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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 John Ho at 360-705-7383 with comments, questions, or suggestions for improvement to the manual.

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**Washington State
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Local Programs
Engineering Services

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12.1 General Discussion

This chapter describes the distribution of Federal Highway Administration (FHWA) funds administered by the Washington State Department of Transportation's (WSDOT) Headquarters Local Programs, and presents the basic procedures for local agency participation.

FHWA funds may be used to reimburse project costs for general transportation planning, preliminary engineering, right of way acquisition, construction, and audits. FHWA funds may be expended only after WSDOT notifies the agency of federal authorization. FHWA funds are not eligible for lobbying efforts (2 CFR Part 200.450).

To use donated lands as part of the agencies' match to the project under certain conditions, see [Section 25.10](#).

.11 FHWA Eligible Roadways – Under Fixing America's Surface Transportation Act (FAST), in order for projects to be eligible for FHWA funds, roadways must be functionally classified routes.

In addition, specific programs require that in order to be eligible, roadways must be identified as part of the National Highway System (NHS) or the Interstate System, which is a component of the NHS.

The NHS provides an interconnected system of principal arterials and other highways serving major population centers, international border crossings, ports, airports, public and intermodal transportation facilities, and other major travel destinations to meet national defense needs and to serve interstate and interregional travel.

Routes which must be included on the NHS are principal arterials, interstate highways, highways on the Strategic Highway Network (STRAHNET), major STRAHNET connectors, and congressional high priority routes.

Non-NHS routes include all other functionally classified routes (except rural minor collector and local access). The Act allows up to 15 percent of Surface Transportation Block Grant rural dollars to be used on rural minor collectors.

.12 FHWA Funding Programs – FHWA reimburses eligible costs for transportation projects from the following programs (see [Section 12.5](#)):

- National Highway Performance Program (NHPP)
- Surface Transportation Block Grant (STBG)
- Congestion Mitigation and Air Quality (CMAQ)
- Highway Safety Improvement Program (HSIP)
- National Highway Freight Program (NHFP)
- Transportation Alternatives (Previously Transportation Alternatives Program) (TAP)
- Ferry Boat Program (FBP)
- Emergency Relief Program (ER)

12.2 Programming Projects

.21 Planning Requirements – The Federal Transportation Act requires a continuous, cooperative and comprehensive performance-based statewide and metropolitan multimodal transportation planning process. This process involves:

- Metropolitan Planning Organization (MPO) long-range transportation plans.
- MPO transportation improvement programs (MTIPs).
- A statewide long-range transportation plan.
- A Statewide Transportation Improvement Program (STIP).

The statewide planning process carries out a cooperative, continuous and comprehensive (referred to as 3C) performance-based multimodal transportation approach for making transportation investment decisions to support the national goals throughout the state. The process for developing the statewide plan and transportation improvement program shall include metropolitan and non-metropolitan local officials with responsibility for transportation, including transit operators, tribal nations, and federal land management agencies. At the state and federal levels, policies and procedures have been established to provide for statewide coordination of transportation programs.

At the state and federal levels, policies and procedures have been established to provide for statewide coordination of transportation programs.

.22 Local Agency Transportation Programs – The local agency transportation program is a listing of prioritized projects that a local agency expects to begin during the next six years. Projects in the local agency transportation program are all FHWA, Federal Transit Administration (FTA), and regionally significant projects regardless of funding source. All cities, towns, counties, tribal nations, and transit agencies are required to prepare and adopt their individual transportation programs annually.

- Cities and towns are required to prepare and adopt a six-year Transportation Program by June 30 annually and file a copy with the Secretary of Transportation not more than 30 days after adoption ([RCW 35.77.010](#)).
- Counties are required to prepare and adopt a six-year transportation program by December 31 annually and file copies with the County Road Administration Board (CRAB) and the Secretary of Transportation not more than 30 days after adoption ([RCW 36.81.121](#)).
- Tribal Nations are required to prepare a Tribal Transportation Improvement Program (TTIP) and forward it to the Bureau of Indian Affairs (BIA). (25 CFR 170.400).
- Transit agencies are required to prepare a six-year transit development plan by September 1st of each year and file a copy with WSDOT, the Transportation Improvement Board, cities, counties, and regional planning councils where the transit agency is located ([RCW 35.58.2795](#)).
- WSDOT prepares a 6-year project delivery plan based on identified system deficiencies and priorities by July 1 annually and makes the plan available for use in consulting with communities, metropolitan and non-metropolitan local officials.

Once the agency's transportation programs are adopted federally funded and regionally significant projects are submitted to MPOs for inclusion in the Regional TIP. County Lead agencies and rural cities can submit directly to WSDOT or the RTPO for inclusion in the STIP based on an agreed upon process.

WSDOT developed a web-based system for agencies to prepare their six-year transportation programs and submit them electronically. For additional information on the system, go to www.wsdot.wa.gov/localprograms/programgmt/stip.htm.

12.3 Coordination With Agencies

.31 Metropolitan Planning Organizations (MPO) – An MPO is the policy board of an organization designated to carry out the metropolitan transportation planning process for an urbanized area with 50,000 or more population as designated by the Bureau of the Census. (23 USC 134(d) and 23 CFR Part 450).

MPOs with populations over 200,000 are designated as Transportation Management Areas (TMAs). Some responsibilities of the TMA/MPO are:

- Carry out a continuing, cooperative, and comprehensive performance-based multimodal transportation planning process (3 Cs), for transportation decision making to support the national performance goals.
- Prepare a 20-year metropolitan transportation plan (MTP) that is financially constrained and serves as a basis for the selection of projects in the MTIP.
- Develop programmatic mitigation plans to address the potential environmental impacts of future transportation projects.
- Develop a congestion management process.
- Develop criteria that relates to regional priorities, establish application procedures, project selection, inform local agency of selection, and monitor to ensure delivery of regional STP, CMAQ, and TAP funds that correlates with the MTP. Federal funds cannot be suballocated to individual jurisdictions or modes based on a predetermined percentage or formula (23 CFR 450.326).
- Develop a four-year MTIP, which:
 - Is required to be updated at least once every four years and approved by the MPO and Governor or Governor's designee.
 - Contains projects consistent with the current metropolitan transportation plan.
 - Includes a list of prioritized projects for four years.
 - Follows a documented public participation plan that provides reasonable opportunities for involvement in the metropolitan transportation planning process by interested parties.
 - Includes a financial plan for implementing the projects that is also consistent with reasonable expectation of available funding.
 - Includes sufficient descriptive project descriptions (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.
 - Contains projects being funded by Title 23, FHWA or Title 49, FTA funding.
 - Estimates the total cost of the project (all phases, all funding sources).

- Contains the amount of federal, state, and local funds to be obligated during each program year.
- Contains regionally significant projects funded with federal funds other than those administered by FHWA or FTA and projects funded with non-federal funds.
- Contains a project or identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or phase within the time period contemplated for completion of the project or the identified phase (see STIP Appendix C).
- Includes performance target achievement. The MTIP shall include, to the maximum extent practicable, a description of the anticipated effect of the TIP toward achieving the performance targets established in the metropolitan transportation plan, linking investment priorities to those performance targets.
- Each year, include a listing of obligated projects (including investments in pedestrian walkways and bicycle transportation facilities). The listing shall be published by March 30 of each year, identifying the Title 23 and/or Title 49, FHWA funds, and FTA funds that were obligated in the preceding calendar year. For each federally funded project, the listing shall include:
 - All federal funded projects authorized or revised to increase obligations in the previous calendar year.
 - The agency responsible for carrying out the project or phase.
 - Sufficient project descriptions (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.
 - The amount of federal funds requested in the TIP.
 - The federal funding obligated during the previous calendar year.
 - The federal funding remaining for subsequent years.
- After the MPO TIP is approved, it is submitted to WSDOT through the web-based system for inclusion in the STIP.

.32 Regional Transportation Planning Organizations (RTPO) – As part of the Growth Management Act (GMA), the state legislature authorized the creation of RTPOs ([RCW 47.80](#)). RTPOs are voluntary organizations composed of local governments within a county, or within geographically contiguous counties, whose purpose is to coordinate transportation planning on a regional basis and to develop a regional transportation plan as applicable. Some RTPO responsibilities may include:

- Establish a cooperative planning process with public involvement.
- Provide a forum for state and local agencies to coordinate their planning.
- Certify that local plans are consistent with the GMA and the regional plan.
- Prepare a regional transportation plan that identifies regionally important transportation facilities, outline a strategy and approach for the region to guide system development and a financing plan.
- Develop a six-year RTIP which is required to be updated at least once every two years and includes a prioritized list of regional projects drawn from state, transit, tribal, city, and county transportation programs and how the program of projects will be financed.

- Develop criteria that relates to regional priorities, establish application procedures, project selection, inform local agency of selection, and monitor to ensure delivery of regional TAP funds. Federal funds cannot be suballocated to individual jurisdictions or modes based on a predetermined percentage or formula (23 CFR 450.324).

After the RTPO TIP is approved, it is submitted to WSDOT through the web-based system. Only the first four years of the RTPO TIP, County Lead agency and rural city transportation programs are included in the STIP.

A list of MPOs and RTPOs is at:

www.wsdot.wa.gov/nr/rdonlyres/91717186-9193-4054-807d-3b229d016fe8/0/mportpowsdotdirectory021113.pdf

A map of MPOs and RTPOs is at:

www.wsdot.wa.gov/nr/rdonlyres/cf5ead4f-f9c9-46f9-b97a-f0e7945f2254/0/mportpomapforweb.pdf

.33 County Lead Agencies – County lead agencies are responsible for developing a county-wide approach to select priority transportation projects in their respective boundaries. Transportation needs of the rural counties are often much different than the needs of metropolitan areas. Rural counties frequently partner with the smaller local jurisdictions to meet the broader needs of the county-wide transportation system. Responsibilities of county-lead agencies include:

- Develop criteria that relates to county-wide priorities, establish application procedures, project selection, inform local agencies of selection and monitor to ensure delivery of Surface Transportation Program (STP) funds. Federal funds cannot be suballocated to individual jurisdictions or modes based on a predetermined percentage or formula (23 CFR 450.326).
- Include non-metropolitan local officials with responsibility for transportation, including tribal nations and provide for consideration of all modes of transportation.
- Public involvement through the respective agency’s six-year program hearings and selection processes.

After projects are prioritized, selected, and approved through the county-wide process, the projects are programmed in the respective lead agency’s transportation program. Upon adoption of the agency’s transportation program, it is submitted for inclusion in the STIP. Each county lead agency works with their jurisdictions to ensure process for inclusion in the STIP.

.34 Local Agencies Outside MPOs – Local agencies outside MPOs are required to comply with the state six-year programming laws as well as federal law under the Federal Transportation Act, 23 USC, and 49 USC for any project they wish to finance with federal funds. Public involvement includes the six-year program hearings and the public comment processes for the local agency.

12.4 Statewide Transportation Improvement Program (STIP)

The Federal Transportation Act requires that each state develop a STIP as a condition to authorize federal funds for transportation projects. The STIP is a four-year prioritized program of transportation projects, compiled from rural transportation programs, RTIPs and MTIPs that have been found consistent with Regional and Metropolitan Transportation Plans along with the Washington Transportation Plan (WTP). The STIP includes projects such as pavement overlays, roadway widening, bridge replacement or repair, signal systems, safety enhancements, bicycle and pedestrian facilities, and transit improvements. Projects included in the STIP are funded by a combination of federal, state, and local sources. Federal aid projects must be included in the STIP before FHWA or FTA can authorize the expenditure of federal funds. Once projects are approved in the STIP, agencies may request project authorization with federal funds.

The STIP is developed annually beginning in October. A draft STIP is available for public review in November on WSDOT's website. FHWA and FTA approve the STIP in January. WSDOT launches the searchable database of the STIP, available to all on WSDOT's STIP web page. Monthly STIP amendments are submitted to FHWA/FTA for approval and are available for public review and comment on WSDOT's website concurrently for 10 calendar days.

The STIP includes:

- All TMA transportation improvement programs without change.
- All MPO transportation improvement programs without change.
- The first four years of all RTPO transportation improvement programs.
- The first four years of rural transportation programs for agencies not in an RTPO.
- Involvement of:
 - Local Agencies
 - Regional Transportation Planning Organizations
 - Transportation Management Areas
 - Metropolitan Planning Organizations
 - WSDOT
 - Transit Agencies
 - Tribal Nations
 - The Governor's Office

The basic required elements of the STIP are:

- All proposed highway and transit projects in the state funded under Title 23 and Title 49 USC, including federal lands projects.
- Consistent with the statewide transportation plan.
- In carbon monoxide, ozone, PM-10, or PM-2.5 nonattainment areas, include projects that conform with the State Implementation Plan (SIP).
- Consistent with expected available funding.

- Identify projects and selection priorities developed with appropriate consultation and/or coordination with local jurisdictions, metropolitan planning organizations, and federal lands agencies.
- Include regionally significant projects funded with federal funds other than those administered by FHWA or FTA and projects funded with non-federal funds.
- Meet the requirements of 23 USC 135(e), Statewide Planning, coordination with local jurisdictions, and approved by FHWA and FTA.
- Include a project or identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or phase within the time period contemplated for completion of the project or the identified phase.

The STIP shall include for each project or phase:

- Project descriptions (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.
- An estimate of the total project cost (all phases, all funding sources).
- The amount of federal, state, and local funds proposed to be obligated during each program year.
- Complete funding for the phase identified (all funding sources).

WSDOT is primarily responsible for implementation of the Washington State STIP. This cannot be accomplished without recognizing the requirements of all transportation providers in developing their various transportation programs.

