concrete structures will not be approved.
3. **Demolition** of existing structure(s).
4. **Detour** – All work items required to accommodate the construction of the new bridge.

5. **Traffic Control for the Work Zone** – Prorated by costs of bridge vs. approach work.
6. **Structural Excavation and Backfill for Bridge** – Includes abutments, wing walls, footings, cofferdams, etc.
7. **Riprap Protecting Bridge Structure Within the Right of Way** – Riprap placed within the right of way to protect the structure can be considered a bridge item.
8. **Approach Slab** – The approach slab is a reinforced concrete element that protects the bridge and abutments from impacts and can be considered a bridge item.
9. **Approach Guardrail Transition Section** – Approach guardrail systems are installed in accordance with Standard Plans and are considered a bridge item provided site conditions do not require unusually long transitions.
10. **Retaining Walls** (up to 20 feet maximum distance from the abutment) – Retaining walls are structural elements that serve the same functions as the standard bridge wing walls and are designed by bridge designers. Retaining walls beyond these limits would not be considered bridge items.
11. **Bridge Drainage** – Including components necessary to carry water from the structure.
12. **Environmental Mitigation** – Prorated for the bridge, demolition of existing structure, and/or detours.
13. **Mobilization** – Prorated by costs of bridge and approach work.

Approach costs will be limited to 15 percent of the above items.

.46 On-Site Field Review of Candidates – The on-site field review team verifies the condition of the bridge, review site information, and possibly requests updated or additional information. The field review is also an opportunity for the bridge owner to provide additional information related to up-front project scoping and analysis done prior to the call for projects.

- a. **Field Review Team** – The Field Review Team consists of the WSDOT Local Programs Bridge Engineer (Review Team leader), a local agency bridge owner representative, the Region Local Programs Engineer, and FHWA Division Bridge Engineer whenever possible. On non-CA agency bridges, the Field Review Team will also have a representative from the agency providing CA services for the non-CA agency. The Local Programs Bridge Engineer may add other representatives as deemed appropriate for specialized conditions.
- b. **Review Procedures**
 1. The Field Review Team conducts an on-site review of proposed bridge projects. The Field Review Team may use results of a previous review for a bridge submitted but not funded, provided the review was conducted within the past three years.

2. The Bridge Inspection Report is reviewed at the site. The Field Review Team looks for inconsistencies between condition codes, load ratings, postings, ADT, and other factors. The WSDOT Local Programs Bridge Engineer calculates an independent sufficiency rating based on codes agreed to by the review team. The final sufficiency rating may change again based on information requested by the team but not available during the field review.
3. The items submitted with the application are reviewed at the site. The Field Review Team reviews the site in detail and recommends which of three funding program best fits the condition of the bridge.
 - a. Replacement projects.
 - b. Rehabilitation projects.
 - c. Seismic-Paint-Scour-Deck Repair.
4. A consensus is reached on the appropriate funding program and estimated scope of work for the project.
5. The project cost estimate submitted by the agency is discussed in detail and revised as appropriate.

.47 Bridge Selection – A local bridge advisory committee convenes after the on-site field reviews are completed with the local agencies. A suggested list of bridge projects are presented to the committee in order of sufficiency rating, results of the field review, review team recommendations, and other pertinent information. The committee reviews all of the projects and adds comments based on a statewide approach.

The Director, Local Programs approves the final list of bridge projects based upon funding levels, delivery schedules, bridge sufficiency and committee comments. Counties and cities will receive a funding notification letter informing them that their bridge project has been approved for funding. The letter will identify the anticipated federal funding level and asks the agency to submit their request for funds through their Region Local Programs Engineer. This letter will also identify the percentage for bridge approach cost participation and any other requirements specific to the project.

The committee is comprised of seven voting members and two alternates. The committee includes four county representatives, four city representatives, with the Local Programs Engineering Services Manager serving as Chair. Alternates initially serve one year as a non-voting member then for three more years as a voting member. Alternates for either city or county may participate in the event a voting member from their respective association is absent.

.48 Project Management and Funding – The level of funding available for the bridge program falls short of meeting all of the needs on the local roadway system. With this limited funding, it is critical that the initial scope, schedule, and budget for each project be as accurate as possible. Identification of changes to the scope, schedule or budget during project delivery need to be communicated to Local Programs, the quarterly project report is the vehicle for this communication.

Updates to the project scope schedule and budget are required for all bridge replacement and rehabilitation projects and all other projects that exceed \$2.0 million are required at 30 percent and 60 percent design.

There are two situations when an agency can request additional funding.

1. **Prior to Construction Obligation/Authorization** – Prior to construction authorization, the agency is required to have all necessary funding secured. If the current engineer’s estimate exceeds the amount of funding approved for the project, the agency may submit a request to increase federal funding. Approval for the increase in funding must be received prior to construction authorization or all costs above the original amount approved for the project will be the responsibility of the agency.
2. **After Advertisement But Before Award** – If all bids received exceed the amount of funding approved for the project, the agency may submit a request to increase federal funding.

Approval for the increase in funds must be received prior to awarding the project contract or all costs above the original amount approved for the project will be the responsibility of the agency. Local Programs will send a letter to the agency approving or denying the proposed increase. If approved, the local agency must then prepare, sign, and submit a Supplemental Agreement and update the TIP/STIP and Prospectus as applicable to the Region Local Programs Engineer for further processing.

34.5 Appendices

- 34.51 NBIS Regulation – Qualifications of Personnel
- 34.52 NBIS Regulation – Inspection Frequency
- 34.53 Bridge Inspector Experience and Training Record
- 34.54 Bridge Program Manager Agreement
- 34.55 Bridge Records
- 34.56 Individual Bridge Record
- 34.57 Local Agency Bridge Program Quality Assurance Checklist

The qualified person within a Local Agency who accepts Bridge Program Manager Status:

Bridge Program Manager (Name)

Bridge Inspector Cert. No.

Mayor or Chairman

Date

Washington State Department of Transportation

Approved By:

Local Programs
Engineering Services Manager

Date

A 34.55.1 General

The on-site inspection of each bridge is important for gathering information about the bridge's structural condition and adequacy. This information must be stored as a permanent bridge record. Such a record provides a useful and accurate history. It also contains information on previous repairs and provides others with ready access to information.

Each agency is responsible for maintaining a bridge file for each bridge within its jurisdiction. A detailed list of information that should be in the bridge file is listed and described in Chapter 2 of the *Washington State Bridge Inspection Manual* (WSBIM) M 36-64. Another reference for a detailed list of the information that should be included in the bridge file can be found in American Association of State Highway and Transportation Officials (AASHTO). The Manual for Bridge Evaluation, Second Edition, 2011. When inclusion of this information in the bridge file is not possible or impractical, reference to the location where it can be found will suffice.

In addition, agencies are required to maintain a record of other general information. This information may be requested during the quality assurance review of the bridge inspection program. The following general information should be on file:

- An experience and training record for each lead inspector.
- A master list of all bridges within the agency's jurisdiction. This list should identify bridges that have fracture critical members, require underwater inspection, and/or warrant special inspection because of their design features, location, or strategic importance.

A 34.55.2 Individual Bridge Records

A permanent record on each bridge must be maintained. This record provides a history of the bridge's condition, maintenance, and inventory data. This information must be kept current.

1. **Washington State Bridge Inventory System (WSBIS) Inventory Coding Form** – A copy of the completed WSBIS Inventory Coding Form must be in the bridge file as a ready source of the current bridge information. The procedures for establishing, maintaining, and updating the inventory information is described in detail in WSBIM [Chapter 2](#).
2. **Bridge Inspection Reports** – Copies of all on-site inspection reports must be kept in the individual bridge file and must be signed by the Team Leader responsible for the inspection. The reports provide specific details about the bridge's condition, how conditions have changed over time, and any previous repairs or maintenance performed. This information is reviewed prior to each bridge on-site visit to prepare the inspector for the conditions or problems they may encounter. Procedures for completing bridge inspection reports are covered in WSBIM [Chapter 3](#) and in the Federal Highway Administration (FHWA) *Bridge Inspector Reference Manual* (BIRM).

3. **Critical Damage Bridge Repair Report** – A copy of the Critical Damage Bridge Repair Report must be kept in the bridge file. This report provides evidence that formal recommendations to correct major bridge damage were made and acted upon in a timely manner, ensuring the safety of the public. See WSBIM [Chapter 6](#) for more information.
4. **Photographs** – Labeled and dated copies of elevation and deck photographs of the bridge must be kept in the bridge file. The label should include the structure ID, bridge name, bridge number, inspector’s initials, and a description including orientation. Whenever the bridge’s condition changes, new photographs should be taken and added to the file. An agency may also keep on file photographs of problems or deficiencies discovered at the bridge (e.g., section loss in a deteriorating piling or significant spalling on a bridge deck). These photographs can provide documentation of existing or developing problems that could lead to repairs. Deterioration requiring a repair should be documented with a photo. The photo is then referenced in the note describing the deterioration and in the repair note initiating the repair. Once the repair is complete, a follow up photo is taken as part of the repair verification procedure.
5. **Plans** – Most bridges will have detailed design plans used for the construction of the bridge and final drawings reflecting the as-built condition of the bridge. These plans should be kept in the bridge file or a note should be included with location of any plans that are too bulky to fit in the file itself. If these plans are not available, a detailed sketch of the bridge needs to be made showing bridge length, width, span length, clearances, and a typical section with bridge materials and dimensions.
6. **Load Rating and Scour Evaluations** – Information necessary for inclusion in the bridge file for load ratings and scour evaluations are detailed in WSBIM [Chapter 5](#).

A copy of the stamped, signed, and dated load rating must be kept in the bridge file. Include a note in the bridge file with location of any load rating that is too bulky to fit in the file itself. Load test data should be included for any field load tests.

Scour evaluations are to be performed for all structures over bodies of water and shall be included in the bridge file. The scour evaluation shall include the calculations and/or narrative to justify the code entered into – WSBIS Item Number 1680. If a bridge is determined to be scour critical, a scour Plan of Action shall also be developed for that structure.

All structures over water shall also be required to have channel cross-sections (soundings) taken at the upstream side of structure to monitor scour and channel migration at the site. Suggested frequencies for cross-sections can be found in Chapter 5 of the WSBIM.
7. **Correspondence** – All letters regarding the inspection, maintenance, or ownership of the bridge should be kept in the bridge file. This may include correspondence from FHWA, WSDOT, other agencies, and/or individuals.

8. **Inspection Procedures** – Each agency is required to develop and maintain procedures that address the special features of a bridge. Special features include fracture critical members, underwater elements, or any other feature requiring special inspection due to location, strategic importance, or special design features.