Agencies within an MPO must submit projects to the MPO, who will then submit to WSDOT for inclusion in the STIP.

Agencies within a RTPO and/or County Lead agency verify with the applicable agency the process regarding project submittals for inclusion in the STIP.

The following schedule shows the processes and responsibilities required by state and federal law to develop Washington's STIP. Many of the events on the schedule interact with others and require cooperation and communication between government agencies.

The schedule is crucial to managing transportation funding. Agencies must plan adequate time for discussion and analysis, public involvement, as well as time to submit information for review.

Annual STIP Timeline	
Deadline	Description
June 30	Cities and towns six-year transportation programs adopted.
July	Agencies & WSDOT submit projects for inclusion in the STIP to MPO's & RTPO's, as applicable
July 31	Adopted transportation programs due to WSDOT.
August/September	MPOs assemble regional TIPs and prepare analysis for conformity finding (as applicable).
August	WSDOT reviews draft MPO TIPs. As requested WSDOT reviews draft RTPO TIPs, County Lead and city transportation programs.
September 1	Transit agencies six year plans due.
September/October	WSDOT, FHWA and FTA review MTIPs for air quality conformity.

Annual STIP Timeline	
Deadline	Description
October	All MPO and RTPO TIPs are due to WSDOT when the October amendment is due
November	WSDOT approves MPO TIPs. FHWA and FTA issue Regional Air Quality Conformity finding. Draft STIP available for public review.
December	WSDOT submits the STIP to FHWA and FTA for approval.
December	Counties adopt annual budgets and six-year programs.
January	FHWA and FTA approve the STIP.

The STIP is amended each month through October. The STIP amendment schedule is available at www.wsdot.wa.gov/ta/progmgt/stip/stiphtml.htm.

12.5 Funding Sources

Once a project is selected to receive federal aid highway funding, the project *must* be developed in accordance with the federal requirements and procedures that apply to federal aid highway projects. The federal aid highway funding is administered through WSDOT which is responsible for ensuring that federal and state requirements and procedures are followed. Also, all FHWA funded programs are reimbursement programs for financing transportation projects.

.51 Surface Transportation Block Grant Program – The STBG program provides flexible funding that may be used by WSDOT and local agencies for projects to preserve and improve the conditions and performance on any federal aid highway, bridge and tunnel projects on any public road, pedestrian and bicycle infrastructure, and transit capital projects, including intercity bus terminals.

For details on all eligible activities and additional details, go to www.fhwa.dot.gov/fastact/guidance.cfm

The agencies are expected to consider the relative importance of the route, roadway condition, and traffic impact on NHS routes as they prepare their six-year programs for their roadway systems. The local agencies and the responsible selection agencies will ensure their respective NHS routes are given priority in their programming process.

The federal participation rate is 86.5 percent.

Suballocation of STBG

- 50 percent of STBG funding is suballocated to MPOs, RTPOs, and county lead agencies based on 2010 census population as follows:
 - Urbanized areas greater than 200,000.
 - Areas greater than 5,000 but no more than 200,000.
 - Areas with population of 5,000 or less.
- The remaining 50 percent is available for use in any area of the state and distribution is left to the discretion of the state. Local agencies are provided a proportion of these funds in their annual allocation.

.52 National Highway Performance Program (NHPP) – The NHPP program provides funding for the condition and performance of the National Highway System (NHS), for the construction of new facilities on the NHS, and to ensure that investments of Federal-aid funds in highway construction are directed to support progress toward the achievement of performance targets established in the State’s asset management plan for the NHS. The NHPP program provides funding that may be used by WSDOT and local agencies for projects including: construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of highways and bridges, including bridges on a non-NHS Federal-aid highway (if Interstate System and NHS Bridge Condition provision requirements are satisfied); bridge and tunnel inspection and evaluation, as well as training bridge and tunnel inspectors; transit capital; environmental restoration and mitigation; safety; construction, rehabilitation, or replacement of ferry boats and facilities; Intelligent Transportation Systems (ITS); and bicycle and pedestrian infrastructure.

FAST continues the focus on performance, accountability and performance targets nationally. This requirement has states develop a risk-based asset management plan for the NHS.

In addition, MAP-21 eliminates dedicated funding for bridge repair. Therefore, the approximate 6 percent share of the NHPP program for local entities is dedicated to fund a portion of a statewide local agency competitive bridge program.

MAP-21 requires a new focus on performance and accountability and sets performance targets nationally. This requirement has states develop a risk-based asset management plan for the NHS. Once more information is provided, this section will be updated.

For information on the designated local NHS routes, go to www.fhwa.dot.gov/fastact/guidance.cfm

For details on all eligible activities, go to www.fhwa.dot.gov/map21/guidance/index.cfm.

.53 Highway Safety Improvement Program (HSIP) – The HSIP continues in the Federal Transportation Act to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-state owned public roads and roads on tribal lands. The HSIP requires a data-driven, strategic approach to improving highway safety on all public roads that focuses on performance.

1. **Strategic Highway Safety Plan** – The safety program requires each state to develop and implement a strategic highway safety plan that is approved by the Governor. Washington State’s plan is called Target Zero. Target Zero identifies safety problems and includes strategies to improve them. As part of the plan, the state is required to develop an evaluation process to assess results and use the information for future improvements.

2. **Safety Program** – Safety projects selected after January 2007 will be consistent with the strategic highway safety plan.

WSDOT has two programs to address safety:

- a. **City Safety Program** – The goal of the program is to fund the design/preliminary engineering, right of way, and construction phases of projects that will reduce fatal and serious injury collisions on city streets in cities of any population and state highways that serve as arterials within cities with a population above 25,000.
- b. **County Safety Program** – The goal of the program is to fund the design/preliminary engineering, right of way, and construction phases of projects that will reduce run-off-road and intersection-related fatal and serious injury collisions on county roads.

All projects funded through this program are required to report on subsequent crash data to FHWA for those years after completion of the project.

The federal participation rate is 90 percent.

For details on all eligible activities, go to www.fhwa.dot.gov/fastact/guidance.cfm

.54 Transportation Alternatives – The FAST Act replaced the Transportation Alternative Program (TAP) with a set-aside of Surface Transportation Block Grant (STBG) program funding for transportation alternatives (TA). These set-aside funds include all projects and activities that were previously eligible under TAP, encompassing a variety of smaller-scale transportation projects such as, on and off-road trail facilities, pedestrian and bicycle facilities, infrastructure projects for improving non-driver access to public transportation and enhanced mobility, community improvement activities, environmental mitigation, recreational trail program projects, and Safe Routes to School projects

Suballocation of TA

- 50 percent of TA funding is suballocated to MPOs, RTPOs, and county-lead agencies based on 2010 census population as follows:
 - Urbanized areas greater than 200,000.
 - Areas greater than 5,000 but no more than 200,000.
 - Areas with population of 5,000 or less.
- The remaining 50 percent is available for use in any area of the state and distribution is left to the discretion of the state. At this time, a proportion of these funds are dedicated to a statewide Safe Routes to School program and the remaining is provided to the RTPOs.

WSDOT and MPOs are not eligible project sponsors for TA funds. However, State DOTs and MPOs may partner with an eligible project sponsor to carry out a project.

Nonprofits are not eligible as direct grant recipients of TA funds unless, they are a designated transit agency, school, or responsible for the administration of local transportation safety programs.

The federal share is 86.5 percent.

The FAST Act requires FHWA to generate a report on the status of transportation alternatives projects and submit the report annually to the Secretary, as well as making it available to the public. The reports are to be based on each Federal Fiscal Year (FFY). The report is due to Local Programs by the MPO/RTPO/County by November 20th each year to meet the FHWA deadline in December.

MPO/RTPO/County is to submit to WSDOT a report for each FFY that includes:

- The number of project applications received that FFY;
- The aggregate cost of the projects for which applications were received that FFY;
- The number of projects selected for funding that fiscal year, including:
 - Aggregate costs of the projects selected, and
 - Location of the projects selected.
- The types of projects to be carried out, based on the following seven categories:
 - Pedestrian & Bicycle Facilities
 - Recreational (recreational trail projects only)
 - Turnouts, Overlooks, Viewing Area
 - Historic Preservation
 - Environmental and Wildlife
 - Safe Routes to School
 - Other – Inventory, control or removal of outdoor advertising

For details on all eligible activities, go to www.fhwa.dot.gov/fastact/guidance.cfm

.55 Congestion Management and Air Quality (CMAQ) – The CMAQ program provides funding for transportation projects and programs that will contribute to attainment of National Ambient Air Quality Standards (NAAQS). CMAQ provides funding for projects and programs in air quality nonattainment and maintenance areas for ozone, carbon monoxide (CO) and particulate matter (PM-10, PM-2.5) which reduce transportation related emissions. The Clean Air Act (CAA) of 1970 also provides for a set-aside for those areas with a classification for PM-2.5. For more information on Air Quality requirements, see the [Environmental Procedures Manual](#) M 31-11.

The primary intent is for these projects and programs to result in tangible reductions in ozone precursor and CO emissions within a timeframe to allow attainment as provided in the Clean Air Act Amendments (CAAA) of 1990. It is important to note that the Clean Air Act requires highest priority be given to the implementation of the transportation portions of applicable SIPs and Transportation Control Measures (TCMs) from applicable SIPs.

An evaluation and assessment of CMAQ projects and programs to determine the direct and indirect impact of the projects on air quality and congestion is required. Air quality benefits must be determined and documented to have projects qualify for CMAQ funds.

CMAQ funds are distributed to the five MPOs representing maintenance areas – Puget Sound Regional Council (PSRC), Spokane Regional Transportation Council (SRTC), Southwest Washington Regional Transportation Council (RTC), Yakima Valley Conference of Governments (YVCOG), and Thurston Regional Planning Council (TRPC). MAP-21 has a set-aside for MPOs designated as nonattainment or maintenance areas for PM-2.5 that are to be used to address PM-2.5 emissions. PSRC is designated as a maintenance area for PM-2.5.

Project planning activities are eligible only if the project leads directly to construction of a CMAQ project; that is, system planning and other non-project specific planning is not eligible. Developing computerized systems, such as a Geographic Information System, are not eligible. Studies to analyze future transportation needs are eligible only to the extent they are needed to develop project specific construction plans.

Sidewalk extensions and wheelchair ramps are eligible if they are incidental to an eligible CMAQ project, but are not eligible if they are the only work in the project. Paving projects for dust control are eligible only in areas where PM-10 nonattainment has been attributed to transportation sources.

If FTA determines eligibility, CMAQ funds may be transferred to FTA to purchase alternate fuel buses and refueling stations for bus fleets and transit conversion to alternate fuel and personal rapid transit systems. Converting municipal fleet operations to alternate fuel source such as compressed natural gas is eligible in areas that require conversion as a measure to mitigate noncompliance in the Clean Air Act.

FAST requires performance measures be established by USDOT for states to use to assess traffic congestion and on-road mobile source emissions and target to address those performance measures to be set by the state. In Washington, PSRC (Transportation Management Area over one million in population representing a maintenance area) is required to develop and update biennially a performance plan to achieve air quality and congestion reduction targets.

The federal participation is 86.5 percent.

For details on all eligible activities, go to www.fhwa.dot.gov/fastact/factsheets/cmaqfs.cfm

.56 Ferry Boat Program (FBP) – The FBP was established in MAP-21 for the construction of ferry boats and for design, right of way, and construction of ferry terminal facilities. Funds will be allocated to states for distribution to the specific eligible public entity.

Federal aid highway funds are available for capital improvements to existing ferry facilities, as well as construction of new ferry facilities. Cost-effective preventive maintenance activities that extend the useful life of the ferry facility are also an eligible activity under 23 USC 116(e). However, operational costs of a ferry, such as costs of ferry service administration, crews, general maintenance, and fuel, are not eligible for direct federal aid highway funding.

Ferry entities are required to submit data to the national ferry database in order to be eligible for FBP funding. FBP funds will be allocated using the most current data.

The federal participation is 80 percent.

For details on all eligible activities, go to www.fhwa.dot.gov/fastact/factsheets/ferryboatfs.cfm

.57 Emergency Relief (ER) Program – Refer to [Chapter 33](#) for details.

.58 National Highway Freight Program (NHFP) – The FAST Act establishes a National Highway Freight Program to improve the efficient movement of freight on the National Highway Freight Network (NHFN) and support several goals, including—

- Investing in infrastructure and operational improvements that strengthen economic competitiveness, reduce congestion, reduce the cost of freight transportation, improve reliability, and increase productivity;
- Improving the safety, security, efficiency, and resiliency of freight transportation in rural and urban areas;
- Improving the state of good repair of the NHFN;
- Using innovation and advanced technology to improve NHFN safety, efficiency, and reliability;
- Improving the efficiency and productivity of the NHFN;
- Improving State flexibility to support multi-State corridor planning and address highway freight connectivity; and
- Reducing the environmental impacts of freight movement on the NHFN. [23 U.S.C. 167 (a), (b)]

The federal participation rate is 86.5 percent.

For details on all eligible activities, go to www.fhwa.dot.gov/fastact/guidance.cfm

12.6 FHWA Discretionary Programs

FHWA administers some discretionary programs through its various offices.

These discretionary programs represent special funding categories where FHWA solicits for candidates and selects projects for funding based on applications received. Each program has its own eligibility and selection criteria that are established by law, by regulation, or administratively. Below is a brief description of these programs.

.61 Federal Lands and Tribal Transportation Programs – The Federal Transportation Act continues to acknowledge the importance of access to federal and tribal lands. Recognizing the need for all public federal and tribal transportation facilities to be treated under uniform policies similar to the policies that apply to federal aid highways and other public transportation facilities, a unified program was created for federal lands transportation facilities, federal lands access transportation facilities, and tribal transportation facilities.

- **Federal Lands Transportation Program** – Provides funding for projects that improve access within federal lands, such as national forests, national wildlife refuges, national recreation areas and other federal public lands on transportation facilities in the national Federal Lands transportation inventory, and owned and maintained by the federal government. The National Park Service, U.S. Fish and Wildlife Service and U.S. Forest Service receive annual allocations identified in legislation. The Secretary decides allocation amounts for Bureau

of Land Management, Bureau of Reclamation, U.S. Army Corps of Engineers and eligible independent Federal agencies with natural resources and land management responsibilities.

- **Federal Lands Access Program** – Provides funding for projects on federal lands access transportation facilities that are located on or adjacent to, or that provide access to federal lands. The program supplements state and local resources for public roads, transit systems, and other transportation facilities that provide seamless access to high-use federal recreation sites or federal economic generators with federally-owned lands. Funds are distributed by formula based on recreational visitation, federal land area, federal public road mileage, and the number of federal public bridges. Programming decisions will be made locally using a tri-party model in each state comprised of representatives from FHWA, state DOT, and local government, in consultation with applicable Federal Land Management Agencies (FMLAs). A new federal match is required for these funds.
- **Tribal Transportation Program** – Provides funding for projects that improve access to and within Tribal lands. This program continues to provide set-asides for tribal bridge projects, tribal safety, program administration and tribal planning. FAST continues the statutory formula for distributing funds among tribes, based on tribal population, road mileage, and average tribal shares under the SAFETEA- LU Indian Reservation Road program.

For details on all eligible activities go to www.fhwa.dot.gov/fastact/guidance.cfm.

12.7 Transfer of STP, CMAQ and TA Funds to the Federal Transit Administration (FTA)

In the event an agency would like funds administered by another federal agency (FTA, BIA, WFL, etc.), the project must be programmed in the first year of the STIP, and the local agency must submit to WSDOT a copy of the federal agency concurrence to accept FHWA funds and administer the project.

Funds may be transferred from FHWA to FTA for projects that are eligible under FTA. If the project is a traditional transit project, it should be transferred to FTA. If the project involves construction of roads or highways, it should stay with FHWA.

For projects that are not clearly transit or highway, the project sponsor should select the administering federal agency. This selection should be done in informal consultation with the two agencies and the Washington State Department of Transportation. Park and ride lots, Transportation Demand Management (TDM) activities, and intermodal facilities might be eligible under both agencies' programs.

This matrix illustrates the FTA transfer options:

	FTA	FHWA
Transit Rolling Stock	X	
Park and Ride Lots	X	X
Pedestrian Ways	X	X
Refueling Bus	X	
Carpool and Vanpool	X	X
Regional Rideshare	X	X
Commute Trip Reduction	X	X
Bikeways		X
Intermodal Station	X	
Bus and Signal Priority		X
Transit Maintenance and Operations	X	
Ferry Terminals	X	X
Passenger Ferry Vessels	X	
People Mover	X	
Auto Ferry Vessels-Metro (Puget Sound)	X	
Auto Ferry Vessels-Rural		X

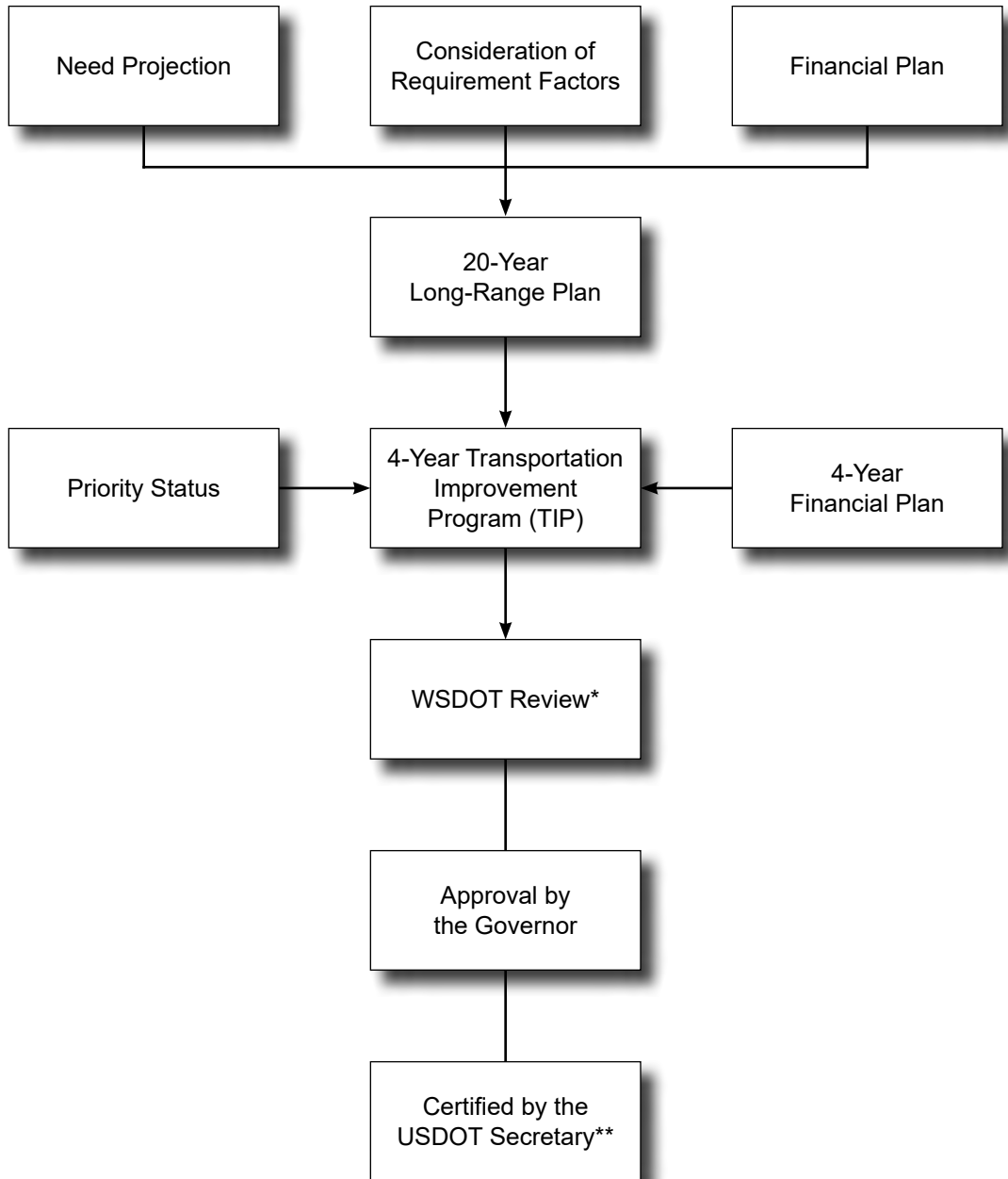
If the project is to be implemented through FTA, the entire project, including all phases, should be transferred. In some instances (some transit planning studies and selected projects not clearly defined above), funds to a transit agency may be approved through FHWA. Generally, these projects will have their scope of work and administrative oversight administered through WSDOT's Public Transportation Division.

Once FTA has reviewed the application and it is complete and ready for approval, FTA requests the transfer through Local Programs. Local Programs will request the transfer of funds from FHWA to FTA. FHWA action to transfer the funds is considered an obligation of federal funds. FTA will subsequently work with the grant recipient to utilize the transferred funds.

For any FHWA funds requested to go to another federal agency for administration a letter/email from the federal agency accepting the FHWA funds must accompany the transfer request.

12.8 Appendices

- 12.81 MPO Planning Flowchart
- 12.82 STP Lead Agencies



*TMAs exempted.
**TMAs only.

Regional Planning and Programming Process
(Simplified Chart for MPOs)

Adams County
Benton-Franklin Council of Governments
Chelan-Douglas Transportation Council
Clallam County
Columbia County
Cowlitz-Wahkiakum Council of Governments
Ferry County
Garfield County
Grant County
Grays Harbor Council of Governments
Island County
Jefferson County
Kittitas County
Klickitat County
Lewis-Clark Valley MPO
Lewis County
Lincoln County
Mason County
Okanogan County
Pacific County
Pend Oreille County
Puget Sound Regional Council
San Juan County
Skagit Council of Governments
Skamania County
Southwest Washington Regional Transportation Council (RTC)
Spokane Regional Transportation Council
Stevens County
Thurston Regional Planning Council
Wahkiakim County
Walla Walla Valley MPO
Whatcom Council of Governments
Whitman County
Yakima Valley Conference of Governments

Appendix 14.51

Project Development Process Flowchart

Phase	Process Activities	Chapter Reference
Initiate	00 Project Development Checklist	12 and 14
	00 Included in STIP	or
Design	00 Project Development Checklist	21 and 43
	00 Prepare Project Prospectus-Design Report	
	00 If Applicable, Engage Consultant	31
	00 Make Environmental Determination	24
	00 If Applicable, Request Design Deviation	41
Request Preliminary Engineering Funds	00 Project Development Checklist	43
	00 Location/Design, Public Hearing, and Approval	
	00 Complete Environmental Action	24
	00 Develop Right of Way Plans and Estimate	25
	00 Complete Relocation Plan	25
	00 Supplement to Local Agency Agreement	22
Request Right of Way Funds	00 Project Development Checklist	25
	00 Relocation and Right of Way Certification and Project Analysis	
	00 DBE Goals Set	26
	00 PS&E Approval	44
	00 Supplement to Local Agency Agreement	22
	00 For State Ad and Award, Financial Responsibility Letter	44
Request Construction Funds	00 Project Development Checklist	46
	00 Contract Number From the Region Local Programs Engineer	
Construction Administration	00 Notice to Minority Contractors Association (see Region Local Programs for Distribution Centers)	26
	00 Advertise for Bids	46
	00 For Certified Agency (CA), Approve Award and Notify Region Local Programs Engineer	46
	00 For WSDOT Administered Contracts, Award by WSDOT	45
	00 Award Data to Region Local Programs Engineer	46
	00 Preconstruction Conference	52
	00 Construction Administration (<i>Construction Manual M 41-01</i>)	52
	00 Project Development Checklist	53
00 Construction Completion Notice to Region Local Programs Engineer		
Project Closure	00 Final Acceptance by FHWA	53
	00 Final Billing and Cost Report to Region Local Programs Engineer	23 and 53
	00 Complete DBE Form	26
	00 Final Records	53
	00 Audit	53

No Environmental Studies, Right of Way, and Hearings Required



Project Development Checklist

Project Title: _____

Project Location: _____

Road or Street Number: _____ FA Program: _____

Initials	Date or N/A	Project Initiation (Chapter 12)
		Project in STIP
		Federal aid program form (Sheet 1 of Prospectus) to: <input type="checkbox"/> Metropolitan planning organization <input type="checkbox"/> Or WSDOT (Region Local Programs) <input type="checkbox"/> Nondiscrimination Agreement
		Program of project approved by appropriate agency

Initials	Date or N/A	Project Prospectus (Chapters 21, 24, 42, and ECS Guidebook)
		Sheet 1 <input type="checkbox"/> Project information, local agency project number <input type="checkbox"/> Description of proposed work and existing facility <input type="checkbox"/> Cost estimate of all phases <input type="checkbox"/> Proposed obligation date <input type="checkbox"/> Environmental determination (CE, EIS, EA) <input type="checkbox"/> Request species listing from USFWS, NMFS, DNR, and WDFW <input type="checkbox"/> Signature block
		Sheet 2 <input type="checkbox"/> Geometric design data <input type="checkbox"/> Environmental considerations <input type="checkbox"/> Performance of work
		Sheet 3 <input type="checkbox"/> Right of way relocation <input type="checkbox"/> Utility relocations <input type="checkbox"/> FAA Involvement <input type="checkbox"/> Signature <input type="checkbox"/> Local Agency Design Matrix Checklist, Appendix 42.101
		Prospectus Submittal Checklist, Appendix 21.41

Initials	Date or N/A	Local Agency Agreement (Chapters 22 and 23)
		Billing address <input type="checkbox"/> Description of work matches prospectus <input type="checkbox"/> Check math on agreement <input type="checkbox"/> Federal aid matching percentage <input type="checkbox"/> Method of financing <input type="checkbox"/> Agreement signed by approving authority

Initials	Date or N/A	Request Preliminary Engineering Funds (Chapter 14)
		Project programmed
		Project application package to Region Local Programs Engineer: <input type="checkbox"/> Project prospectus with attachments (including Roadway Section if applicable) <input type="checkbox"/> Local Agency Agreement <input type="checkbox"/> Prospectus Submittal Checklist completed
		PE funds authorized by Local Programs
		Evaluate if WSDOT Access Permits are required

Initials	Date or N/A	Consultant Selection Process (Chapter 31)
		Independent estimate for consultant services and recommendation (request) to approving authority
		Receive approval to advertise for consultant services
		Advertise for consultant services - see Appendix 31.74 (Must include Title VI language)
		Develop consultant evaluation selection criteria
		Select minimum of three best qualified firms
		Submit request for approval of selected firm to approving authority
		Conduct pre award audit (if necessary) before negotiations
		Approving authority approves selection, negotiation begins
		Negotiation completed – submit final draft of agreement, etc., to the approving authority
		Receive approval from approving authority
		Agreement signed by consultant
		Agreement executed by approving authority (consultant may now begin work)
		Notice to proceed sent to the consultant
		Send copy of agreement to Region Local Programs Engineer