The members that require an underwater inspection shall be identified and the inspection procedures specified. Waters deeper than 4 feet will normally require a diver that is trained in bridge inspections. Wading types of inspections can usually be performed by regular bridge inspection teams as part of the structural inspection. Detailed procedures for conducting these inspections are in WSBIM [Chapter 3](#).

9. **Other Information** – All other information gathered about the bridge should be kept on file. This includes details about maintenance work performed, special reports or studies, heat straightening, damage, and paint reports.

A 34.55.3 Master List

The purpose of a master list is to assist in the management of non-routine inspections, bridges needing special inspection and/or inspection equipment. Each agency is required to maintain a master list of:

- Bridges with fracture critical members.
- Bridges requiring underwater diving inspections.
- Bridges with special features (e.g., segmental bridges).

It is recommended that each agency maintain a master list of:

- Bridges that are scour critical.
- Load posted bridges.
- Bridges requiring an Under Bridge Inspection Truck to inspect limited access members.
- Short span bridges.
- Bridges needing repairs.
- Bridges needing traffic control for routine inspections.
- Fatigue cracked bridges.
- Environmentally sensitive bridges.
- Bridges needing deck replacement.
- Bridges that are seismic vulnerable.
- Bridges needing painting.

This information can be used to plan, schedule, and monitor the special inspections. At a minimum, the following information must be included for each bridge:

- Bridge type and location.
- Type and frequency of inspection required.
- Location of particular members to be inspected.
- Inspection procedures to be used.
- Type of special equipment required.
- Previous inspection dates.
- Most recent inspection findings.
- Any follow-up action taken as a result of the most recent inspection findings.

Bridges are added to the master list when they are identified as needing an underwater, fracture critical, or special features inspections. As these inspections are performed, the master list is updated with the most current information. Bridges are kept on the master list throughout their service life, unless the bridge's category (e.g., fracture critical, special features) changes.

A 34.55.4 Bridge Construction Files

Bridge construction files should include the following:

- Construction Plans
- As-built Drawings
- Specifications
- Shop and Working Drawings
- Material Certification
- Material Test Data

A 34.55.5 Short Span Bridges

Short span bridges (see WSBIM [Chapter 3](#)) are bridges or multiple culverts having an opening of 20 feet or less. The short span bridges are generally not reported to the Federal Highway Administration. Washington State encourages the reporting of short span bridge information because of concerns about their condition and possible maintenance repairs required.

A 34.55.6 Inspector Qualifications

The NBIS outline the minimum training and experience required for the head of the bridge inspection organization or Program Manager and the lead bridge inspector or Team Leader. Each agency is required to maintain a record of qualifications for each of its bridge inspection personnel. The agency needs to include the names and qualifications of each individual performing bridge inspections.

The Bridge Inspector Experience and Training Record Form was developed for this purpose. The form is completed by the head of the bridge inspection organization who verifies that lead inspectors meet the qualifications. The completed form is sent to the WSDOT Local Agencies Bridge Engineer for review and the issuance of a bridge inspector identification number. This number is required on the inspection reports. A copy of the completed form is kept on file with the agency.

Each agency is responsible for keeping this information current. During the quality assurance review process, agencies may be asked to verify the qualifications of their inspectors.

Initials	Date or N/A	
_____	_____	Load Rating (WSBIM Chapter 5)
_____	_____	_____ Stamped, signed, and dated by Professional Engineer
_____	_____	_____ WB72-93 coded correctly per load rating
_____	_____	_____ Bridge is posted if necessary
_____	_____	_____ Bridge is included on master list of posted bridges
_____	_____	_____ WB76-60 coded correctly
_____	_____	_____ WB75-51 through WB77-55 correctly coded
_____	_____	_____ Location if not in individual bridge file
_____	_____	General Correspondence
_____	_____	Inspection Procedures (WSBIM Chapter 3)
_____	_____	_____ Bridge is Fracture Critical
_____	_____	_____ Bridge is on Fracture Critical Master List
_____	_____	_____ Fracture Critical procedures
_____	_____	_____ Bridge requires underwater inspection
_____	_____	_____ Bridge is on Under Water Inspection Master list
_____	_____	_____ Underwater Inspection procedures
_____	_____	_____ Bridge is Complex
_____	_____	_____ Bridge is Complex Bridge Master List
_____	_____	_____ Complex Bridge Inspection Procedures
_____	_____	Maintenance Records
_____	_____	_____ Maintenance recommendations on inspection report
_____	_____	_____ Maintenance initiation (signed, dated)
_____	_____	_____ Maintenance completed (signed, dated, description)
_____	_____	Other Information
_____	_____	_____ Special reports

44.1 General Discussion

After a project's location and design have been approved, work begins on the final version of the plans, specifications, and cost estimates (PS&E). These documents are used to award and administer a construction contract. The PS&E must be approved as defined in [Chapter 13](#), Becoming Certified to Administer FHWA Projects, before the project can be advertised for construction.

PS&E approval is done by the local agency as identified in the Washington State Department of Transportation (WSDOT)/Local Agency Certification Acceptance (CA) Agreement. The approving authority identified on the CA Agreement must approve the plans and specifications and document that approval, and a professional engineer licensed in the state of Washington must seal and date the plans and specifications.

The local agency should use the Project Development Checklist ([Appendix 14.52](#)) to check for completeness of the contract plans prior to approving them.

The local agency must maintain a commitment file, when applicable. This must contain a summary of all commitments made during the development of the project. The file should be reviewed to ensure that the commitments that apply to the contractor are incorporated in the PS&E. This file must also include commitments the local agency is responsible for completing, such as annual reporting to resource agencies. It is the local agency's responsibility to ensure this file is updated to show when these commitments were completed. Commitments typically involve right of way, maintenance and/or environmental considerations.

A copy of the preliminary PS&E must be submitted to the Region Local Programs Office for concurrence prior to Advertisement. An Ad-ready copy shall also be furnished to the Region Local Programs Engineer prior to advertisement. If the local agency would like WSDOT to prepare the Record of Materials (ROM), an additional copy is also needed.

In addition, any local agency project with work on, over or below state routes or within limited access for the interstate system requires design and traffic documentation approval and PS&E concurrence from WSDOT prior to advertisement. A WSDOT general permit may also be required prior to Ad. The Region Local Programs Engineer can assist in coordinating these approvals.

On WSDOT ad-and-award projects, WSDOT will review and concur with the PS&E prior to printing contract plans and specifications. An estimate of the cost of this service can be obtained from the Region Local Programs Engineer. Refer to forms for a checklist.

44.2 PS&E Requirements

.21 Wage Rates – For information on state law requirements, contact the Municipal Research and Services Center for a listing of current laws. State and federal wage rates must be included for all Federal Highway Administration (FHWA) projects advertised by a local agency. The wage rates used will reflect the latest rates approved by the Washington State Department of Labor and Industries (L&I) and the U.S. Department of Labor. Refer to [CFR 29 part 30](#) and [RCW 39.12](#) and [RCW 49.28](#).

The Federal Davis-Bacon Act predetermined minimum wage must be paid to all covered workers on federal aid projects exceeding \$2,000 that are located on a route which is classified as a federal aid highway (Principal Arterial, Minor Arterial or Collector). The Davis-Bacon requirements do not apply to force account work performed by agency forces.

The applicability of Davis-Bacon is dependent on the relationship or linkage of the project to a federal aid highway. If the project is “linked” to a federal aid highway based on proximity or impact (i.e., without the federal aid highway the project would not exist), then Davis-Bacon requirements apply. Examples of such projects include the removal of outdoor advertising, a wetland to filter highway drainage, etc. Please contact your Region Local Programs Engineer to determine if Davis Bacon prevailing wage rates apply.

If the project is on a route classified as a rural minor collector or local access then the Davis-Bacon requirements do not apply.

Another Davis-Bacon issue is the acceptability of using volunteer labor on transportation projects. The US Department of Labor states in its Field Operations Handbook (Section 15): “There are no exceptions to Davis-Bacon coverage for volunteer labor unless an exception is specifically provided for in the particular Davis-Bacon Related Act under which the project funds are derived.” The Davis-Bacon Related Act for the Federal Aid Highway Program

(23 U.S.C. Section 113) is silent on this subject. Therefore, on projects subject to Davis-Bacon coverage, a contractor or subcontractor may not use volunteer labor. On the other hand, a state highway or local government agency may use volunteer labor under its direct control as a force account effort.

Local agencies may access the Wage Rate data file at www.wsdot.wa.gov/eesc/design/projectdev/adready/combinedwage.htm. If a local agency is not “on line,” wage rates can be requested through the Region Local Programs Engineer.

The effective date for state and federal rates is determined as follows:

- a. **State Wage Rates** – L&I will use the date that bids are due as the effective date for determining prevailing wages provided that the contract is awarded within 60 days after bids are due ([RCW 39.12](#)). If the contract is not awarded within 60 days after bids are due, L&I will determine the prevailing wage on the date the contract is awarded.

- b. **Federal Wage Rates** – This data is received from the USDOL in a document entitled “General Wage Determinations Issued Under the Davis-Bacon and Related Acts.” Modifications are issued weekly by the USDOL. The effective date for federal wage rates is the date of notice in the Federal Register or the date on which written notice is received by WSDOT, whichever occurs first. All modifications on projects to which the determination applies are effective if published before contract award.

The following are exceptions:

- The effective date for determining state prevailing wage rates shall be the date of bid opening. For contracts awarded more than six months after the bid opening date, the effective date for determining the wage rates shall be the award date.
- The effective date for determining federal prevailing wage rates shall be ten days prior to bid opening (or less if the engineer determines an addenda can be issued prior to bid opening). For contracts awarded more than 90 days after the bid opening date, the effective date for determining the wage rates shall be the award date.

Prior to bid opening, the local agency may contact the Region Local Programs Engineer to see if wage rates have changed or are pending.

To minimize the possibility of out-of-date state and federal wage rates at the time of bid opening, the wage rates should be requested from the Region Local Programs Engineer seven days before the advertising date.

.22 Other Requirements

- a. **Form FHWA-1273** – Each set of contract documents shall include Form FHWA-1273, Required Contract Provisions Federal-Aid Construction Contracts. Copies of FHWA-1273 are available from the Region Local Programs Engineer.
- b. **Affirmative Action** – See [Chapter 27](#), Equal Employment Opportunity and Training.
- c. **Disadvantaged Business Enterprises (DBE)** – In accordance with FHWA and WSDOT efforts to increase DBE participation in FHWA projects, WSDOT has developed a management-by-objective goal-setting process for DBE participation. For additional information, see [Chapter 26](#), Disadvantaged Business Enterprises.
- d. **“Buy-America” Requirements** – Steel and iron that is permanently incorporated into the project shall consist of American-made materials, as outlined in the required GSP.

The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.

Purchase of foreign steel and iron products by local agencies for installation on a federally funded project is not allowed without an approved public interest finding from Local Programs, to the limit allowed by the “Buy America” General Special Provision.