Initials	Date or N/A	Consultant Administration (Chapter 31)
		Oversee the consultant's work and billings to ensure compliance with the agreement
		Prepare diary to record discussions and visitation with the consultant
		Check consultant billings regarding employee classification, wage rate, actual invoices for direct non salary costs, etc.
		Enter consultant payment on ledger system
		Conduct consultant employee interviews
		Establish and maintain a tracking system to monitor consultant agreement expiration dates

Initials	Date or N/A	Environmental Processes (CE Guidebook) Categorical Exclusion
		<input type="checkbox"/> Request a NEPA kick-off meeting with the LPE and Local Programs Environmental Engineer (if warranted). Review the draft CE Documentation Form prior to the kick-off meeting <input type="checkbox"/> Submit completed drafts of discipline reports to WSDOT Region Local Programs for review by Local Programs Environmental Engineer <input type="checkbox"/> Submit completed discipline reports to WSDOT Region Local Programs <input type="checkbox"/> Obtain all necessary approvals

Initials	Date or N/A	Environmental Assessment (Appendix C in CE Guidebook)
		Obtain concurrence from FHWA Area Engineer and Local Programs HQ that an EA is necessary.
		Submit preliminary environmental assessment to Region Local Programs
		Revise draft environmental assessment, based on Local Programs and FHWA comments
		WSDOT and FHWA approve environmental assessment
		Publish notice of availability for environmental assessment
		Publish opportunity for comment period and hearing, if held
		Submit FONSI package (including summary of comments received and responses, any revisions to the environmental assessment and FONSI) to Region Local Programs for review by Local Programs and FHWA
		FONSI issued by FHWA
		-or-
		Establish need to develop Environmental Impact Statement

Initials	Date or N/A	Environmental Impact Statement (Appendix B in CE Guidebook)
		Obtain concurrence from FHWA Area Engineer and Local Programs HQ that an EIS is necessary.
		Submit draft Notice of Intent to Region Local Programs
		FHWA Publishes Notice of Intent Submit interdisciplinary team recommendations to project manager
		Develop public involvement plan
		Develop data inventory and evaluation from interdisciplinary team
		Submit preliminary discipline reports for review to Region Local Programs
		Submit completed discipline reports to Region Local Programs
		Submit preliminary Draft Environmental Impact Statement to Region Local Programs
		Receive WSDOT and FHWA comments on the preliminary draft of EIS
		Submit camera-ready Draft Environmental Impact Statement to Region Local Programs Engineer for WSDOT and FHWA signature
		Receive approval to publish Draft Environmental Impact Statement Distribute draft environmental impact statement to circulation list
		Publish notice of availability in Federal Register (minimum 45 days comment period)
		Advertise opportunity for public hearing
		Respond to all comments received and forward comments/responses to Region Local Programs for review by Local Programs
		Prepare and submit preliminary Final Environmental Impact Statement to Region Local Programs Engineer
		Receive comments from WSDOT and FHWA
		Receive approval to print Final Environmental Impact Statement
		Submit final Environmental Impact Statement to Region Local Programs Engineer for WSDOT and FHWA signature
		Circulate final Environmental Impact Statement
		Submit draft record of decision package to FHWA
		Final ROD issued by FHWA

Initials	Date or N/A	Design Approval (Chapter 43)
		Submit project prospectus
		Submit design report
		Submit "Work Zone Safety and Mobility" report where applicable (see Section 41.2)
		Submit pavement design criteria
		Meet public hearing requirements
		Meet environmental requirements
		Concurrence with BA effect determinations
		ECS approval by FHWA
		For projects over \$50 million in the construction phase and bridge projects over \$40 million in the construction phase conduct a Value Engineering Study.
		For traffic signal projects, submit warrants for signalization to Region Local Programs Engineer
		Obtain location and design approval
		Publish design approval notice

Initials	Date or N/A	Right of Way Funding and Acquisition Funding (Chapters 14 and 25)
		Project in STIP
		Complete design hearing requirements
		Approve right of way plan
		Submit right of way relocation plan (if required) to Region Local Programs Engineer
		Submit right of way project funding estimate or true cost estimate, supplement to Local Agency Agreement and FHWA approval of environmental documents, to Region Local Programs Engineer with request for right of way funds
		Receive authorization to acquire R/W from the Director, Local Programs
Initials	Date or N/A	Acquisition (Chapter 25)
		Acquisition procedures approved by the ROW Program Manager, Local Programs
		Acquisition procedures current
		Set up documentation file for each parcel
		Set up commitment file
Appraisal		
		Appraiser approved by WSDOT
		Give landowner opportunity to accompany appraiser
		Signed appraiser certification in file
Appraisal Review		
		Appraisal reviewer approved by WSDOT
		Date of value determination precedes commencement of negotiations
		Just compensation set by agency
		Signed review appraiser certification in file
Negotiations		
		Prepare diary of all owner contacts
		Give owner written statement of just compensation (Offer Letter)
		Ensure that settlement contains construction clauses
		Obtain evidence of clear title
		Negotiator disclaimer statement in file
Relocation Plan		
		Approved by WSDOT
		Work with WSDOT relocation staff on all relocations
Project Completion		
		Complete relocation
		Complete acquisition
		Complete administrative settlement documentation
		Place a copy of deeds in file, include proof of payment in file
Send		
		Letter of certification sent from local agency to Region Local Programs Eng.
		LPA coordinator conducts certification review
		WSDOT's certification by ROW Program Manager, Local Programs

Initials	Date or N/A	Plans, Specifications, and Estimates (Chapters 24, 26, 27, 44, and ESC Guidebook)
		Review commitment and correspondence file When applicable, secure the following permits or interagency coordination: <input type="checkbox"/> Airport roadway clearance from FAA <input type="checkbox"/> Coastal zone management compliance from DOE <input type="checkbox"/> For cultural, archeological, or historic sites SHPO contacted <input type="checkbox"/> Obtain concurrence letters for environmental determination <input type="checkbox"/> When waters modified or controlled Washington Department of Fish & Wildlife and DOE contacted regarding permitting <input type="checkbox"/> When stream is affected WDFW and DOE contacted regarding permitting <input type="checkbox"/> For timber supporting land, permit from DNR <input type="checkbox"/> When construction might reduce water quality, contact DOE <input type="checkbox"/> For quarries of 2 acres (0.81 ha) and 10,000 tons (9 091 metric tons) or more DNR contacted <input type="checkbox"/> Waters/wetlands – Army Corps of Engineers and DOE contacted <input type="checkbox"/> For navigable waterways, permit from Coast Guard obtained <input type="checkbox"/> If ESA-listed species are present in the project action area, U.S. Fish & Wildlife Service and National Marine Fisheries Services consulted <input type="checkbox"/> Utility agreement obtained <input type="checkbox"/> Railway agreement(s) obtained <input type="checkbox"/> On all federal aid projects, any revision to Division 1 of the Standard Specifications or APWA Division 1 General Special Provisions requires prior written approval from Local Programs
		PS&E completed: <input type="checkbox"/> Vicinity map <input type="checkbox"/> Summary of quantities <input type="checkbox"/> Pit, quarry, stockpile, and waste sites <input type="checkbox"/> Reclamation plans <input type="checkbox"/> Roadway sections <input type="checkbox"/> Plans/profiles <input type="checkbox"/> Utility <input type="checkbox"/> Structure notes <input type="checkbox"/> Signing <input type="checkbox"/> Illumination <input type="checkbox"/> Bridge plans <input type="checkbox"/> Traffic control plans <input type="checkbox"/> Detour plans <input type="checkbox"/> Standard plans <input type="checkbox"/> Sheets numbered and dated <input type="checkbox"/> Each sheet signed and stamped by Professional Engineer <input type="checkbox"/> Bridge plans, design calculations, and soil report to Region Local Programs Engineer (State Ad and Award only) <input type="checkbox"/> Form FHWA-1273 and latest amendment included <input type="checkbox"/> Log of test borings <input type="checkbox"/> Training requirements <input type="checkbox"/> EEO requirement clauses <input type="checkbox"/> For steel, included Buy America requirement <input type="checkbox"/> Traffic control special provisions <input type="checkbox"/> Specialty items <input type="checkbox"/> General special provisions and amendments arranged in order and indexed <input type="checkbox"/> Project proposal <input type="checkbox"/> Noncollusion Declaration <input type="checkbox"/> Contract <input type="checkbox"/> DBE Utilization Certification <input type="checkbox"/> Engineer's estimate complete

Initials	Date or N/A	Plans, Specifications, and Estimates (Chapters 24, 26, 27, 44, and ESC Guidebook)
		PS&E completed: (continued) <input type="checkbox"/> DBE Utilization Certification <input type="checkbox"/> Engineer's estimate complete <input type="checkbox"/> Documentation for each item in engineer's estimate <input type="checkbox"/> Justification for nonparticipating items <input type="checkbox"/> Detailed documentation for lump sum items available in project files <input type="checkbox"/> Estimate to Region Local Programs Engineer <input type="checkbox"/> Training goal set by Local Programs <input type="checkbox"/> DBE goal set by Local Programs <input type="checkbox"/> Approval of local agency supplied materials <input type="checkbox"/> Sources approved by approving authority <input type="checkbox"/> Approval of stockpiling by the Director, Local Programs (when payment is requested for material when stockpiling aggregates, etc., for use on a future federal aid project) <input type="checkbox"/> Distribution of preliminary plans as determined by local agency
		Field review of PS&E (State Ad and Award only)
		Tied bids – Approval from WSDOT
		For State Ad and Award, financial responsibility letter with PS&E documents sent to Region Local Programs Engineer
		PS&E approved by approving authority
		Plans, contract specifications and estimate stamped, signed, and dated, and on file in the local agency office
		State and federal wage rates added to ad plans
		PS&E sent to Region Local Programs Engineer

Initials	Date or N/A	Request Construction Funds (Chapter 14)
		Project in STIP
		Send letter with the following attachments to Region Local Programs Engineer requesting construction funds: <input type="checkbox"/> Supplement to Local Agency Agreement, if project includes other phases <input type="checkbox"/> Letter of right of way certification <input type="checkbox"/> Final FHWA approval of environmental documents

Initials	Date or N/A	Local Ad and Award Advertise for Bids (Chapter 46)
		Get Local Programs Contract Number _____ from Region Local Programs Engineer
		Approve ad period of less than three weeks
		Publish notice of bid opening
		Date of publication for sealed bids

Initials	Date or N/A	Bid Opening (Chapter 46)
		Issued addendum (if within one week of bid opening, bid opening should be delayed)
		Opened bids
		Prepared bid tabulation sheet
		Checked submitted bids for tabulation errors
		Completed bid and bidders tabulation sheet
		Checked DBE participation project goals – verify DBE certification status
		Request DBE concurrence to award from Local Programs for contracts containing DBE Goals
		Determine responsive bid
		Determine contractor qualifications
		Contractor registered by Washington State Department of Labor and Industries
		Contractor licensed as required by the laws of the State of Washington

Initials	Date or N/A	Bid Opening (Chapter 46)
		The System for Award Management (SAM) has been checked and documented (www.sam.gov/portal/public/sam)
		Award recommendation sent to approving authority
		When low bid is over engineer's estimate, submit justification and letter of award recommendation to approving authority
		Submit supplement to Local Agency Agreement
		Supplement approved by Local Programs

Initials	Date or N/A	Award of Contract (Chapter 46)
		Establish contract award date _____
		Sent "Award Letter" to successful low bidder
		Sent request for a DBE Utilization Certification breakdown if a DBE goal was set
		Sent "Condition of Award" to successful low bidder if DBE goals are set in the contract
		Notify all unsuccessful bidders
		Return bid bonds
		Notify second and third bidders of holding bid bonds until execution
		Sent award data to the Region Local Programs Engineer: <ul style="list-style-type: none"> <input type="checkbox"/> Tabulation of bids <input type="checkbox"/> Engineer's estimate <input type="checkbox"/> Actual versus estimated costs shown in Local Agency Agreement <input type="checkbox"/> Award letter <input type="checkbox"/> DBE Utilization Certification, DOT Form 272-056A (if applicable) <input type="checkbox"/> DBE Written Confirmation Document, DOT Form 422-031 (if applicable) <input type="checkbox"/> Estimated date of contract completion or number of working days for the contract <input type="checkbox"/> Names and addresses of all firms that submitted a quote to the successful low bidder

Date of Award is Cutoff for Charging to Preliminary Engineering

Initials	Date or N/A	Construction Administration Execution of Contract (Chapter 46)
		Sent contract and contract bond papers to contractor for signature
		"Certificate of Insurance" received from contractor
		Approving authority executed contract documents
		Notified the contractor by phone of the execution of the contract
		Executed a copy of the contract to contractor
		Sent notice to proceed to contractor, with cc to Region Local Programs Engineer
		Returned bid bonds to second and third bidders

Initials	Date or N/A	Preconstruction Conference (Chapter 51)
		Notice of preconstruction conference to: <ul style="list-style-type: none"> <input type="checkbox"/> Contractor <input type="checkbox"/> Region Local Programs Engineer <input type="checkbox"/> Affected utility companies <input type="checkbox"/> Police department <input type="checkbox"/> Fire department <input type="checkbox"/> Hospital <input type="checkbox"/> Ambulance service <input type="checkbox"/> Post Office <input type="checkbox"/> Others _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____
		Preconstruction conference agenda prepared
		Preconstruction conference held