- e. **Traffic Control Plans** – Traffic Control Plans (TCP) must be included in the contract documents. TCPs shall be consistent with Part 6 of the MUTCD, low volume roads, Part 5. Detour Plans and agreements shall be included in the contract documents to demonstrate constructability. **K Plans used as a reference are NO LONGER ALLOWED. Agencies must develop contract specific traffic control plans for each contract.**

Construction projects that impact bicycle and/or pedestrian traffic must include accommodation for all impacted modes of travel in the contract Traffic Control Plans. Ensure these accommodations are in compliance with ADA standards.

- f. A **“TIED BID”** is a federal project and a non-federal project or two federal projects (otherwise separate contacts) that are advertised and bid together as a single contract. To bid the projects under a single contract, approval is required by Local Programs prior to being advertised.
- g. **Sole Source Justification** – Justification for the use of agency-supplied materials must be documented by the local agency. The materials must have been produced by agency forces or acquired through competitive bidding. Material purchased from a sole source may be used only when preapproved by Local Programs. To receive approval, submit a Public Interest Finding (PIF) for approval prior to use.
- h. **Warranty/Guarantee** – No warranty requirement shall be approved which may place an undue obligation on the contractor for items or conditions over which the contractor has no control. Warranties/guarantees shall not be included in federal aid projects or the bonds except as follows:

On NHS construction contracts a warranty can be included in the contract in accordance with the following: Warranty provisions shall be for a specific product or feature. Warranties for items of maintenance are not eligible for federal participation and will not be allowed. All warranty requirements and subsequent revisions shall be submitted to the WSDOT Region Local Programs Engineer and forwarded to Local Programs for advance approval.

On non-NHS construction contracts a warranty can be included in the contract in accordance with the following: Project warranty/maintenance provisions may be included in a project if a nonparticipating bid item and special provision is included in the contract. All other warranty requirements other than product or feature, and subsequent revisions, shall be submitted to Region Local Programs Engineer for advance approval.

.23 **Local Ad and Award Projects** – See [Chapter 46](#).

.24 **State Ad and Award Projects** – See [Chapter 45](#).

44.3 Documents Requiring Professional Stamps

The following documents require a PE stamp upon completion. The Professional Engineer with responsible charge of the project will assure that appropriate engineering reports and documents are stamped in accordance with [RCW 18.43.070](#). If a particular “Engineering Report or Document” is not listed, it is not necessarily exempt from the requirement.

The list includes:

- Design Documents
- Right of Way Plans
- Type, Size, and Location Report
- Plans, Specifications (with appropriate Division 1 approvals as outlined in [Section 44.5](#)), and Estimates, including all plan sheets.
- Special Provisions
- Temporary Erosion and Sediment Control Plan
- Plans for Falsework and Forms, normally the contractor’s responsibility
- Bridge Design Report
- Bridge Load Ratings
- As Built Plans
- Technical Change Orders
- Value Engineering Study Report
- Standards Deviation Request
- Emergency Contracts that contain the equivalent of PS&E documents

44.4 Contract Plans

For WSDOT ad-and-award projects, the plans should be prepared in accordance with the [Plans Preparation Manual](#) M 22-31. For local ad-and-award projects, there are no federal or state requirements for plan sheet size or guidelines for preparing contract plans.

44.5 Specifications

WSDOT publishes and distributes the Standard Specifications, and the Amendments and General Special Provisions. On federal aid projects, any revision to Division 1 of the Standard Specifications or approved Division 1 revision (Amendment or WSDOT or APWA General Special Provision) requires prior approval from Local Programs. In all cases, naming conventions will clearly identify the origin, General Special Provision, APWA Special Provision, Agency Provision, or Project Provisions.

.51 Standard Specifications – All FHWA funded projects, including local agency force projects, will be constructed in conformance with the current [Standard Specifications for Road, Bridge, and Municipal Construction](#) M 41-10, and such approved amendments that modify these specifications.

.52 Amendment to the Standard Specifications – These amendments are approved changes to the Standard Specifications.

.53 General Special Provisions – These are specifications that describe special project features in common usage.

.54 APWA General Special Provisions – These are specifications unique to local agency projects. See www.wsdot.gov/partners/apwa.

.55 Special Provisions – Since Special Provisions are specifications governing matters peculiar to an individual project, they are not covered in the *Standard Specifications*. Their use should be held to a minimum and applicable *Standard Specifications* should be used instead. Issues mandated in the state and federal laws shall not be changed.

Special Provisions are required:

- a. For the presentation of all features of a project not covered by the *Standard Specifications* and General Special Provisions.
- b. Where the *Standard Specifications* are being amended.
- c. For any deviation from the *Standard Specifications* with regard to materials, construction details, measurement, and payment.
- d. When noted in the WSDOT Standard Item Table.

The following paragraphs discuss some pertinent aspects of special provisions.

- All nonstandard pay items shall be covered in the Special Provisions.
- The local agency is encouraged to include a value engineering incentive clause in their construction specifications encouraging the contractor to propose changes in contract requirements that will accomplish the project's functional requirements at less cost on high cost and major projects.
- Traffic control must be in accordance with the MUTCD. A Special Provision shall be prepared outlining traffic control requirements and including any pay items.
- Neatline measurement of quantities is allowed by special provision. This specification may allow payment of the neatline measurement from the lines and grades as shown on the plans or as directed by the Engineer's stakes on the ground. This may apply to aggregates, base course, and surfacing. On asphalt quantities, the unit price could include the cost of coring to verify density and depths. Culvert and pipeline installation may be paid by the lineal foot-in place with bedding, backfill, and compaction as incidental to the unit price. In these instances, an item should be added for extra excavation or backfill if the profile varies or is subject to change during the contract. Shoring must be paid as a separate bid item.
- Direct reference to proprietary specifications of national, regional, or local trade associations should not be included in FHWA contract specifications; such proprietary specifications are subject to change without notice to, or acceptance by, the state or FHWA. If proprietary specifications must be used, the complete text, or such parts as are applicable, should be incorporated into special provisions for the project.

Proprietary Items – Sole Source

The use of trade names in specifications and on plans should be avoided. Instead, specifications should be formulated to assure full opportunity for competition among equivalent materials, equipment, and methods. Specifying patented or proprietary material, products or processes is allowed for federal aid projects only under one of the following conditions:

Specify at Least Three Brand Names

- At least three names of acceptable materials or products, if available, are listed together with a list of the required features and specifications that will be considered equal to the listed items.

Approved Public Interest Finding

- The agency is requiring a specific material or product and a written Public Interest Finding (PIF) document has been prepared and approved by Local Programs.

Approved Experimental Feature

- The material or product has been approved through FHWA as an experimental feature.

Specify Brand Names and Allow for Approved Equals

- Specify a brand name. The agency will provide the bidder with options by naming at least two additional products or manufacturers that are acceptable and allowing for “approved equals” followed by a performance specification. When this is done, no approval is required for usage; it is not considered a proprietary item.

A good specification for brand name specifying will read as follows:

The (type of product) furnished shall be (brand name, model), (brand name, model), or an approved equal having the following features (functions):

- a. (feature)
- b. (functions)
- c. (feature)

In order to find the two acceptable items, the agency has to be looking for certain features or functions. These features or functions need to be clearly identified in the Special Provision.

Public Interest Finding

An agency may require a specific material or product when there are other acceptable materials and products when such specific choice is approved as being in the public interest, such as traffic signal control equipment. The written (PIF) must:

Clearly show that the best interest of the public and the agency will be achieved. This is accomplished by describing any cost effectiveness and efficiency to be realized.

A benefit cost analysis should be completed to support the PIF. The supporting documentation and the decision of the agency must be maintained in the project file. See [Appendices 44.76](#) through [44.83](#) for detailed instructions and example.

Proprietary items must be approved by Local Programs.

A PIF is not required when:

A utility agreement is being established and the utility company supplies the material at no cost. This includes minor quantities of materials and supplies and proprietary products that are routinely used in a utility's operation, which are essential for the maintenance of the system. The material must still comply with the Buy America requirements.

44.6 Estimates

The engineer's estimate of a proposed project's cost shall include the estimated quantity and estimated unit price for each proposed work item. Bridge items shall be segregated from roadway items. A tabulation for each bridge showing its applicable items shall be submitted.

If materials salvaged from the project are to be used for roadway purposes, the value of such materials should not be included in the project cost.

The estimate shall separately list the costs of nonparticipating items, local agency force work, and local agency furnished materials.

The separate cost groups shall be summarized and totaled on the first sheet of the estimate.

The Region Local Programs Engineer may be contacted for assistance in preparing the estimate. An estimate example is shown in [Appendix 44.74](#).

44.7 Appendices

- [44.71](#) Local Agency Bid Proposal Package
- [44.72](#) City Letter of Financial Responsibility – Example
- [44.73](#) County Letter of Financial Responsibility – Example
- [44.74](#) Estimate and Grouping – Example
- [44.75](#) Local Agency Plans Preparation Checklist
- [44.76](#) Patented/Proprietary Items – PIF Instructions
- [44.77](#) Two-Week Advertisement – PIF Instructions
- [44.78](#) Mandatory Use of Borrow or Disposal Site – PIF Instructions
- [44.79](#) Agency Supplied Equipment – PIF Instructions
- [44.80](#) Agency Supplied Material – PIF Instructions
- [44.81](#) Local Agency Force Work – PIF Instructions
- [44.82](#) Tied Bids – PIF Instructions
- [44.83](#) Public Interest Finding – Example

44.8 Forms

- FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts

This chapter is used by local agencies operating under Certification Acceptance ([Chapter 13](#)) and choosing to advertise and award construction contracts themselves. [Chapter 52](#) will also apply to these agencies.

Local agencies wanting to have the Washington State Department of Transportation (WSDOT) administer their construction contracts should refer to [Chapter 51](#).

46.1 General Discussion

Local agencies may let contracts for their projects provided that the following conditions are met:

- .11 The local agency uses the advertising and award procedures outlined in this section to advertise for bids, select the responsible bidder with the lowest responsive bid, and award the contract.
- .12 A Local Agency Agreement between the state and local agency is in effect setting forth the conditions under which the project will be constructed.
- .13 The local agency is participating in the cost of the project or has other special interests in it.
- .14 The local agency is certified for project administration in accordance with [Chapter 13](#).

No project can be advertised until the following items have been completed:

- PS&E has been approved.
- The environmental document has been approved.
- The project's right of way has been certified.
- Project Disadvantaged Business Enterprise (DBE) and Training goals have been established.
- Construction funds have been authorized by Local Programs.
- A contract number has been obtained from the Region Local Programs Engineer.
- FHWA has authorized the project in FMIS.
- The Region Local Programs Engineer has concurred with advertising the project.