Initials	Date or N/A	Preconstruction Conference (Chapter 51)
		Minutes of meeting to: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractors <input type="checkbox"/> Region Local Programs Engineer <input type="checkbox"/> Other attending persons <input type="checkbox"/> Invited but not represented agencies <input type="checkbox"/> Project file
		"Training Program": <input type="checkbox"/> Received from contractor <input type="checkbox"/> Approved by agency
		"Apprentice/Trainee": <input type="checkbox"/> Approval request from contractor <input type="checkbox"/> Approved by agency

Initials	Date or N/A	Construction Documentation (Chapter 52)
		"Record of Material" received from WSDOT Materials Laboratory
		Contractor provides copies of permits obtained from other agencies and/or property owners: <input type="checkbox"/> Washington State Department of Wildlife/Fisheries-Hydraulic Permit <input type="checkbox"/> Washington State Department of Ecology <input type="checkbox"/> Irrigation Regionals <input type="checkbox"/> Burlington Northern Railroad <input type="checkbox"/> Union Pacific Railroad <input type="checkbox"/> Air Pollution Control Authority <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____
		Temporary water pollution control plan approved
		Agency requests updated ESA species listing every six months
		Approved contractor's progress schedule
		Received railroad insurance from contractor
		Construction diary started
		Inspector's diary started
		"Certification of Materials Origin" received from contractor
		Material source approval received
		Plans for falsework and forms: <input type="checkbox"/> Received from contractor <input type="checkbox"/> Approved by agency
		Required job site posters placed by contractor: <input type="checkbox"/> WH 1321 – Employee Rights Under the Davis-Bacon Act (project engineer to fill in contact information on the form prior to supplying to the contractor) <input type="checkbox"/> FHWA-1022 – Notice Federal Aid Project (project engineer to fill in contact information on the form prior to supplying to the contractor) <input type="checkbox"/> EEOC-P/E-1 – Equal Employment Opportunity IS THE Law <input type="checkbox"/> WHD Publication 1088 – Employee Rights Under the Fair Labor Standards Act <input type="checkbox"/> WHD Publication 1420 – Employee Rights and Responsibilities Under the Family and Medical Leave Act <input type="checkbox"/> WHD 1462 – Employee Polygraph Protection Act <input type="checkbox"/> WISHA F416-081-909 – Job Safety and Health Law <input type="checkbox"/> F242-191-909 – Notice to Employees (L&I) <input type="checkbox"/> F700-074-909 – Your Rights as a Worker in Washington State <input type="checkbox"/> EMS 9874 – Unemployment Benefits
		Daily construction signing records started (checked twice daily and recorded)
		Weekly statement of working days started
		Material acceptance sampler appointed

Initials	Date or N/A	Construction Documentation (Chapter 52)
		Material independent assurance sampler appointed
		Appointed office engineer for progress estimates and final records
		Obtain a copy of the scale certifications
		Daily scale check
		Received FHWA Form 1391 for each July from contractor and subcontractors
		FHWA Form 1392 prepared and sent to Region Local Programs
		Received "Request to Sublet Work" and "Subcontractor or Agent Certification" from contractor
		Approved request to sublet (subject to 70 percent limit)
		Received "Intent to Pay Prevailing Wages" from contractor, subcontractors, and agents
		Received approved "Intent to Pay Prevailing Wages" from Labor and Industries (required before first payment)
		Checked first certified payroll from contractor and subcontractors to ensure payment of prevailing wages
		Conducted random check of each successive payroll
		Wage rate interviews conducted
		Checked employee interview wage rate against certified payroll and Labor and Industries approved prevailing rate
		Assigned Change Order Numbers _____ (Local Programs approval required when change order will alter the termini, character, or scope of work. Approval must be obtained before effective date of change order to be eligible for federal participation.) <input type="checkbox"/> Prepare change order that details basis and need for the change <input type="checkbox"/> Extension of time approved _____ days <input type="checkbox"/> Change order signed by contractor <input type="checkbox"/> Change order signed by surety (if required) <input type="checkbox"/> Verbal approval obtained from approving authority <input type="checkbox"/> Signed by approving authority <input type="checkbox"/> Original sent to contractor <input type="checkbox"/> Copy of approved change order sent to Region Local Programs Engineer <input type="checkbox"/> Supplement to Local Agency Agreement approved by the Director, Local Programs
		Obtained copy of monthly estimate <input type="checkbox"/> Verified and documented that DBE is performing a commercially useful function prior to making a monthly payment <input type="checkbox"/> Prepared estimate <input type="checkbox"/> Checked estimate <input type="checkbox"/> Estimate sent to contractor <input type="checkbox"/> Estimate received from contractor <input type="checkbox"/> Obtain all "Intent to Pay Prevailing Wages" forms (for first month only; no payment can be made to the contractor until the form is received)
		Overview of DBE Work (Chapter 26): <input type="checkbox"/> Verify work being done per Condition of Award Letter <input type="checkbox"/> Conduct on-site review(s) of each DBE to determine if the DBE is performing a commercially useful function (CUF) <input type="checkbox"/> Review change orders that affected DBE work <input type="checkbox"/> DBE goal change approved by the Director, Local Programs
		Overview of EEO (Chapter 27): <input type="checkbox"/> Agency designates an EEO officer <input type="checkbox"/> Conduct on-site compliance review <input type="checkbox"/> Monitor DOT Form 820-010 each month for each trade <input type="checkbox"/> Notify contractor of compliance or noncompliance with the contract provisions <input type="checkbox"/> Ensure EEO signs are posted

Initials	Date or N/A	Project Completion (Chapter 52)
		Prefinal inspection by local agency and contractor completed
		Final inspection by local construction agency and contractor completed
		Report of Non-American Made Material (GSP 0605.GR1) received from contractor
		Notice of completion sent to contractor
		Extension of time request with justification received from contractor
		Extension of time granted, _____ days
		Extension of time refused, _____ days _____ liquidated damages
		Letter sent notifying contractor of assessed liquidated damages
		Copy of completion notice requesting inspection and acceptance by Region
		Local Programs
		Contractor submitted claim
		No claim submitted
		Notice of completion to: _____
		Department of Labor and Industries
		Department of Revenue
		Received "Affidavit of Wages Paid" from contractor and subcontractors
		Received ESA species listing for the project every six months
		Received "Monthly Report of Amounts Credited as DBE Participation" from contractor
		Release received from Department of Labor and Industries
		Release received from Department of Revenue
		Comparison of preliminary and final quantities sent to approving authority
		Material certification form sent to approving authority
		Completed "Report of Contractor's Performance" for prime contractor
		As built plan completed (to be retained indefinitely)
		Final record book #1 completed
		Final estimate approved by the approving authority
		Final estimate received from contractor
		Paid final estimate
		Released retained percentage from escrow or mailed check to contractor

Initials	Date or N/A	Project Closure (Chapters 32 and 53)
		Completion letter sent to Region Local Programs Engineer (within 15 days after project is completed)
		Final billing sent to Region Local Programs Engineer (within 90 days after completion)
		Completed final field inspection by the Region Local Programs Engineer. Deficiencies (if any) will be noted on DOT Form 140-500.
		Resolve deficiencies found during the above field inspection
		Informed by Region Local Programs Engineer of WSDOT final billing approval

22.1 General Discussion

A Local Agency Agreement is an agreement between a local agency and the Washington State Department of Transportation (WSDOT). An agreement is prepared for each federal aid project, and it covers all phases of work involved in the project (preliminary engineering, right of way acquisition, construction). Its purpose is to ensure that the federal funds in the agreed-upon amount are spent in accordance with all applicable state and federal laws and regulations. The agreement also specifies the procedure for payment and reimbursement on the project.

If the federal aid participation ratio entered in the agreement is not the maximum rate allowed by the Federal Highway Administration (FHWA), then the participation ratio entered becomes the maximum rate allowed.

No costs are eligible for federal aid reimbursement until authorized in writing by WSDOT. This authorization is separate from the agreement

The total cost of a project (including federal, state, agency, and private funds) must be shown on the Local Agency Agreement for each phase of work that includes federal or state funds. At the time of each phase authorization, all funds necessary to complete the scope of work for that phase must be secured.

Project Agreement End Date – All projects are now required to have a Period of Performance which includes both a begin date and an end date. A project’s begin date is the date of FHWA authorization. Local agencies will be required to supply an estimated Project Agreement End Date for each federally authorized phase of a project. To ensure adequate time for the delivery of local projects, which are subject to state environmental requirements, substantial community involvement, eminent domain, and coordination with other local projects, WSDOT recommends when establishing the “Project Agreement End Date” local agencies consider:

- For **Planning Only** projects – WSDOT recommends local agencies estimate the end of the project’s period of performance and add one year.
- For **Preliminary Engineering** (PE – design) and **Right of Way** (RW) – WSDOT recommends local agencies estimate when each phase will be completed and add one year to each, due to the complications that may arise with environmental requirements and approvals and negotiating right of way with property owners and railroads.
- For **Construction** (CN) – WSDOT recommends local agencies estimate when construction will be completed and add two years, to provide adequate time to acquire all the necessary paperwork, releases, and negotiate any claims for closure of the project.

Note: 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 within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

When authorizing construction, the agency's proposed advertisement date must be noted on the supplemental Local Agency Agreement, or the original LAA if construction is the first phase authorized. Local Agencies are expected to go to ad within six weeks of construction authorization.

All funds shown on the Local Agency Agreement must be supported by a documented cost estimate (23 CFR Part 630) that is based on an Agency's best estimate of costs. The cost estimate must demonstrate how the funds shown on the LAA were determined, and what information was used in the calculation.

22.2 Preparation Procedure

An original Local Agency Agreement signed by the approving authority must be submitted by the local agency to the Region Local Programs Engineer when the Project Prospectus ([Chapter 21](#)) is submitted. This agreement form will be retained by WSDOT. It is the responsibility of the local agency to submit an additional agreement form or a copy if they need an executed agreement for their files. To allow sufficient time for WSDOT review and execution, these documents should be submitted a minimum of 4 weeks prior to the time when federal reimbursement is desired.

Agreements containing errors will be returned to the local agency for correction. Any changes must be initialed by the approving authority ([Chapter 13](#)). To avoid this delay, the agency should check all figures prior to submittal, and if in doubt, request assistance from the Region Local Programs Engineer.

An agreement form (DOT Form 140-039) is contained in [Appendix 22.51](#), with instructions for completing it in [Appendix 22.52](#). Local agency cost estimates for each phase of a project are entered on the form, as well as the project name, length, termini, description, Project Agreement End Date, Proposed Advertisement Date (required for construction phase) and method of construction financing. These methods are described in [Appendix 22.52](#).

Local agency resolutions or ordinances that may be needed are discussed in [Appendix 22.52](#).

22.3 Supplemental Agreement

Funds requested beyond the amount set forth in a Local Agency Agreement, supplementing for the next phase of the project and/or a change to the Project Agreement End Date will require execution of a Supplemental Agreement.

Changes to the project funding must be made in accordance with this manual (see [Chapter 12](#)) and must be accompanied by documented cost estimates for phases already authorized or seeking authorization (23 CFR Part 630).

All projects shall submit a supplemental agreement to revise the federal funds obligated within 90 days after it is determined that the estimated federal share of project costs has decreased by \$250,000 or more (23 CFR Part 630.106(4) Subpart A).

Federal approval is required to change a Project Agreement End Date. Therefore, Project Agreement End Date may only be changed during a phase, through a supplement, if:

- a project has a change in the terms and conditions of the federal award (e.g., significant cost change or scope change); or

- adequate justification is provided for project schedule revision or other circumstances (e.g., litigation) and there is no change to the terms and conditions of the Federal project.

Note: Requests for reimbursement 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.

A Supplemental Agreement form (DOT Form 140-041) is shown in [Appendix 22.53](#), and instructions for completing it are given in [Appendix 22.54](#). Like the original agreement form, the Supplemental Agreement form requires information about the project's name, length, termini, description, schedule and funding.

22.4 Documented Cost Estimate

A documented cost estimate is an itemized estimate of costs broken down by phase for a project. Preliminary engineering estimates can be based on a percentage of historical construction costs, or based on historical labor and equipment needs used to complete similar design efforts. Right of way estimates will be the right of way project funding estimate ([Appendix 25.172](#)) or true cost estimate ([Appendix 25.173](#)). Construction estimates will be the engineer's estimate, including construction engineering costs. Bid tabulations, or award data may be used to justify increases when completing Supplemental Agreements.

Acceptable references for building a documented estimate may be historical construction costs, estimates from recent similar work, WSDOT Unit Bid Analysis, or other estimating methods. A cost estimate must be provided for each phase shown on the Local Agency Agreement, including preliminary engineering. Estimates for the Construction Phase should include funds for construction engineering in addition to the Engineer's Estimate.

When submitting a cost estimate with a Supplemental Agreement please provide a brief statement explaining what costs changed since the original Local Agency Agreement was created. Bid tabulations or award data may be used to justify Supplemental Agreement increases for construction phases of a project.

22.5 Appendices

- [22.51](#) Local Agency Agreement
- [22.52](#) Local Agency Agreement – Instructions
- [22.53](#) Local Agency Agreement Supplement
- [22.54](#) Local Agency Agreement Supplement – Instructions
- [22.55](#) Vacant
- [22.56](#) Documented Cost Estimates – Example

22.6 Forms

- [DOT 140-039](#) Local Agency Agreement – Example
- [DOT 140-041](#) Local Agency Agreement Supplement – Example

Chapter 23 Progress Billing (Reimbursement Costs)

23.1 General Discussion

All progress billings shall be submitted monthly to WSDOT Headquarters Local Programs by the local agency in accordance with the terms of the Local Agency Agreement ([Chapter 22](#)). Billings will not be accepted before the Local Agency Agreement is executed and authorization in writing has been received from the Washington State Department of Transportation (WSDOT).

The execution of the Local Agency Agreement does not constitute approval of federal funds. This authorization from WSDOT is separate from the Local Agency Agreement.

Once written authorization is provided the Agency agrees to show continuous progress through monthly billings. Failure to show continuous progress may result in your project becoming inactive, as described in 23 CFR 630.106 and subject to deobligation of federal aid funds and/or agreement closure.

The Local Agency Agreement, when completed, establishes a work order account which permits billing to the project. The Work Order Accounting Plan (WOAP) and the work order ledger may be seen at the region office where the Region Local Programs Engineer can answer questions pertaining to these items.

WSDOT assigns a contract number on all federal aid construction projects. This number identifies the project. It should be used in addition to the federal aid project number when corresponding with WSDOT.

23.2 Billing Procedures for Local Agency Ad and Award and Agency Force Work

Once Local Programs has executed the Local Agency Agreement and WSDOT has given the local agency written authority to proceed, the agency submits progress billings monthly for each phase of work. Any work that is performed before the official authorization date does not qualify for federal participation.

Also, Federal grant requirements nationwide have now been consolidated and detailed in 2 CFR 200, please refer to them for additional guidance and eligibility.

As part of the changes included in the CFR is specific to signature authority on reimbursement requests. Per **2 CFR 200.415(a)** – *To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budget, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, **signed by an official who is authorized to legally bind the non-Federal entity.***

Effective December 1, 2016, all progress billings are submitted as follows:

1. Local Programs sends the local agency the original fund authorization letter.
2. The agency submits a progress billing ([Appendix 23.71](#)) to WSDOT Headquarters Local Programs in accordance with the Local Agency Agreement. The form must be completed in accordance with the instruction outlined in [Appendix 23.72](#).

All progress billings, including the final progress bill may be submitted electronically via email to hq1pbillings@wsdot.wa.gov or hard copy to

WSDOT Local Programs
PO BOX 47390
Olympia, WA 98504-7390

- All hard copy progress billings must have an original signature in order to be processed.
- All email progress billings must include all of the following in order to be processed:
 - Agency
 - Project title
 - Federal aid project number
 - Local Agency agreement number
 - Signature of the official who is authorized to legally bind the local agency as the progress billing form includes the following certification statement:

*“By **signing this report**, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, **may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise.** (US Code Title 18, Section 1001 and Title 31. Sections 3729-3730 and 3801-3812)”*

The first progress billing requires the local agency to submit back-up documentation to:

- Support the reimbursement request. (e.g., consultant invoices, contractor pay estimates, staff hours, etc.) and
- Local Agency’s documentation confirming the individual signing the reimbursement request is authorized to legally bind the agency (council/commission resolution of delegation, etc). Therefore, to implement this requirement, will depend on the structure of your agency on who has this authority or has delegated this authority to another individual in the agency (e.g. Mayor (official) to the City Administrator, Public Works Director or Finance Director).
- For on-going projects, the first reimbursement package submitted after December 1, 2016, is required to include the agency’s documentation confirming the individual signing the reimbursement request is authorized to legally bind the agency.

Thereafter, the billing period needs to be consecutive and if requested, documentation needs to support dates within that billing period. An explanation needs to be provided for billing periods that overlap. The amount claimed on the progress billing must be billed at the Federal Participation Rate per the Local Agency Agreement or up to the maximum authorized amount. If not, an explanation must be provided with progress bill.

Upon completion of project, the local agency must submit a final bill (Appendix 23.71) clearly marked “Final Billing” and final summary (Appendix 23.75) to the WSDOT Headquarters Local Programs. The purpose of this summary is for the Agency to report the total project costs including federal, state, local and other funds received. The form must be completed in accordance with the instructions outlined in Appendix 23.76

All progress billings must be substantiated by the required standard documentation established in this manual, the *Construction Manual* M 41-01, requirements of the contract documents, and as defined by FHWA and must be available for review.

Construction costs are not eligible for reimbursement until after the contract has been awarded. Exceptions may include contract advertisement, staking, etc. **However, a statement explaining these costs must be included with the progress billing.**

23.3 Billing Procedures for State Ad and Award

Progress billings are submitted as follows:

- Requests for payment from contractors are submitted to the Regional Administrator in accordance with the Local Agency Agreement.
- The requests will be processed in the region using standard WSDOT procedures.

23.4 Number and Timing of Submittals

Progress billings will be numbered sequentially and submitted monthly.

If the billing is prepared properly, payment should normally be received within three weeks of submittal. If payment is not received within one month, the agency should contact WSDOT Headquarters Local Programs.

FHWA requires WSDOT to conduct a quarterly review of local agency inactive projects. Local Programs definition of an inactive project is any project for which no expenditures have been charged against the federal project for the past 9 months. Any project that meets this definition will require evaluation and documented justification for remaining open. If a federal project remains open without acceptable justification and supporting documentation for remaining open, the project is at risk of being closed by FHWA. Examples of reasonable justification can be found in [Appendix 23.73](#).

23.5 Identification of Federal Aid Participating and Nonparticipating Charges

Costs are eligible for Federal Highway Administration (FHWA) federal participation if claimed in accordance and in compliance with 23 CFR and 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

No costs may be claimed for reimbursement if incurred prior to FHWA authorization to proceed with the work. All work must be programmed with FHWA.

All local governments and units of local governments that claim indirect costs under federal awards must prepare an Indirect Cost Rate Proposal (ICRP) and related documentation to support those costs. The ICRP must be prepared in accordance with the instructions and regulations outlined in Appendix VII to 2 CFR Part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals.

- A local government that receives more than \$35 million in all direct Federal funding must submit its ICRP to its federal cognizant agency for indirect costs. The cognizant agency for indirect cost negotiations is the Federal agency providing the largest amount of direct Federal awards. A local government that has a current federally negotiated indirect cost rate approved by its cognizant agency may apply for a one-time extension of the rate for a period of up to four years as defined in 2 CFR Part 200.414, paragraph (g).
- Other local governments must develop and certify ([Appendix 23.74](#)) an ICRP in accordance with federal requirements and maintain the proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs.

If a local government has never received federal reimbursement for indirect costs they may be eligible to use a de minimis rate of 10% of their modified total direct costs. Eligible agencies that elect to use the de minimis rate must meet the requirements as defined in 2 CFR Part 200.414, paragraph (f).

Some costs have been deemed ineligible for federal participation. Ineligible costs include equipment purchase and repair (unless specifically approved by FHWA), future equipment replacement costs, and those costs unallowable under 2 CFR Part 200.

.51 Participating Functions – Classifications of work programmed with FHWA and eligible for federal aid:

- Preliminary Engineering** – The work of locating and designing, making surveys and maps, sinking test holes, making foundation investigations, preparing plans, specifications and estimates, centerline, right of way plan preparation and other related preliminary work and incidental construction staking, to the extent such staking is necessary to review construction plans, and related general engineering preparatory to the letting of a contract for construction. The work may also include traffic counts, studies undertaken to determine traffic demands, holding of public hearings, preparation of right of way cost estimates, legal, and other costs incidental to the location and design of a highway project necessitating the acquisition of right of way thereon up to but not including the appraisal of individual parcels for acquisition purposes.

These engineering costs are generally incurred prior to the date of construction PS&E approval or the date construction plan changes are completed prior to the beginning of construction. The date of contract award is the cutoff for charging to preliminary engineering.

- Acquisition of Rights of Way** – The continuation of preparation of right of way plans; appraisal for parcel acquisition; review of appraisals; preparation for and trial of condemnation cases; management of properties acquired; furnishing of relocation advisory assistance; and other related labor expenses. If RW costs are claimed after the date of contract award, please provide an explanation.
 - Excess land (appraised value) including uneconomic remnants.
 - Improvements (appraised salvage value).

- Right of way acquired after certification by the local agency that right of way necessary for a designated federal aid highway project has been acquired.
 - Judgments in condemnation cases not appealed when the attorney's closing report indicates a basis for appeal. The amount in excess of the review appraiser's determination of value is nonparticipating.
 - Landowners:
 - Attorneys' fees;
 - Witness fees;
 - Expert witness fees; or
 - Similar costs to a landowner based on value of the services rendered to him which are paid by the local agency in connection with acquisition of rights of way, regardless of whether such costs are included in court judgments or court costs in litigated condemnation cases, e.g., statutory evaluation allowance.
- c. **Construction Engineering** – The work of supervising construction activities; the inspection of construction and related mechanical aspects (e.g., staking necessary to review construction plans together with those staking activities necessary for the local agency to control construction operations); testing of materials incorporated into construction, checking shop drawings and measurements for and preparations of progress and final estimates, and as-built drawings. Construction engineering costs are generally incurred only after approval of the PS&E, a contract number is issued, and also incurred prior to:
- Completion date of the final contract pay estimate and its submission to the contractor;
 - The final date of charges for required material testing; or
 - Completion date of the separation of contract cost by code type, location, etc., whichever is applicable to that portion of the construction engineering phase involved.
- d. **Highway Planning** – The orderly and continuing assembly and analysis of information about highways, such as the history of highway development and their extent, dimensions and conditions, use, economic and social effects, costs, and future needs.
- e. **Research and Development** – The search for more complete knowledge of the characteristics of the highway system and the translation of the results of research into practice.
- f. **Administrative Settlement Costs-Contract Claims** – Services related to the review and defense of claims against federal aid projects.
- g. **Miscellaneous Functions** – Costs incurred for other activities which are properly attributable to, and for the benefit of, federal aid projects but are not assignable to any of the previously defined functions.

h. Construction Costs Other Than Contractor Payments

- Royalty expenses for material furnished by the local agency that are used by the contractor.
- Temporary signs, traffic control labor, traffic control devices, and temporary illumination furnished by the local agency. The initial basic cost of traffic control devices purchased for use on the project is an authorized participating cost.
- Work performed by local forces.

.52 Standards for Selected Items of Costs – The following are standards for determining the allowability of selected items of cost. In general, costs must be reasonable, necessary, and allocable to the specific project. The allowability of the selected items of cost is subject to the general policies and principles stated above.

a. Salaries and Wages

1. Subject to appropriate authorization requirements, federal funds may participate in the cost of salaries, wages, and related payroll expenses incurred for periods of time public employees are actively engaged, either directly or indirectly, in project-related activities. Timekeeping procedures need to provide for allocating employees' time to projects and/or other activities each day on an hourly basis. The timekeeping document, such as a time slip, time and attendance report, or time book, is the source document which must be available for examination by audit personnel to support direct labor costs claimed on any federal project. The document needs to be signed by both the employee and a responsible employee (supervisor) having knowledge that the time distribution is accurately reported.
2. Salaries, wages, and related payroll expenses of a local agency for maintenance, general administration, supervision and other overhead are not eligible for reimbursement.

b. Travel and Transportation

1. Federal funds may participate in the cost of commercial transportation, privately owned automobiles, and per diem or subsistence essential to the completion of the project and is performed in accordance with prescribed procedures.
2. Reimbursement may be made for use of privately owned automobiles and per diem or subsistence incurred in conformance with the established reimbursement policy of the local agency.

c. Employee Leave and Holidays

1. A local agency may claim reimbursement for the costs of leave, e.g., annual, sick, military, jury, that is earned, accounted for, and used in accordance with established procedures. The cost of such leave must be a liability of the local agency, must be equitably distributed to all activities, and the pro rata costs distributed to a federal aid project must be representative of the amount that is earned and accrued while working on the project.

2. Compensatory leave granted by a local agency in lieu of payment of overtime to eligible employees may be claimed for reimbursement if accrued and granted under established policies on a uniform basis. Such leave costs must meet the criteria discussed in paragraph (a) of this section.
3. Costs for other leave of a similar nature which may be peculiar to a specific local agency may also be reimbursed provided it meets the criteria set forth in paragraph (a) of this section.

d. Social Security, Retirement, and Other Payroll Benefits

1. Federal funds may participate in allocable costs incurred for social security, retirement, group insurance premiums, and similar items applicable to salaries and wages of public employees engaged in work in federal aid projects.
2. The costs for such benefits must be a liability of the local agency and must meet the criteria set forth in paragraph 1 of c above.

.53 Utility Relocations, Adjustments, and Reimbursement – Federal participation is subject to the provisions of 23 CFR part 645, subpart A.

.54 Reimbursement for Railroad Work – Costs must be incurred per 23 CFR part 646, subpart B and will be reimbursed in accordance with 23 CFR part 140, subpart I.

.55 Other Costs Allowable Subject to FHWA’s Approval – Although some category of expenditures are not mentioned specifically in Part 140, “Reimbursement,” of 23 CFR as eligible for federal participation, should the local agency wish to seek federal participation it is allowed to request approval from the FHWA prior to billing. The expenditures that relate to the federal aid project should be well identified through proper documentation.

.56 Other Unallowable Costs – Other unallowable costs include those costs identified in 2 CFR Part 200.

23.6 Billing Reviews

Each year construction projects are selected for “Billing Reviews.” These reviews are conducted at the agency and include representatives of FHWA, WSDOT Local Programs, and the local agency. One or more progress bills for the selected project will be reviewed for compliance with documentation standards established in this manual, the *Construction Manual* M 41-01, requirements of the contract documents, and as defined by FHWA. During a billing review, the agency must have all the required backup documentation necessary to support the invoice. The documentation must be available and filed in a way that is easy for the reviewers to locate.

At the conclusion of the review, a report is generated by FHWA and issued to WSDOT Local Programs. The report will include descriptions of the items reviewed, the backup documentation located in the files to support the payments, and a “Supported or Unsupported” finding for each item. Any “unsupported” payment findings are considered improper payments which may require corrective action and possible repayment of federal funds. Local Programs provides a copy of the report to the agency and identifies any findings.