46.2 Procedures

.21 Funding – A Local Agency Agreement and construction funds must be authorized by the Local Programs before a contract is advertised.

.22 Bidding Procedures – The local agency is prohibited from establishing any procedures or requirements for qualification or licensing of contractors, which prevents the submission of bids or prohibits consideration of bids submitted by any responsible contractor, whether resident or nonresident of the state, except as outlined.

The prequalification of prospective bidders is the responsibility of the local agency. WSDOT will not prequalify prospective bidders for local agency projects. A local agency may at its option use the WSDOT prequalification procedure specified in the *Standard Specifications* M 41-10. If another procedure is used, it must be approved by FHWA prior to use. When an agency does not prequalify prospective

bidders, they should afford ten days after notification for the low bidder to provide evidence of capability to perform the work.

When evaluating whether or not the Bidder is qualified to perform the work the following information should be considered:

- Experience
- Personnel
- Equipment
- Financial Resources
- Performance Record

Qualifications must, at a minimum, consist of bonding capability as required by state law and compliance with licensing requirements of state law. The local agency may include additional requirements.

When the DBE participation goal is included in the contract provisions, meeting the goal is part of the bidding requirements, as explained in [Chapter 26](#) and [Chapter 44](#).

For all FHWA projects, bidding opportunities, on a nondiscriminatory basis, shall be afforded to all qualified bidders regardless of state boundaries, race, sex, color, or national origin.

No bidder shall be disqualified or prevented from competitive bidding by restricting the purchase of a surety bond or insurance policy from any surety or insurer outside the state and authorized to do business with the state.

.23 Preparation of the Project Proposal – See WSDOT *Standard Specifications* Section 1.02.6.

.24 Advertising of the Project – Federal aid projects shall be advertised for a three-week period prior to opening of bids. The contract advertisement period shall be as follows: Projects shall be advertised in the local agency’s official legal publication at least twice, 20 calendar days prior to the last date upon which the bids will be received. The agency will award and execute the contract to the responsible bidder with the lowest responsive bid unless the agency decides that all bids are to be rejected. Local Programs must concur when rejecting all bids. An advertisement period less than three weeks may be approved in special cases when justified. Shortened advertisement periods shall be no less than two weeks and require approval from FHWA. Approval must be properly documented in the project file. Examples for requesting shorter advertising periods are as follows:

- Emergency correction of roadways or bridges.
- To meet the conditions of an environmental permit (fish windows).
- To meet the conditions of a Bureau of Reclamation Permit (Irrigation Canal).
- To complete project prior to a school district opening in the fall.

In addition, the justification for the two week ad request should include the following:

- Will the shorter ad period limit the competition?
- Will the shorter ad period increase the overall cost of the project?
- Does the project include a Disadvantaged Business Enterprise (DBE) goal and will it allow the subcontractors sufficient time to submit a bid to the proposal holders?

The project will be advertised in the official legal publication for the agency and, if necessary, other newspapers to provide the widest possible coverage commensurate with the size of the project. Affidavits of publication must be in the project file.

The local agency will comply with the standard USDOT Title VI Assurances by inclusion of the following language in the solicitations for bids:

“The (Local Agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.”

Should an addendum be necessary during the advertising period to correct or add something to the bid or plan data, such addenda if **minor** shall be approved by the CA local agency prior to transmittal to all the plan holders. A **major** addendum, which constitutes a change that significantly affects the cost of the project to the FHWA or alters the termini, character, or scope of the work requires HQ Local Programs approval. Each bidder shall present with their bid written notice of their receipt of each addendum received.

.25 Bid 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, the name of the bidder and the reason for not reading the bid 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 is not permitted.

Adequate justification for rejecting any bids must be documented by the local agency.

.26 Evaluation of Bids for Award – The local agency shall verify that all required bid documents have been properly submitted and executed by all bidders. All bids are then reviewed for accuracy, unbalancing of bid items, etc., and tabulations checked and confirmed. Any corrections to the bid tabulations are made, if necessary, in accordance with *Standard Specifications* Section 1-02 and 1-03.

In order for a bid to be considered responsive, a bid deposit of at least 5 percent of the total bid proposal must accompany each bid. In accordance with *Standard Specifications* Section 1 02.7, the Proposal Bond shall not be conditioned in any way to modify the minimum 5 percent required.

When there is a specified DBE goal for the project, the successful bidder will be selected on the basis of having submitted: (1) the lowest responsive bid which has met the DBE goal; or (2) when the DBE participation is less than the specified goal, responsiveness will be determined on the basis of good faith efforts to attain the goal. All agencies that have projects with mandatory DBE goals must submit the bid tabs,

the DBE Utilization Certification and the DBE Written Confirmation Document of the apparent low bidder to the Region Local Programs Engineer (LPE) to obtain concurrence to award before the contract is officially awarded to the apparent low bidder. Failure to gain LPE concurrence prior to award on every project with DBE goals and subsequent award of a contract to a nonresponsive bidder will jeopardize the project's federal funding. For more information on DBE program requirements, see [Chapter 26](#).

The local agency shall prepare a tabulation of bids showing the item details for at least the three lowest acceptable bids.

On projects where the lowest responsible bid exceeds the engineer's estimate, it is the local agency's decision whether or not to award the project. Reasons for justifying award:

- There was adequate competition for the project location and/or type of work.
- The project is essential to the public interest (safety, emergency repair, etc.).
- There was a significant error in the engineer's estimate.
- If advertising again would likely result in higher bids.

If the local agency determines that the lowest bidder is not qualified or deemed non-responsive, it shall document those findings prior to awarding the bid to the next lowest responsive bidder.

The Local Agency Agreement must be supplemented if any overrun or underrun occurs beyond the authorized amount. See [Section 22.3](#).

The original signed Supplemental Agreement form must be submitted to the Region Local Programs Engineer. This supplemental agreement form will be retained by WSDOT. It is the responsibility of the local agency to submit an additional supplemental agreement form or copy if they need an executed supplemental agreement for their files.

.27 Award of Contract – After bids have been tabulated and evaluated in accordance with the procedures described above, the construction contract may be awarded to the responsible bidder with the lowest responsive bid. Projects with DBE goals must have concurrence of the Region Local Programs Engineer prior to award. Failure to obtain LPE approval will jeopardize the project's federal funding. Prior to award, agencies must verify contractor status with the System for Award Management (SAM) at www.sam.gov/portal/public/sam to determine if a contractor and or a supplier has been excluded from bidding on a federal aid contract. The results of that search will be documented to the project file. SAM is the electronic version of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs (Lists), which identifies those parties that have been suspended, debarred, or otherwise excluded from bidding on federal procurement and nonprocurement contracts. Construction contracts awarded to firms listed on the Excluded Parties Listing will not be eligible for federal aid reimbursement.

After award by the local agency, the contractor must be advised of the award in writing. For an example of an award letter with a Zero DBE goal, see [Appendix 46.43](#). For an example of an award letter for a contract that has an identified DBE goal, see [Appendix 46.44](#). The information contained in the body of these examples must be included in the local agency letter.

.28 Execution of Contract – Local agencies shall not execute a contract with any contractor who is not registered or licensed in accordance with state laws.

The local agency prepares the necessary documents and forwards them for execution by the successful bidder and the proper officials of the local agency.

An example of a standard contract agreement is in [Appendix 44.73](#). The Region Local Programs Engineers can furnish these standard forms upon request.

46.3 Submittal of Award Data

The local agency must submit the following information to the Region Local Programs Engineer with 30 days of award:

- Tabulation of bids.
- Engineer’s estimate.
- Award letter to the contractor.
- Names and addresses of all firms that submit a quote to the successful low bidder.
- DBE Utilization Certification, DOT Form 272-056 (if applicable).
- DBE Written Confirmation Document, DOT Form 422-031 (if applicable).
- Diversity Management & Compliance System (DMCS) contact information as follows,

Agency	Contractor
Name:	Name:
Title:	Title:
Phone:	Phone:
Email:	Email:

Failure to submit the above listed information, before construction begins, will result in a delay of reimbursement for the billed cost, until the information is received.

46.4 Appendices

- [46.41](#) Advertisement – Example
- [46.42](#) Local Agency Funds – Award Letter Example
- [46.43](#) Zero Goal – Award Letter Example
- [46.44](#) Mandatory Goal – Award Letter Example
- [46.45](#) Contract Bond – Example
- [46.46](#) Vacant

Invitation to Bid

Sealed bids will be received by the (Local Agency), at the reception desk located in Room _____ of the _____, Washington until _____ a.m. on _____ and will then and there be opened and publicly read for the construction of the improvement(s).

All bid proposals shall be accompanied by a bid proposal deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent (5%) of the amount of such bid proposal. Should the successful bidder fail to enter into such contract and furnish satisfactory performance bond within the time stated in the specifications, the bid proposal deposit shall be forfeited to the (Local Agency).

The right is reserved to reject any and all bids and to waive informalities in the bidding.

Maps, plans, and specifications may be obtained from this office upon payment of the amount of \$ _____.

Informational copies of maps, plans and specifications are on file for inspection in the Office of the Local Agency Engineer, (Local Agency), Washington.

The following is applicable to federal aid projects.

The (Local Agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

The improvement for which bids will be received is described below:

*This bolded paragraph cannot be reworded for FHWA funded projects.

Date

Principle, Title
Company Name
Address
City, State, Zip

Contract Number:
Project Title:

Dear:

This will advise that the contract for the above referenced project has been awarded to your firm at the bid price of \$_____.

The contract will be forwarded at a later date. The contract must be signed and returned in accordance with the mailing instructions furnished with the contract documents. Please return within 20 calendar days after the date of award.

Sincerely,

Local Agency

cc: Region Local Programs Engineer

WITNESS our hands this _____ day of _____, 19 _____

PRINCIPAL

ATTORNEY-IN-FACT, SURETY

NAME AND ADDRESS LOCAL OFFICE OF AGENT

APPROVED:

CITY/COUNTY

By: _____

APPROVING AUTHORITY

Date: _____, 19 _____

SURETY BOND NUMBER

CONTRACT NUMBER

This chapter is used for NHS and non-NHS routes by Local Agencies operating under Certification Acceptance (CA) and choosing to administer construction contracts themselves. In the sequence of project development, this follows [Chapter 46](#).

Local Agencies whose construction contracts are administered by the Washington State Department of Transportation (WSDOT) should refer to [Chapter 51](#).

Title 23 USC and 23 CFR provisions apply to all NHS Federal aid projects regardless of federal funding source or approval authority. State standards may be used on non-NHS projects, except for federal requirements pertaining to contracts (bid proposal content including Davis Bacon and DBE) and procurement procedures (competitive bidding and Brooks Act).