23.7 Appendices

- [23.71](#) Local Programs Progress Billing – Example
- [23.72](#) Local Programs Progress Billing – Instructions
- [23.73](#) Inactive Justification Examples
- [23.74](#) Certificate of Indirect Costs
- [23.75](#) Local Programs Final Project Summary – Example
- [23.76](#) Local Programs Final Project Summary – Instructions

Appendix 23.71

Local Programs Progress Billing – Example

Agency Address
 Federal Tax ID No.
 Agency Use:

Local Programs Progress Billing

Federal Aid or State Project: _____
 Agreement Number: _____
 Last Supplement: _____
 Project Title: _____
 Project End Date: _____

Progress Bill No: _____
 Final Progress Bill? Yes / No
 Billing Period from: _____ through: _____
 CN Award Date: _____

	1	2	3	4	5	6	7	8
	Total Eligible This Period	Total Eligible To Date	Participation Rate	Amount Claimed This Period Col 1 x Col 3	Amount Claimed Prior Periods	Total Claimed To Date Col 4 + Col 5	Amount Authorized Per Agreement	Remaining Federal/State Funds Col 7 - Col 6
PE								
a - Agency				0.00		0.00		0.00
b - Consultant				0.00		0.00		0.00
c-d				0.00		0.00		0.00
<i>Total Preliminary Engineering</i>	0.00	0.00		0.00	0.00	0.00	0.00	0.00
RW								
f				0.00		0.00		0.00
g-h				0.00		0.00		0.00
<i>Total Right of Way</i>	0.00	0.00		0.00	0.00	0.00	0.00	0.00
CN								
k - Contract				0.00		0.00		0.00
l - Consultant				0.00		0.00		0.00
m				0.00		0.00		0.00
n				0.00		0.00		0.00
o - Agency				0.00		0.00		0.00
p				0.00		0.00		0.00
<i>Total Construction</i>	0.00	0.00		0.00	0.00	0.00	0.00	0.00
TOTAL PROJECT	0.00	0.00		0.00	0.00	0.00	0.00	0.00

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise. (US Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Submit to HQ Local Programs
 hqpbillings@wsdot.wa.gov
 WSDOT Local Programs
 PO BOX 47390
 Olympia, WA 98504-7390

 Signee

 Title

 Date

Revised 11/1/2016

Progress Billing Form – After the Fund Authorization letter is received by the agency, a Local Programs Progress Billing form must be completed. ([Appendix 23.71](#)). Form is available for download on our website: www.wsdot.wa.gov/LocalPrograms/ProgramMgmt/forms.htm.

Funding Set Up – The amount of federal funding set up for a project is based on the local agency agreement. Column (7) should be compared with column (6) to ensure that the amounts requested are within the funding amount set up by the local agency agreement. Payments will not be made in excess of the amount in column (7). If the amount in column (6) exceeds the amount shown in column (7), a supplement to the local agency agreement must be submitted to reflect the revised cost before payment can be made.

Exception: Following the final settlement and closure of the agreement, a final payment may be made in excess of the amount authorized per agreement in column (7) up to, but not to exceed the total project Fund Authorization Amount. Consult your Region Local Programs Engineer for specific project information.

Coding Instructions – The Local Programs Progress Billing is arranged in the same manner as the local agency agreement though not all lines from the local agency agreement are shown on the Local Programs Progress Billing. The lines for state services are not included because state costs are billed separately. Since the state services are not shown, the totals for PE, RW, and Construction shown on the Local Programs Progress Billing will not agree with those shown on the local agency agreement. The Local Programs Progress Billing totals (column 7) will reflect the total amount available to the local agency based on the local agency agreement.

Data Required to Request Payment – As a minimum, only those line items for which payment is being requested need to be coded. The other lines can be left blank. The top portion of the form must include the following:

- **Agency Information: Agency Name, Address and Federal Tax ID or Statewide Vendor Number and Agency Use** – This space provided is for the agency's records and is not required to receive payment.
- **Project Information** – Federal Aid Project, Agreement Number, Last Supplement, Project Title, Project End Date.
- **Progress Billing Information** – Progress Bill No., Final Progress bill (yes/no), Billing periods, CN Award Date. The first progress billing must include the first date expenditures were actually incurred on the project. Thereafter, the billing period needs to be consecutive and if requested, documentation needs to support dates within that billing period. Crosscheck the billing period dates against prior bills(s). If dates overlap, please provide a statement confirming that costs are new and have not been claimed on prior bills(s).

Details for Completing Local Programs Progress Billing Form

This form only reflects the amounts claimed and authorized for payment to the local agency. It does not include costs for state services.

*The progress billing form contains formulas that auto calculate the amounts. To ensure correct calculations, enter amounts in column 3 and column 7 from the local agency agreement prior to entering the other columns.

- Column (1)** Total Eligible This Period: Record the total eligible costs incurred for federal participation this period for each item of work. (Agency must claim all eligible costs).
- Column (2)** Total Eligible to Date: Record the total amount previously claimed in column (2) plus new eligible in column (1). (This cell does not auto calculate)
- Column (3)*** Participation Rate: Enter the current participation percentage in the local agency agreement.
- Column (4)** Amount Claimed This Period: The form calculates this amount from Column (1) multiplied by column (3). For manual calculation (Multiply column (1) by column (3) and enter in column (4). This represents the amount of funds claimed on the progress bill. Column (4) can never exceed Column (1) and must be equal to the participation rate up to the authorized agreement amount.
- Column (5)** Amount Claimed Prior Period: Record the total amount previously claimed in column (6) (This cell does not auto calculate)
- Column (6)** Total Claimed to Date: The form calculates this amount from adding column (4) and column (5). For manual calculation add column (4) and column (5) and enter the total in column (6). The total claimed to date for PE, R/W, and Construction cannot exceed the amount authorized shown in column (7). Refer to funding setup section.
- Column (7) *** Amount Authorized Per Agreement: This is the total amount of funds authorized for each line item per the latest version of the Local Agency Agreement. Enter the amount from the local agency agreement listed as the Estimated Federal Funds.
- Column (8)** Remaining Federal Funds: The form calculates this amount by subtracting column (6) from column (7). For manual calculation subtract column (6) from column (7) and enter the total in column (8). The difference represents the remaining funds available. This column cannot be a negative value. If negative, a supplement to the Local Agency Agreement must be prepared to receive full payment. Refer to funding setup section.

Preliminary Engineering

- Line a** Agency Work for PE: Eligible PE cost incurred by the local agency.
- Line b-c** Other PE: As shown on Local Agency Agreement, usually consultant cost.
- Line d** State Service: As shown on Local Agency Agreement, is not included on the progress billing.
- Line e** Total PE Cost: This is the total amount claimed and authorized for payment to the local agency within the PE phase. Column (7) on this line shows the total amount of federal funds set up for the local agency based on the latest version of the Local Agency Agreement.

Right of Way

- Line f** Agency Work for RW: Eligible RW cost incurred by local agency.
- Line g-h** Other RW: As shown on Local Agency Agreement, usually consultant cost.
- Line i** State Service: As shown on Local Agency Agreement, is not included on the progress billing.
- Line j** Total RW Cost: This is the total amount claimed and authorized for payment to the local agency within the RW phase. Column (7) on this line shows the total amount of federal funds set up for the local agency based on the latest version of the Local Agency Agreement.

Construction

- Line k** Contract: Eligible payments made to contractor. Contract Award date must be submitted before payment will be made.
- Lines l-n** Other CN: Other costs incurred by the local agency as indicated on the Local Agency Agreement, such as Day Labor, Agency Supplied Materials, etc.
- Line o** Agency Work for CN: Eligible cost incurred by the local agency. Construction costs are not eligible for reimbursement until after the contract has been awarded. See exceptions in [Section 23.2](#).
- Line p** State Service: As shown on Local Agency Agreement, is not included on the progress billing.
- Line q** Total CN Cost: This is the total amount claimed and authorized for payment to the local agency within the Construction phase. Column (7) on this line shows the total amount of federal funds set up for the local agency based on the latest version of the Local Agency Agreement.

Total Project

- Line r** Total Project Cost: Add the Total PE, Total RW, and Total CN. This is the total amount claimed and authorized for payment to the local agency. Column (7) on this line shows the total amount of federal funds for all phases of work for the local agency based on the latest version of the Local Agency Agreement. It does not include state services.

Sign and date the progress billing and distribute according to the instructions located at the bottom of the form and in [Section 23.2](#).

Example 1**State: Washington****FMIS Project # 000001**

The project is for the acquisition of right of way and is considered valid remaining open for the settlement of one remaining parcel of land relative to the construction of the roadway improvement at Case Boulevard in the County. The parcel was successfully acquired through condemnation procedures, but final settlement of the last parcel remains to be adjudicated through the Superior Court. Although deposited the fair value of the property at time of taking, final cost is to be determined by the court. The balance of unexpended federal aid project funds is anticipated to be sufficient to cover the cost of the property. Final settlement date has not been established. Federal dollars may not be invoiced to FHWA until settlement has taken place; the costs remain in the file awaiting future release. We have initiated discussion with the right of way division to determine whether the cost of the final parcel should be reclassified as nonparticipating for federal aid to permit the project to progress to final acceptance and closure because of the inordinate and continuing delay in settlement.

Example 2**State: Washington****FMIS Project # 000002**

The project is valid because further expenditures are anticipated. The project is a Safe Routes to School sidewalk improvement administered by the local agency. The construction was completed and inspected by the state on April 24, 2012; however, the balance of the construction contract cost has not been billed under the agreement because of a contractual wage rate complaint filed on July 11, 2012. The complaint alleges the contractor failed to pay its workers the required prevailing rate of wages. There is no specified time frame for the resolution/adjudication of the complaint and payment to the contractor may be delayed for a substantial period of time. A copy of the complaint action is on file in the offices of FHWA. WSDOT will monitor the matter and update FHWA accordingly.

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

1. All costs included in this proposal (identify date) to establish billing or final indirect costs rates for (identify period covered by rate) are allowable in accordance with the requirements of the Federal award(s) to which they apply and the provisions of Appendix VII to 2 CFR Part 200, Subpart D (3), Required certification. Unallowable costs have been adjusted for in allocating costs as indicated in the indirect cost proposal.
2. All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

Appendix 23.75



Final Project Summary

Agency:	Project Title
Federal Aid Number:	Agreement: LA-

Participation Rate: 86.50% **Authorized Amount:** 1,500,000.00
Authorization Date: PE 05/07/15
 CN 02/15/16
Project End Date: 12/31/17

Type of Work	Total Project Cost	Total Federal/State Claimed to date	Agency Funds
PE			
Consultant	230,829.99	188,270.00	42,559.99
Agency Non-Eligible	2,117.88	0.00	2,117.88
Agency	25,000.00	21,625.00	3,375.00
	0.00	0.00	0.00
Total	257,947.87	209,895.00	48,052.87
RW			
	0.00	0.00	0.00
	0.00	0.00	0.00
	0.00	0.00	0.00
	0.00	0.00	0.00
Total	0.00	0.00	0.00
CN			
Contract	1,543,033.01	871,054.36	671,978.65
Consultant	38,759.67	33,527.11	5,232.56
Agency Non-Eligible	514.46	0.00	514.46
Agency	25,000.00	21,625.00	3,375.00
	0.00	0.00	0.00
Total	1,607,307.14	926,206.47	681,100.67
Project Total	1,865,255.01	1,136,101.47	729,153.54

By **signing this report**, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, **may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise.** (US Code Title 18, Section 1001 and Title 31. Sections 3729-3730 and 3801-3812).

Submit to HQ Local Programs with final bill

hqjpbillings@wsdot.wa.gov

WSDOT Local Programs
 PO BOX 47390
 Olympia, WA 98504-7390

 Signee

 Title

Appendix 23.76 **Local Programs** **Final Project Summary – Instructions**

The final progress bill must include a final summary. The purpose of this summary is for the Agency to report total project costs including federal, state, local and other funds received. This form can be downloaded at www.wsdot.wa.gov/localprograms/programmgmt/forms.htm

Exception – If a project is not completed and the Agency is billing remaining available funds with the possibility of incurring more eligible costs; do not mark the billing as a final bill. Upon completion of project, submit a final bill to report the eligible costs even if zero dollars are being claimed along with the final summary.

Required Data – This form is arranged in the same manner as the Local Agency Agreement.

The form must include the following:

- Agency Name, Project Title, Federal Aid Number and LA Agreement Number.
- Federal Participation Rate Authorized Amount, Authorized Dates, Project End Date. (Refer to the last supplement of the Local Agency Agreement).
- Type of work – Should align with Local Agency Agreement. (Add or remove lines on form as needed).
- Total Project Cost – Record all costs incurred on Project including Federal, State, Local other grants. (Add or remove lines from form as needed).
- Total Federal/State Claimed to date – Record the amount of funds reimbursed from WSDOT. This amount should mirror the amount on final progress billing column 6.
- Agency Funds – Record all costs (not reimbursed by WSDOT), that are considered Agency costs or that have been reimbursed from other Agencies, Grants, programs, etc.

*Total Federal/State Claimed to date plus Agency Funds should equal Total Project Cost.

Sign and date form and send to the WSDOT Headquarters Local Programs (address on form) or submit electronically via email to hqlpbillings@wsdot.wa.gov

24.1 General Discussion

This chapter summarizes the regulations and federal coordination requirements that local agencies must follow on projects that receive funding from the Federal Highway Administration (FHWA). Detailed guidance for complying with the federal requirements is provided in the publication entitled *NEPA Categorical Exclusions – A Guidebook for Local Agencies* and in the *Environmental Manual* M 31-11.