52.1 General Discussion

WSDOT is responsible for the proper expenditure of FHWA funds on Local Agency projects. Local Programs will consult and work with Local Agencies as needed and will perform systematic project management reviews to ensure that proper procedures are followed.

Except for this chapter, construction shall be administered and materials inspected, in accordance with the [Construction Manual](#) M 41-01. For exceptions to the [Construction Manual](#), see [Appendix 52.107](#). In case of conflicting guidelines, this chapter governs the [Construction Manual](#). Agencies may choose to use their own forms provided the same information is included on the agency forms as is shown on the WSDOT forms used for the same purposes. For an understanding of WSDOT documentation requirements, use [Chapter 10](#) of the [Construction Manual](#) as a guide.

All FHWA projects are subject to Disadvantaged Business Enterprise (DBE), on the Job Training (OJT) and Equal Employment Opportunity (EEO) compliance reviews by WSDOT.

The [Standard Specifications for Road, Bridge, and Municipal Construction](#) M 41-10 and APWA GSP 1-01.3 define the major elements for construction contracts.

52.2 Preconstruction Conference

After a contract is awarded, the Local Agency should arrange a conference with the contractor. The Local Agency Engineer shall notify the Region Local Programs Engineer of the time and place of the conference.

On large, complex projects, a preconstruction conference should be held before each construction phase. It may be desirable to hold separate conferences for some specialized construction items such as paving, roadside planting, or electrical work. The preconstruction conference may include a partnering session, if appropriate. For a conference agenda example, refer to [Appendix 52.101](#).

The meeting should be documented and copies of the minutes transmitted to the Region Local Programs Engineer and each agency, organization, and firm that has involvement or interest in the project (see [Appendix 52.102](#)).

52.3 Quality Control

The quality of materials and workmanship on a project must conform to the contract specifications so that the public funds expended will have purchased a safe, economical, and fully functional transportation facility.

.31 General – The source for each type of material must be approved by the Local Agency prior to use. There are two submittal processes allowed by *Standard Specifications* Section 1-06.1 for material approval in Washington State, the Qualified Product List, and the Request for Approval of Materials (RAM). Contractors are encouraged to use one of these tools to request material approval or, if an agency has their own process established, to follow that.

The Qualified Product List (QPL) is compiled by the WSDOT Materials Laboratory (Mats Lab) Documentation Section and can be accessed at www.wsdot.wa.gov/Business/MaterialsLab/QPL.htm.

The Request for Approval of Material (DOT Form 350-071) is a form distributed by WSDOT. Contractors may use this form to submit requests for approval for materials not found in the QPL. Some agencies have a similar form that is also acceptable.

Local Agencies requesting a Record of Materials (ROM) from WSDOT’s Mats Lab should submit their request as soon as possible to avoid delaying the contractor. The average processing time is approximately four to eight weeks.

Reimbursement of FHWA funds may be denied for work done contrary to, or in disregard of, the contract documents.

Local Agencies making improvements to National Highway System (NHS) routes with federal funding must comply with the FHWA approved qualified tester program. If a Local Agency is not certified to perform the tests, they can contact a qualified testing laboratory or their Region Local Programs Engineer to make arrangements for WSDOT to perform the testing on the project.

.32 Qualified Tester Requirements – For local agencies the guidelines below apply:

1. **Construction Projects on Non-NHS Highway System** – There is no requirement for qualified testers on the non-NHS highway system. Construction projects that have FHWA funds must follow the requirements contained in this manual.
2. **Construction Projects on the NHS Highway System With No FHWA Funds** – There is no requirement for qualified testers on the NHS highway system that do not have FHWA funds in the construction phase.
3. **Construction Projects on the NHS Highway System With FHWA Funds** – Qualified Testers are required for construction projects that on the NHS highway system that have FHWA funds in the construction phase.

Agencies have several options for meeting the qualified tester requirements:

- Contract with WSDOT to perform the required tests (based on available workforce).
- Local agencies may pursue tester qualification through WSDOT for agency personnel (based on available workforce).

- Agencies may use any AMRL R-18 laboratories qualified to test as defined by AASHTO test methods appropriate to the material. Employees of AMRL R-18 laboratories are considered qualified via the laboratory certification process. WAQTC testers may also work on NHS projects.
- Agencies may also use laboratories that are accredited by the Laboratory Accreditation Bureau, L-A-B for Construction Materials Testing or accredited by the Construction Materials Engineering Council's (CMEC's) ISO 17025 program. These laboratories are considered to meet the quality assurance requirements in 23 CFR 637.209(a) (2), (3), and (4).

.33 Quality Assurance Program for Qualified Testers – For work on an NHS Highway System local agencies must develop a quality assurance program which will assure that the materials and workmanship incorporated into each federal-aid highway construction project is in conformity with the requirements of the approved plans and specifications, including approved changes. The program must meet the criteria in FHWA regulation for *Quality Assurance Procedures for Construction* (23 CFR 637).

The Quality Assurance Program includes the following:

- Qualified Tester Program
- Equipment Calibration/Standardization/Check and Maintenance Program
- Qualified Laboratory Program
- Independent Assurances (IA) Program

There are three ways an agency can meet the IA on-site evaluation requirements. They are as follows:

- Contract with WSDOT's Region Materials Lab (based on available workforce)
- Contract with a qualified local agency
- Contract with a qualified testing firm.

HMA Testing – Qualification is required for the following test methods:

- **AASHTO T 168** – Sampling Bituminous Paving Mixtures
- **AASHTO T 308/ASTM D 6307** – Asphalt Content of Hot Mix Asphalt (HMA) by the Ignition Method (may substitute other AASHTO or ASTM extraction methods). Use of Ignition Method must include furnace correction factor for each mix tested.
- **AASHTO T 209/ASTM D 2041** – Rice Density
- **AASHTO T 27/T 11** – Sieve Analysis of Fine and Coarse Aggregates
- **AASHTO T 255** – Total Evaporable Moisture Content of Aggregate by Drying
- **WAQTC TM 6** – Moisture Content of HMA

HMA Density Testing – Qualification is required in the following test method:

- **WAQTC TM 8** – In place Density of Bituminous Mixes Using the Nuclear Moisture-Density Gauge

Concrete testing can be performed by testers qualified by AMRL R-18 qualification in the following test methods:

- **AASHTO T 23** – Making and Curing Concrete Test Specimens in the Field
- **AASHTO T 119** – Standard Test Method for Slump of Hydraulic-Cement Concrete
- **AASHTO T 152** – Air Content of Freshly Mixed Concrete by the Pressure Method
- **AASHTO T 141/ASTM C 172** – Sampling Freshly Mixed Concrete
- **AASHTO T 309** – Temperature of Freshly Mixed Portland Cement Concrete

Laboratories must meet the AASHTO Standards for Moist Cabinets, Moist Rooms, and Water Storage Tanks and be qualified to Cure, Cap, and perform compression testing of test specimens.

Testers with current ACI grade 1 Concrete Testing Certification can also perform concrete field testing on NHS projects with federal funding.

Aggregate testing can be performed by laboratories qualified by AMRL R-18 in the following test methods:

- **AASHTO T 2** – Sampling of Aggregates
- **AASHTO T 27/T 11** – Sieve Analysis of Fine and Coarse Aggregates
- **AASHTO T 176** – Determination of the Plastic Fines in Graded Aggregate by Use of the Sand Equivalent Test
- **AASHTO T 248** – Reducing Field Samples of Aggregates to Testing Size
- **AASHTO T 255** – Total Moisture Content of Aggregate by Drying
- **AASHTO TP 61** – Determining the Percentage of Fracture in Coarse Aggregate

Laboratories offering Embankment and Base Density field-testing must be qualified to perform the following test methods:

- **AASHTO T 272** – Family of Curves – One-Point Method
- **AASHTO T 310** – In-Place Density and Moisture Content of Soil and Soil Aggregate by Nuclear Method
- **AASHTO T 99** or other approved test method of determining – Moisture Density Relations of Soils

The following is a breakdown of materials and how they will be accepted.

List of Materials to Test

1. Structural Concrete
 - Slump
 - Air
 - Temp
 - Compression Testing
 - Aggregate
2. Asphalt in the roadway
 - Density
 - Hot Mix
 - Aggregate
3. Surfacing under roadway and bridge approaches
 - Density
 - Gradation and SE

4. Base material under roadway, embankments, bridge approaches
Density
Gradation and SE
5. Structural Grout
Compression Testing
6. High Strength Nuts Bolts and Washers*
Manufacturer's Certificate of Compliance
Certificate of Material Origin

List of Materials to Certify

1. Steel
Manufacturer's Certificate of Compliance
Certificate of Material Origin*
2. Iron
Certificate of Material Origin*
3. Liquid Asphalt Products
Manufacturer's Certificate of Compliance
4. Construction Geosynthetics
Manufacturer's Certificate of Compliance
5. Guardrail Items
Certificate of Material Origin for steel components*
6. Bridge Bearing Assemblies that are not welded
Manufacturer's Certificate of Compliance
Certificate of Material Origin**

List of Material to Accept With Visual Inspection or Catalog Cut**

(All items must meet FHWA Buy America Requirements)

1. Traffic marking – paints and thermoplastics
2. Electrical items and accessories
3. Fencing
4. Landscaping or irrigation items
5. Drainage Items
6. Rebar Tie Wire
7. Backer Rod under RCS Expansion Joints
8. Rebar Chairs and Dobie Blocks
9. Temporary Items
10. Compost
11. Street furniture etc.
12. Monument Case and Cover Certificate of Material Origin is required

*See *Standard Specifications* Section 9-06.5.

**Agencies must document the sources of steel and iron by having a "Certification of Materials Origin" on file including mounting hardware.

List of Materials That Require Fabrication Inspection

(All items must meet the FHWA Buy America Requirements)

1. Structural Steel Beams or Fabricated, Welded items
2. Structural Precast Concrete Items
3. Bridge Bearing Assemblies that are welded
4. Signs
5. Sign Bridges
6. Cantilever Sign Structures

52.4 Progress Payments

Progress payments must be based on measurements of work performed so that the contractor can be fairly compensated and so that public funds will not be expended on work that has not yet been done.

.41 General – Progress estimates should be prepared on a pre-selected date each month and payment made to the contractor. Measurement and payment for all acceptably completed bid items of work will be in accordance with *Standard Specifications* Section 1-09. Source documents used to support payments must be complete, standalone documents that fully support the payment being made. Documentation to support payment shall be in accordance with *Construction Manual Chapter 10*. Agencies that have integrated computer programs for Inspector Daily Reports and payment source documents shall include all the information shown on the WSDOT forms used for those purposes. Progress estimates should be prepared promptly and may be forwarded to the contractor for review and signature.

.42 Statement of Intent to Pay Prevailing Wages – The contractor and subcontractors of every tier shall submit form

LI 700-29 to Washington State Department of Labor & Industries (L&I) for approval of the wage rates they intend to pay. Each statement must be accompanied by the filing fee established by L&I and required by [RCW 39.12.030](#) and [39.12.040](#).

Form LI 700-29 shall be on file with the Local Agency before any payment is made to the contractor. Subcontractors of every tier shall have an approved copy of this form on file with the Local Agency before any payment can be made for their work.

52.5 Changes and Extra Work

Prior to beginning work on a contract, a Local Agency should have a written policy for the approval of change orders to ensure that appropriate procedures are followed. Without a written change order policy delegating approval authority, the designated CA Agreement approval authority must approve all change orders. See item #2, i of the Certification Agreement ([Chapter 13](#)).

It is important to distinguish between actual changes to the contract work and normal overruns and under-runs that may occur. No change order work shall be done prior to approval being given by the appropriate authority, verbal or written. Verbal approval requires written documentation including a description of work that adequately describes the extent of the change. Verbal approval must be followed by a written

change order. No contract payment shall be made prior to having the written change order approved by the appropriate authority.

Changes to a Condition of Award letter shall be handled in accordance with the GSP (Changes in the Quantity of Work). All change orders affecting the work of DBEs shall be submitted to the Region Local Programs Engineer for concurrence prior to executing the change order.

When changes in the work will alter the termini, character, and scope of an approved project, approval of Local Programs is required prior to the commencement of the physical work. For further information, refer to [Chapter 21](#). All change orders must be numbered in sequence.

Change order documentation is composed of two parts:

1. The approved change order signed by the agency and the contractor.
2. The backup documentation. The backup documentation shall include an explanation in sufficient detail so that everyone involved will understand the need for the change, and how the change will affect the overall contract. The explanation shall include a detailed justification of the cost and/or any adjustment to working days associated with the change. The detailed cost justification shall be documented independent of the contractor's proposal to substantiate the change.

.51 Administrative Settlement Costs – Administrative settlement costs are costs related to the defense and settlement of contract claims. These will include, but are not limited to salaries of contracting officers or their authorized representatives, attorneys, or members of arbitration boards, appeal boards, etc., that are allowable to the findings and determination of contract claims, but not including administrative or overhead costs.

FHWA funds may participate in administrative settlement costs, which are:

- Incurred after notice of claim.
- Properly supported.
- Directly allocable to a specific FHWA project.
- For employment of special counsel for review and defense of contract claims when recommended by the agency's legal counsel and approved in advance by WSDOT.

When a claim is submitted, the Region Local Programs Engineer should be contacted for advice on how to proceed.

52.6 Termination of Contract

Standard Specifications Section 1-08.10 contains procedures and criteria for termination of a contract. Prior to termination action against a contractor or reassignment of the performance to the surety, the Local Agency must obtain Local Programs concurrence.

52.7 Compliance With Federal Contract Provisions

FHWA requires that all subcontracts at any tier be in writing, per 23 CFR, Section 635.116(b). This includes both contracts between the prime contractor and their subcontractors, and contracts between subcontractors and their agents.

Each of these subcontracts must also physically contain the following documents. None of these documents can be included by reference only.

- The general special provision (GSP) entitled “Required Federal Aid Provisions.”
- Form FHWA 1273 “Required Contract Provisions, Federal Aid Construction Contracts.”
- The minimum wage rates for the contract as required by [RCW 39.12](#) and [Title 29](#) of the Code of Federal Regulations (CFR).

It is the responsibility of the Local Agency to ensure full compliance with the provisions above.

Implementation of the DBE and EEO programs are also federal contract requirements. For information, refer to [Chapters 26](#) and [27](#).

52.8 Physical Completion of Construction

The Local Agency will carry out the following requirements to terminate the construction contract and ready the project for acceptance by WSDOT and FHWA:

.81 Final Inspection – The Local Agency Project Engineer shall send a request for WSDOT inspection and acceptance to the Region Local Programs Engineer no later than within 15 days of substantial completion of work by the contractor. A copy of the completion letter that is sent to the contractor should accompany the request.

.82 Notice of Physical Completion – Within ten calendar days after physical completion of the work by the contractor, the Local Agency Project Engineer shall notify the contractor by letter that the construction is physically complete, and that the project is subject to audit and acceptance by WSDOT. The agency shall diligently pursue closure of the contract.

.83 Final Reports – A construction project is considered complete when the items listed below have been completed. All certifications and reports shall be retained for at least three years after final acceptance of the project.

1. **Final Estimate (Approving Authority File)** – When the contractor has a claim pending against the Local Agency and wants to receive a final estimate, a claim must be submitted in writing, detailing the specific items and amounts. When a claim is submitted, immediately contact the Region Local Programs Engineer so that FHWA can be informed of the claim’s details at an early stage. See [Standard Specifications](#) Section 1-09.12(2).
2. **Comparison of Preliminary and Final Quantities (Approving Authority File)** – This is a listing of items that show the preliminary and final quantities.
3. **Certified Final Bill for Utility Agreement, if applicable, to Region Local Programs Engineer.**
4. **Final Records (Approving Authority File)** – The Local Agency Project Engineer must document the work performed on the contract. Documentation consists of field books, inspector’s record of field tests, Project Engineer’s and inspector’s diaries, all invoices, weigh bills, truck measurements, quantity tickets, receiving reports, field office ledgers, mass diagrams, cross-sections, computer listings, and work profiles. Photographs or video tapes before, during, and after construction could be useful, especially if care is taken to show any unusual conditions, equipment, or procedures.

Final records shall be retained by the Local Agency for at least three years following acceptance of the project by Local Programs. The Local Agency will receive the administrative review letter showing the starting and ending date of the three-year retention period from the Director, Local Programs Division (OMB Circular A-133).

5. **Record of Material Samples and Tests**
 6. **Materials Certification (Appendix 52.104)** – The intent of the materials certification is to assure that the quality of all materials incorporated into the project are in conformance with the plans and specifications, and thus ensure a service life equivalent to the design life.
 - a. This materials certification shall be completed in accordance with *Construction Manual* Section 9-1.5 or **Section 52.3** of this manual and is submitted along with the completion letter to the Region Local Programs Engineer.
 7. **Affidavit of Wages Paid** – Upon completion of a contract, the prime contractor and every subcontractor or agent shall submit Form LI-700-7, Affidavit of Wages Paid, to L&I for certification of the wage rates paid on the project. Each affidavit must be accompanied by the filing fee established by L&I.

An L&I certified copy of Form LI-700-7 from the prime contractor, and every subcontractor or agent, must be on file with the Local Agency before the bond will be released.
 8. Release for the Protection of Property Owner and General Contractor. Form LI-263-83, is no longer furnished by L&I. The new process requires the agency to use the Labor and Industries website at <https://fortress.wa.gov/lni/crpsi/> to verify that the prime contractor and all subs on the project have paid the required industrial insurance and medical-aid premiums. The UBI number for each contractor and sub is required to access the verification. The printed verification statements must be on file with the Local Agency before the retained percentage can be released.
 9. For all federal aid projects and select state funded projects, the prime contractor shall enter the amounts paid to all firms involved with the contract (Zero payments shall be marked accordingly). The prime contractor shall enter the payments amount received from the agency each month into the WSDOT Diversity Management and Compliance System – DMCS (<https://wsdot.diversitycompliance.com>). The local agency shall each month confirm the entries in the WSDOT Diversity Compliance System. Payment information shall be entered monthly and include the actual date of the payment. See **Chapter 26**.
- .84 Project Acceptance** – The approving authority’s approval of the final estimate will be considered as the Local Agency’s acceptance of the project.

52.9 Projects within Interstate Rights of Way

All construction, materials, and quality control requirements contained in the current editions of the *Standard Specifications* and *Construction Manual* must be incorporated into the contract. (See [Section 14.3](#) for complete guidance on work within the Interstate Rights of Way.)

52.10 Appendices

- [52.101](#) Preconstruction Conference Agenda – Example
- [52.102](#) Preconstruction Conference Minutes – Example
- [52.103](#) Letter Requesting WSDOT Project, Inspection, and Acceptance – Example
- [52.104](#) Materials Certification – Example
- [52.105](#) Weekly Statement of Working Days
- [52.106](#) Change Order
- [52.107](#) Exceptions to the WSDOT *Construction Manual* M 41-01

52.11 Forms

See [Construction Manual Chapter 11](#)
FHWA Form WH-347

1. Order of work (Progress Schedule)
2. Utilities and Railroads
 - a. Project Engineer prepare list of affected services and representatives to be contacted.
 - b. Underground services should be located.
 - c. Notification time required by organizations.
 - d. Insurance required, if any.
3. Subcontractors and Agents
 - a. Request for approval must be submitted along with a Statement of Intent to Pay Prevailing Wage and Subcontractor or Agent Certification.
 - b. Nature of work to be performed by each.
 - c. Subcontractor's route correspondence via prime contractor.
 - d. Prime contractor must have a representative with authority on the job at all times (designated by letter).
 - e. DBE subcontract work – indepth discussion including conditions of award if any.
4. Records and Reports
 - a. Description of required forms and initial supply should be handed out or mailed to prime contractor.
 - b. All reports must be handled through prime contractor's office.
 - c. Record of Materials should be provided and Requests for Approval of Materials Sources (RAM) should be submitted as soon as possible.
 - d. Falsework plans, if required.
 - e. Certified payrolls must be submitted on time and wage rate interviews will be conducted. Per the FHWA 1273, employee full social security numbers and home addresses shall not be included on weekly payrolls.
 - f. EEO and trainee requirements – indepth discussion.
 - g. DBE requirements when the contract contains UDBE goals – indepth discussion.
 - DBE – Onsite reviews must be conducted on all DBE and UDBE firms that works on the project.
 - h. Required job site posters (provided to Prime Contractor).
 - i. Davis-Bacon statement regarding the USDOL, WSDOT and local agency's role in investigations for labor compliance.
 - j. ADA requirements.

5. Traffic Control And Safety
 - a. *Manual on Uniform Traffic Control Devices* will control signing.
 - b. Review and discussion of Traffic Control Plan (TCP) including pedestrian and bicycle accommodations.
 - c. Safety control on structures.
 - d. Flagman should use standard paddle and vest and must be certified with flagman card.
 - e. Speed regulation of construction equipment.
 - f. Contractor and project engineer designate by name the individual responsible for construction traffic control.
 - g. Safety and health requirements.
 - h. Request police to report all construction zone accidents to the contracting authority.
 - i. Gross legal load limits shall be adhered to.
 - j. The local agency will monitor the requirements of [RCW 46.61.655](#) as amended by Substitute House Bill No. 2455 and cooperate with law enforcement agencies in the enforcement as provided in *Standard Specifications* Section 1-07.1. Substitute House Bill No. 2455 deals with covered loads or 6 inches of freeboard.
6. Environmental Considerations
 - a. Commitment files.
 - b. Standard Specifications/Special Provisions.
 - c. Contractor responsibility to obtain permits.
 - d. Department of Ecology requires registration of rock crushers in accordance with [WAC 173-400](#).
 - e. Temporary Erosion and Sediment Control Plan (TESCP).
 - f. Spill Prevention, Control, and Containment Plan (SPCCP).
7. Dismiss Disinterested Parties (list those leaving)
8. Reopen with General Construction Discussion
 - a. Contractor explains how he plans to pursue the work.
 - b. Review of anticipated construction problems.
 - c. Conflict resolution – need for partnering.

Checklist

Change Order

Question	Yes	No	N/A
1. Does the change order alter the termini, character, or scope of the work?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, you must have H & LP approval to be eligible for federal funds.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, you must submit a revised Page 1 of the prospectus.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the Change Order over \$7,500.00 and outside the scope of work?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, the change cannot be a change order and must be an independent work.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the Change Order detail all items involved with the change?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Does the Change Order include an adjustment in working days?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, the time extension must be stated in the Change Order.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, an independent engineer's estimate of time must be included to document the extension.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, that must be stated in the Change Order.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Does the Change Order alter the DBE Condition of Award?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, you must obtain concurrence form Local Programs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, you must obtain the DBE's signature on the Change Order.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Does the Change Order involve a material substitution?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, you must determine if a material credit is appropriate.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. If Change Order work started prior to it's execution, prior verbal approval by the Approving Authority must be granted and documented.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Has the Change Order been signed by the contractor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Has the Change Order been executed by the Approving Authority?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If you are a "non CA Agency", you must have the acting CA Authority's approval.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Has an independent engineer's estimate justifying the costs and time extensions been completed and documented?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Has a detailed memo outlining the chronology of events, basis of need, costs and working days been prepared and placed in the file accompanying the Change Order?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Appendix 52.107 **Exceptions to the** **WSDOT Construction Manual M 41-01**

The following exceptions to the *Construction Manual* M 41-01 may be used by the local agency.

- The local agency may develop their own Record of Materials (ROM), and approve manufacturers not listed on the approved WSDOT manufacturers list. The ROM is a listing of the construction items, generated by either the State Materials Laboratory or the Local Agency that has been identified from the plans and specifications for each project. The ROM identifies the types and quantities of materials, the standard acceptance methods and the number of acceptance and verification samples required for all material that will be used on the project. The ROM should always be maintained. If material quantities are increased or decreased during the construction of the project the ROM must reflect these changes. This may either increase or decrease the amount of acceptance tests needed. The ROM needs to reference the standard specification or contract provision where the material requirement is defined. The ROM also lists the acceptance requirements for materials requiring other actions, such as fabrication inspection, manufacturer's certificate of compliance, shop drawing or catalog cuts.
- Asphalt plant inspectors and scalepersons are not required at established commercial sources. This exception does not allow the agency to eliminate acceptance sampling of the materials.
- The following items may be accepted with an approved catalogue cut and documented by visual inspection and a manufacturer's material certification (provided manufacturer's certification is based on actual testing and meet the FHWA Buy America Requirements):
 - Electrical items and accessories
 - Paving fabrics or construction geosynthetics
 - Fencing of any kind
 - Landscaping or irrigation items
 - Glare screens
 - Traffic buttons or pavement markings
 - Guardrail items (Certificate of Material Origin is required)
 - Drainage items (Certificate of Material Origin is required)
 - Emulsified Asphalt for HMA Tack Coat and BST (Suppliers Bill of Lading acts as Manufacturer's Certificate of Compliance)
 - Re Bar Tie Wire
 - Backer Rod under RCS Expansion Joint
 - Rebar Chairs and Dobie Blocks
 - Temporary Items
 - Sandbags, Rope, and Wood Stakes
 - Compost, topsoil
 - Monument Case and Cover (Certificate of Material Origin is required)

- PG Binder (Suppliers Bill of Lading acts as Manufacturer's Certificate of Compliance)
- Sign Inspection (Manufacturer's Certificate of Compliance is required)
- Pigmented Sealer
- A Certificate of Material Origin is required for all steel and iron items on federally funded projects.
- Local agencies are not required to have Scaleman's Daily Reports as long as:
 - The printed ticket contains **all** of the same information that is on the Scaleman's Daily Report Form 422-027.
 - You must have an AM and PM tare weight for each truck. The tare weights must be shown on the printed ticket.
 - **Local agencies are still required to collect scale certifications at 6-month intervals per *Standard Specification 1-09.2(2)*.**
- Local agencies may test their own signal cabinets.
- Local agencies may lower the density testing requirements to 90 percent of the rice density for non structural overlay pavement designs with a thickness of 1.25 to 2 inches (30 to 50 mm). This should be limited to areas or projects with documented foundation problems and on overlay of existing pavements.
- Local agencies are not required to follow the qualified testing program outlined in the *Construction Manual M 41-01* if the agencies projects are not on the NHS, or are on the NHS and the project does not contain federal funding AND the acceptance sampling frequencies and test methods are done in accordance with [Chapter 9](#) of the *Construction Manual M 41-01* and the exceptions listed above.

In addition to mandatory acceptance sampling, a local agency may choose to do independent assurance sampling. If a local agency elects to do independent assurance sampling, the procedures listed shall be followed.

- Assurance sampling and testing will be done independent of acceptance testing, not utilizing the same testing equipment or performed by the same personnel. Assurance samples of aggregate may be taken by the field inspector and split two ways. One split will be tested by the inspector in the field as an acceptance sample and the other split will be an assurance sample for immediate testing and comparison with field results.
- Assurance sample testing does not reflect on the acceptability of the material involved. Acceptance under the contract is determined by the acceptance testing process. Assurance testing is performed to obtain an independent verification of proper testing procedure and equipment.

Comparison of Assurance and Acceptance Test Results – Assurance sample results will be compared with the acceptance test results of the companion samples.

Reports of the comparison of results will be placed in the project file. The degree of conformance will be determined according to the deviation ranges noted below. Gradation test results will be compared only on specification screens.

Test	Normal Range of Deviation	Maximum Range of Deviation
Sand Equivalent	±8 points	±15 points
Fracture	±5 percent	±10 percent
Asphalt Content (HMA and ATB)	±0.3 percent	±0.6 percent
Sieve Analysis – All Items: No. 4 (4.75 mm) sieve and larger	±5 percent	±8 percent
No. 6 (3.35 mm) sieve to No. 80 (0.180 mm) sieve	±3 percent	±6 percent
No 100 (0.150 mm) and No. 200 (0.075 mm) sieve	±2 percent	±4 percent

In the table above, “Normal Range” indicates an acceptable range of variation between test results and no action is required. Test results which fall in this category will be so indicated by the wording “normal deviation” on the assurance test reports. Test results falling outside of the “Normal Range” but within the “Maximum Range,” will be indicated by the wording “questionable deviation” on the assurance test reports. For deviations falling into this category, the Project Engineer or a representative shall review the original test report form, advise the responsible test operator of the deviation, and review the test procedure at the next opportunity.

Test results exceeding the maximum range will be indicated by the wording “excessive deviation.” For deviations falling in the excessive category, the Project Engineer or a representative will notify the appropriate personnel for corrective action.

Corrective action will include review of sampling procedures, sample splitting procedures, testing procedures, and testing equipment. Actions and results of these investigations will be documented to the project file by a notation. These may include comments or findings by the Lab and testing personnel.

Independent Assurance Sampling Frequency Guide

Item	Test	Assurance Sample
Gravel Borrow	Grading & SE	1 – 20,000 Ton
Select Borrow	Grading & SE	1 – 20,000 Ton
Sand Drainage Blanket	Grading	1 – 20,000 Ton
Gravel Base	Grading, SE & Dust Ratio	1 – 20,000 Ton
CSTC	Grading, SE & Fracture	1 – 10,000 Ton
CSBC Grading	SE & Fracture	1 – 10,000 Ton
Maintenance Rock	Grading, SE & Fracture	1 – 10,000 Ton
Ballast Grading	SE & Dust Ratio	1 – 10,000 Ton
Shoulder Ballast	Grading & Fracture	1 – 10,000 Ton
Backfill for Sand Drains	Grading	1 – 10,000 Ton
Crushed Coverstone	Grading, SE & Fracture	1 – 5,000 Ton
Crushed Screening		
5/8 – 1/4	Grading & Fracture	1 – 5,000 Ton
1/2 – 1/4	Grading & Fracture	1 – 5,000 Ton
1/4 – 0	Grading & Fracture	1 – 5,000 Ton
Gravel Backfill for Foundations	Grading, SE & Dust Ratio	1 – 5,000 Ton
Walls	Grading, SE & Dust Ratio	1 – 5,000 Ton
Pipe Bedding	Grading, SE & Dust Ratio	1 – 5,000 Ton
Drains	Grading	1 – 5,000 Ton
PCC Paving		
Coarse Aggregate	Grading	1 – 10,000 Ton
Fine Aggregate	Grading	1 – 5,000 Ton
Completed Mix		
Consistency	Slump	1 – 25,000 SY
Air Content	Air	1 – 25,000 SY
Yield	Cement Factor	1 – 25,000 SY
Test Beam	Flexural Strength	1 – 25,000 SY
PCC Structures		
Coarse Aggregate	Grading	1 – 5,000 Ton
Fine Aggregate	Grading	1 – 2,500 Ton
Consistency	Slump	1 – 1,000 CY
Air Content	Air	1 – 1,000 CY
Cylinders (28-day)	Compressive Strength	1 – 1,000 CY
Yield	Cement Factor	1 – 1,000 CY
Cement	Chemical and Physical Certification (Verification Sample)	1 – 1,000 Ton
Asphalt Materials		Verification
Paving Asphalt (AR, AC, PBA)		1 qt. every 3rd shipment
Liquid Asphalt (Cutback, Emulsion)		1 qt. every other shipment
Emulsion for ACP Tack Coat		None required

53.1 General Discussion

After substantial completion of the work, the agency shall diligently pursue contract completion. In cases where the contractor is not diligently pursuing completion, the agency shall impose liquidating damages penalties, completion of remaining work with local forces or unilateral closure and claims against the contractor.

After the construction phase of a FHWA transportation project, done either by competitive bidding or by local agency forces, specific procedures are carried out to terminate the project's finances and review project performance. These procedures are necessary in order to settle any outstanding contract obligations, and to ensure that funds were expended properly.

This chapter lists requirements for closing the project accounts at WSDOT and FHWA and discusses project management reviews and project audits.

53.2 Closure

After the construction contract is complete, a 90-day project closure period begins. This closure period is initiated upon receipt of either a completion letter from the local agency or a final inspection of the project from the Region Local Programs Office. During this period, the local agency must complete the requirements described below.

No further payment will be made after the date indicated on the 90-day closure letter without the approval of Local Programs.

The local agency may request, however, that the 90-day closure period be extended. In this case, the local agency shall submit a written request to Local Programs justifying an extended closure period.

All Local Agency Agreements are required to have a Project Agreement End Date (2 CFR 200.309). Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

.21 WSDOT Project Review – The Region Local Programs Engineer will conduct the final field inspection. It is suggested that the Region Local Programs Engineer be invited to the final project inspection with the contractor. If the final inspection reveals items that must be corrected or resolved before the project can be closed, these will be noted in the final inspection report. The Region Local Programs Engineer will work with the local agency to make the necessary corrections or to accomplish resolutions. If there is an unresolvable item indicating that a portion of project work is ineligible for FHWA reimbursement, WSDOT will issue a letter of notification outlining the ineligible work items and related costs.

.22 Final Billing – Within 90 calendar days of the completion date, the local agency shall submit a final bill (Appendix 23.71) clearly marked “Final Billing” and a Final Project Summary (Appendix 23.75) to WSDOT Headquarters Local Programs.

.23 Project Closure – Once the project has been reviewed and closed by FHWA, Local Programs provides the agency with an Administrative Review letter. The letter includes a final accounting and settlement of the total project costs, which may result in a payment or billing to the agency as appropriate; and provides information on records retainage.

53.3 Project Reviews

In order to be reasonably certain that local agencies are administering FHWA funds in accordance with the Local Agency Guidelines, WSDOT will perform procedural reviews on selected local agency ad-and-award projects.

These reviews will be:

- Project Management Reviews (PMR) performed by Local Programs (see [Appendix 53.51](#) for review questions for PMR's and Documentation Reviews).
- Documentation Reviews performed by the Region Local Programs Engineer.

The agency may lose CA status, have its delegation of authority reduced to a project or phase of a project, or be placed on probationary CA. This may be the result of:

- A PMR or Documentation Review.
- An audit by the State Auditor.
- Final project inspection.
- The qualifications and experience of the agency staff are altered.

.31 PMR Preparation – Local Programs, through the Region Local Programs Engineer, will schedule a PMR with the agency and will request that the local agency managers participate. The local agency should have all pertinent documentation ready for the scheduled review. Typical procedural review questions are listed in [Appendix 53.51](#). Typical documents to be examined during this review are also listed in [Appendix 53.51](#). All deficiencies will be identified for the agency at the time of the PMR. Copies of documentation not available at the time of review shall be submitted through the Region Local Programs Engineer within 30 calendar days. After the 30-day period, the final PMR letter will be sent to the agency.

.32 PMR Deficiencies – If no major deficiencies are found in the local agency's project management methods, the local agency will be informed in writing of the review team's findings and recommendations.

If major deficiencies exist, the local agency will be asked to take corrective action within 60 days. If the deficiencies include ineligible work, WSDOT will issue a citation letter.

If deficiencies exist in the agency's procedures, management practices, or systems, or if specific project errors are found, WSDOT's administrative response might be one or more of the following:

- No action against the agency.
- Joint conference with the Local Agency, Region Local Programs Engineer, and the Director, Local Programs or the director's designee.

- Limit or withhold the agency's future Certification Acceptance authority (Chapter 13) to the extent deemed necessary:
 1. Allow Certification on a project-by-project basis.
 2. Direct WSDOT to assign a Project Engineer to each project for supervision, inspection, and administration.
 3. Contract the supervision, inspection, and administration to a consulting firm.
 4. Delay project authorization until adequate supervision, inspection, and administration is available from the local agency, WSDOT, or consultants.
- Establish a repayment plan when violations to procedures make certain expenditures ineligible for federal reimbursement. Per Section VII of the Local Agency agreement, withholding of funds from the local agency's gasoline tax distribution may be necessary if a satisfactory repayment plan is not established within 45 days.

53.4 Financial and Compliance Audit

.41 Single Audit – The local agency is responsible for ensuring that a federal single audit is performed in accordance with 2 CFR Part 200.501 – Audit Requirements. WSDOT is also responsible for ensuring that FHWA funds are properly expended. The State Auditor will therefore audit each local agency.

.42 Project Audit – A project audit by WSDOT Local Programs is triggered by deficiencies found during:

1. A routine audit by the State Auditor, either on an FHWA project or on any other project where federal funds are involved.
2. A documentation review.
3. A project management review.

.43 Project Records – Project records shall be maintained in accordance with the terms of the Local Agency Agreement and shall be made available to the audit personnel upon request. It is helpful if field notes and other documentation are available in sufficient detail to facilitate the audit review.

.44 Audit Report – The state auditor notifies Local Programs upon completion of a formal audit report. If findings on a particular audit arise, Local Programs contacts the agency to confirm the findings and coordinate resolution. Audit findings must be resolved within six months of the date that the audit report is issued. Upon resolution, Local Programs issues a Management Review letter to the agency and provides copies to the FHWA. Audits will normally include the following categories:

- Interagency Agreements
- Land Development or Land Acquisition Projects
- Tier Contracting Procedures
- Fund Management – Transactions
- Accounting Methods – Cash or Accrual
- DBE-EEO Practices
- Use of Grant Acquired Equipment

53.5 Appendices

- 53.51 Local Agency Project Management Review Checklist
(DOT Form 272-024 and DOT Form 272-026)
- 53.52 Final Inspection of Federal Aid Project
- 53.53 Vacant
- 53.54 Certified Payroll Example

List of Forms

	Form Number
Project Initiation	
Local Agency Federal Aid Project Prospectus	140-101
Local Agency Damage Inspection Report – FHWA Emergency Relief	300-001
Special Transportation Planning Study Agreement	224-080
Request Preliminary Engineering Funds	
Local Agency Agreement (Federal)	140-039
Local Agency Agreement Supplement (Federal)	140-041
Local Agency Agreement (State)	140-087
Local Agency Agreement Supplement (State)	140-087A
Progress Billing	
Federal Aid Request for Payment	Appendix 23.71
Final Project Summary	Appendix 23.75
Consultant Selection Process	
Independent Estimate for Consultant Services	140-012
Supplemental Agreement	140-063
Environmental	
Local Agency Environmental Classification Summary	140-100
Plans, Specifications, and Estimates	
Local Agency Railway Agreement	140-044
Required Contract Provisions, Federal Aid Construction Contracts	FHWA-1273
Local Ad and Award	
Award of Contract	
Contract Bond	FHWA-45
DBE Utilization Certification	272-056
Construction Administration	
Change Order – Local Agency	140-005
Change Order – Minor Change	421-005
Local Agency Quarterly Report of Amounts Credited as DBE Participation	422-103
Weekly Statement of Working Days Example Sheet	Appendix 52.105
Project Completion	
Final Inspection of Federal Aid Project	140-500
Local Agency Project Management Review Checklist	272-024
Final DBE Utilization Plan Report	272-055

The following forms are provided in Chapter 11 of the *Construction Manual* M 41-01.

Form Number	Rev. Date	Form Name
272-050	9-07	Apprentice/Trainee Approval Request
350-092	1-16	Asphalt Concrete Pavement Compaction Control Report
350-073	5-11	Asphalt Concrete Test Section Report
350-126	8-97	Asphalt Plant Inspection
540-020	8-15	Backflow Prevention Assembly Test Report
140-043	10-06	Certification Acceptance Qualification Agreement
420-004	3-08	Certification for Federal-Aid Projects
350-109	7-12	Certification of Materials Origin
540-509	8-15	Commercial Pesticide Application Record
350-009	7-02	Concrete Cylinder Transmittal
350-115	2-10	Contract Materials Checklist
421-040A & B	10-04/3-08	Contractor's Daily Report of Traffic Control – Traffic Control Log
350-112	8-14	Correlation Nuclear Gauge to Core Density
351-015	11-97	Daily Compaction Test Report
422-008	6-16	Daily Report of Force Account Worked
422-644	12-95	Daily Report of BST Operations
300-001	6-16	Detailed Damage Inspection Report FHWA Emergency Relief
424-003	12-96	Employee Interview Report
421-014	1-97	Examination Sheet for Contract Items
750-001	10-97	Fall Protection Plan
272-060	12-04	Federal-Aid Highway Construction Annual Project Training Report
FHWA-1391	9-15	Federal-Aid Highway Construction Contractors' Annual EEO Report
272-061	8-03	Federal-Aid Highway Construction Cumulative Training Report
FHWA-1392	9-15	Federal-Aid Highway Construction Summary of Employment Data
350-130	3-08	Field Acceptance Report for Qualified Products
350-074	3-10	Field Density Test Report (Nuclear Gauge)
422-635	3-08	Field Note Record
422-637	3-08	Field Note Record for Drainage
422-636	9-96	Field Note Record (Sketch Grid)
134-146	10-07	Final Contract Voucher Certificate
422-009	2-96	Final Record Notes
422-009B	2-96	Final Record Notes
230-036B	3-07	Follow-Up Documentation Review
422-010	7-10	Force Account Equipment Rate Request
350-564	1-96	Gradation Chart 0.45 Power
230-036A	1-16	Initial Documentation Review (Procedures)
422-100	6-03	Inspection of Federal Aid Project
422-004	3-08	Inspector's Daily Report
422-004A	7-08	Inspector's Daily Report
422-004B	2-96	Inspector's Daily Report
422-020	4-11	Inspector's Record of Field Test

Form Number	Rev. Date	Form Name
422-103	8-16	Local Agency Monthly Report of Amounts Credited as DBE Participation
272-051	5-15	DBE On-Site Review for Architect & Engineering/Professional Services Firms
272-052	5-15	DBE On-Site Review for Construction Subcontractors / Dealers / Manufactures
450-001	1-96	Manufacturer's Certificate of Compliance for Ready Mixed Concrete
820-010	6-99	Monthly Employment Utilization Report
421-007	5-06	Order to Resume Work
421-006	10-11	Order to Suspend Work
450-005	3-02	Post-Tensioning Record
350-026	5-02	Preliminary Sample Transmittal
421-010	5-15	Prime Contractor Performance Report
350-040	5-14	Proposed Mix Design
420-012	1-96	Recommended Changes to Specifications and Construction Manual
421-009	6-12	Release Retained Percentage (Except Landscaping)
350-042	6-16	HMA Mix Design Submittal
422-007	3-08	Report of Protested Work
350-071	12-12	Request for Approval of Material
421-012	4-16	Request to Sublet Work
350-056	1-09	Sample Transmittal
422-027	10-11	Scaleman's Daily Report
FHWA-47	7-98	Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds
272-049	3-12	Training Program
410-025	3-02	Project Engineer Transmittal Checklist
350-572	6-04	Manufacturer's Certificate of Compliance Checklist