Projects involving federal funds, permits, or land are governed by a number of environmental requirements, including but not limited to:

- National Environmental Policy Act (NEPA) of 1969, 42 USC 4321, et. seq.
- Council on Environmental Quality Regulations for Implementing NEPA, 40 CFR, Part 1500, et. seq.
- Federal Highway Administration and Federal Transit Administration Implementing Regulations, 23 CFR, Parts 771, 772, and 774
- Environmental Impact and Related Procedures, 49 CFR, Part 622
- Section 7 of the Endangered Species Act (ESA), 50 CFR, Part 402
- Section 106 of the National Historic Preservation Act, 36 CFR, Part 800
- Presidential Executive Order 12898 – Environmental Justice
- Section 4(f) of the U.S. Department of Transportation Act of 1966

Prior to approval of final NEPA documents, FHWA regulations require that a subsequent phase of a project be programmed into the current State Transportation Improvement Plan (STIP). Eligible phases include Right of Way and Construction. In cases where no federal Right of Way or Construction funding is available for a subsequent phase, projects may be listed in the STIP by allocating local agency money for the subsequent project phase.

Approval of NEPA, in particular the final signature on the Categorical Exclusion Documentation Form, does not signify an approval of the State Environmental Policy Act (SEPA), nor any applicable local, state, and federal permits. Local agencies are responsible for ensuring compliance with SEPA and obtaining all applicable local, state, and federal permits. While the local agency may utilize the analysis completed in the NEPA process to assist in the completion of SEPA and applicable permits, NEPA approval must not be misconstrued as a guaranteed approval of any other local, state, or federal requirement. The local agency must work with other agencies, as appropriate, to provide the required analysis to complete their responsibilities under SEPA and other local, state, and federal permit and process requirements.

24.2 NEPA Classification

Projects subject to NEPA fall into one of the three following classifications:

- Class I Projects require preparation of an Environmental Impact Statement (EIS) because the action is likely to have significant adverse environmental impacts.
- Class II Projects are Categorical Exclusions (CE). These actions are not likely to cause significant adverse environmental impacts. They meet the definitions contained in 40 CFR 1508.4 and 23 CFR 771.117.
- Class III Projects require preparation of an Environmental Assessment (EA) because the project's impact on the environment is not clearly understood.

.21 NEPA Class I Projects (EIS) – Actions that are likely to have significant impact on the environment because of their effects on land use, planned growth, development patterns, traffic volumes, travel patterns, transportation services, natural resources, or because they are apt to create substantial public controversy. See Appendix B in the *NEPA Categorical Exclusions – A Guidebook for Local Agencies* and the EPM for guidance on preparing an EIS. Projects that usually require an EIS, as defined in 23 CFR 771.115, are:

- New controlled-access freeway.
- Highway project of four or more lanes in a new location.
- New construction or extension of fixed rail transit facilities (*e.g.*, rapid rail, light rail, commuter rail, automated guideway transit).
- New construction or extension of a separate roadway for buses or high-occupancy vehicles not located within an existing highway facility.

Although examples are given, it is important to remember that the size and significance of the potential impacts determine the need for an EIS, not the size of the project.

.22 NEPA Class II Projects (CE) – Actions that meet descriptions contained in NEPA rules (40 CFR 1508.4, 23 CFR 771.117) and do not typically involve significant environmental impacts. Unless specifically requested by other agencies or due to either unusual circumstances or public controversy, these actions do not require an EIS or an EA. Class II projects typically:

- Do not induce significant impacts to planned growth or land use.
- Do not require the relocation of significant numbers of people.
- Do not have a significant impact on any natural, cultural, recreational, historic, or other resource.
- Do not involve significant air, noise, or water quality impacts.
- Do not have significant impacts on travel patterns.
- Do not otherwise, either individually or cumulatively, have any significant environmental impacts.

Class II Projects are subdivided into two subcategories, which determine the documentation and approval requirements.

- a. **C-list Categorical Exclusions (c-list CE)** – Class II Projects that do not require approval. The following federal actions meeting the CEQ and FHWA criteria for c-list CEs are listed in FHWA regulations (23 CFR 771.117 (c)) and can be approved by Local Programs without signature by FHWA:
 1. Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 USC 307; approval of a unified work program and any findings required in the planning process pursuant to 23 USC 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and federal aid system revisions which establish classes of highways on the federal aid highway system.
 2. Approval of utility installations along or across a transportation facility.
 3. Construction of bicycle and pedestrian lanes, paths, and facilities.
 4. Activities included in the state’s highway safety plan under 23 USC 402.
 5. Transfer of Federal lands pursuant to 23 USC 317 when the subsequent action is not an FHWA action.
 6. The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
 7. Landscaping.
 8. Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
 9. Emergency repairs under 23 USC 125.
 10. Acquisition of scenic easements.
 11. Determination of payback under 23 CFR part 480 for property previously acquired with federal aid participation.
 12. Improvements to existing rest areas and truck weigh stations.
 13. Ridesharing activities.
 14. Bus and rail car rehabilitation.
 15. Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
 16. Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

17. The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.
18. Track and railbed maintenance and improvements when carried out within the existing right of way.
19. Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
20. Promulgation of rules, regulations, and directives.
21. Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.
22. Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way.
23. Federally-funded projects:
 - (i) That receive less than \$5,000,000 of Federal funds; or
 - (ii) With a total estimated cost of not more than \$30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost.
24. Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

25. Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342) carried out to address water pollution or environmental degradation.
 26. Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in paragraph (e) of this section.
 27. Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section.
 28. Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of this section.
 29. Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE.
 30. Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.
- b. **D-list Categorical Exclusions (d-list CE)** – Class II Projects that typically require additional documentation and may require FHWA approval. The second part of CFR (23 CFR 771.117 (d)) is known as the “d-list”. Examples of d-list projects identified in 23 CFR 771.117 (d) include but are not limited to:
1. This section has been deleted.
 2. This section has been deleted.
 3. This section has been deleted.
 4. Transportation corridor fringe parking facilities.
 5. Construction of new truck weigh stations or rest areas.
 6. Approvals for disposal of excess right of way or for joint or limited use of right of way, where the proposed use does not have significant adverse impacts.
 7. Approvals for changes in access control.
 8. Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

9. Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
10. Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.
11. Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.
12. Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.
 - (i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.
 - (ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.
 - a. Where a pattern emerges of granting CE status for a particular type of action, the FHWA will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.
13. Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e) of this section.
 - a. Actions described in (c)(26), (c)(27), and (c)(28) of this section may not be processed as CEs under paragraph (c) if they involve:
 - (1) An acquisition of more than a minor amount of right-of-way or that would result in any residential or nonresidential displacements;
 - (2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;

- (3) A finding of “adverse effect” to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in *de minimis* impacts, or a finding of “may affect, likely to adversely affect” threatened or endangered species or critical habitat under the Endangered Species Act;
- (4) Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;
- (5) Changes in access control;
- (6) A floodplain encroachment other than functionally dependent uses (*e.g.* bridges, wetlands) or actions that facilitate open space use (*e.g.*, recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

.23 NEPA Class III Projects (EA) – Actions that have uncertain or poorly understood impacts on the environment. The EA determines the extent and level of environmental impact. An EA may support a NEPA Finding of No Significant Impact (FONSI) or indicate that an EIS is warranted. The content and complexity of an EA will vary depending on the project. See Appendix C of the *NEPA Categorical Exclusions – A Guidebook for Local Agencies* and the EM for details on EA procedures and documentation requirements.

24.3 Early Project Coordination & Environmental Mitigation

Many projects require early coordination with a range of federal, state, local agencies and tribal governments to ensure there are a minimum of delays to permitting and construction. Local agencies are encouraged to coordinate and communicate with federal, state and local agencies and tribal governments to discuss technical issues. However, discussions related to environmental mitigation require the advance participation by the FHWA Area Engineer and/or the designated Local Programs Environmental Engineer to assure that all parties understand whether potential environmental mitigation measures will be eligible for federal reimbursement prior to a commitment being made.

Note that all elements of Emergency Repair (ER) project work require advance coordination and approval by FHWA to ensure that Federal participation is allowable.

When there are multiple federal lead agencies, early coordination between those agencies is crucial to ensure that all agencies’ NEPA requirements are met.

24.4 Project Re-Evaluation

Whenever single or cumulative conditions have occurred that might cause new or more severe environmental impacts, the local agency shall re-evaluate an environmental document.

A written re-evaluation is required when any one of the following conditions exists:

1. There is a change to the project scope. This requires a reevaluation even if the NEPA approval is less than three years old. (Some kinds of scope changes, such as those that include work outside of the previous study areas, are likely to result in a determination that a supplemental NEPA document is needed.)
2. An acceptable FEIS has not been submitted to FHWA within three years from the date of the DEIS circulation.
3. Federal approvals of major steps to advance the project (such as FHWA approval to acquire right of way or approval of PS&E) have not occurred within three years of NEPA approval (that is, FHWA's approval of the NEPA CE Documentation Form, issuance of a FONSI, or ROD).
4. There is a law change that is relevant to the information provided in the original document (i.e., a new species is listed as threatened or endangered under ESA). This is required even if the NEPA approval is less than three years old.
5. New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the NEPA document. (This is likely to result in a determination that a supplemental NEPA document is needed.)

The re-evaluation needs to indicate whether any new information is known that alters the previous analysis and findings. If so, the local agency needs to conduct appropriate environmental studies to support the updated conclusions.

The re-evaluation is submitted in written form to the Region LPE. The Region LPE will transmit a copy of the re-evaluation to Local Programs for review and coordination with FHWA. Based on the findings of the re-evaluation, FHWA will determine if additional documentation is appropriate (for example, a supplemental EIS, updated EA or NEPA CE Documentation Form, depending on the original NEPA classification).

24.5 Supplemental Document

If a project re-evaluation results in a determination that the NEPA document must be supplemented, the supplement should follow the same procedures as those used for the original document. The scope of the supplement can be limited to the changes to the project. FHWA should be consulted regarding the scope and disciplines that must be analyzed.

24.6 Other Federal Requirements

The NEPA document must include information on how the project complies with other federal regulations and requirements. The federal requirements that most frequently pose the greatest risk to project schedules and timelines are those addressing cultural resources (Section 106 of the National Historic Preservation Act), federally listed endangered species (Section 7 of ESA) and parklands and historic properties (Section 4(f) of the Department of Transportation Act). The *NEPA Categorical Exclusions – A Guidebook for Local Agencies* provides guidance on meeting the federal regulations and requirements that must be considered under NEPA.

24.7 Tribal Consultation

In addition to the Section 106 process, FHWA and local agencies must consult with the affected tribes on projects that potentially affect treaty rights. Local Programs process for sharing discipline reports with tribes is described in the *NEPA Categorical Exclusions – A Guidebook for Local Agencies* (Appendix I). Tribal contact information is available online at www.wsdot.wa.gov/tribal/tribalcontacts.htm.

24.8 Environmental Permitting

The local agency is responsible for ensuring that all required permits and approvals are obtained prior to initiating construction. The links below will direct users to a brief description of the federal, state, and local environmental permits.

- Federal Permits (www.wsdot.wa.gov/environment/permitting/permitfsl.htm)
- State Permits (www.wsdot.wa.gov/environment/permitting/state.htm)
- Local Permits (www.wsdot.wa.gov/environment/permitting/local.htm)

The Governor's Office of Regulatory Assistance has developed a web-based tool to assist users to identify the permits that are required for different types of projects. This tool can be accessed at <http://apps.ecy.wa.gov/opas/>.

24.9 Appendices

24.81 NEPA Categorical Exclusion Documentation Form

24.10 NEPA Categorical Exclusions – A Guidebook for Local Agencies

www.wsdot.wa.gov/nr/rdonlyres/87901eb4-008a-43a0-9db7-2179e0bc939f/0/ecsguidebooksecure.pdf

24.11 Environmental Manual

www.wsdot.wa.gov/publications/manuals/m31-11.htm

24.12 Plain Talk Toolkit

www.wsdot.wa.gov/library/pttoolkit.htm

24.13 Reader-Friendly Tool Kit

www.wsdot.wa.gov/environment/readerfriendly.htm



**Washington State
Department of Transportation**

**NEPA Categorical Exclusion
Documentation Form**

Federal Aid Project Number	Date	Intent of Submittal <input type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Re-Evaluate
Agency	Project Title	
County		
Beginning MP:	Township(s):	
Ending MP:	Range(s):	
Miles:	Section(s):	

Part 1 - Project Description

Part 2 - Categorical Exclusion & STIP

- Identify the CE from 23 CFR 771.117 (CE Guidebook - Appendix A) that fits the entire project
- Per 23 CFR Part 452(l) identify the subsequent project phase identified on the STIP? ROW Construction
- Attach a copy of the STIP page to the CE documentation form.

NEPA Approval Signatures

_____ Date _____ Local Programs Environmental Engineer _____ Date _____

_____ Date _____ Federal Highway Administration _____ Date _____

Completed by (Print Official's Name):	Telephone (include area code):	Email address:
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Part 3 - Permits, Approvals & Right of Way (ROW)			
Yes	No	Permit of Approval	
<input type="checkbox"/>	<input type="checkbox"/>	Corps of Engineers <input type="checkbox"/> Sec. 10 <input type="checkbox"/> Sec. 404	Yes
		<input type="checkbox"/> Nationwide Type	No
		<input type="checkbox"/> Individual Permit No.	Permit of Approval
<input type="checkbox"/>	<input type="checkbox"/>	Coast Guard Permit	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	Coastal Zone Management Certification	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	Critical Areas Ordinance (CAO) Permit	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	Forest Practices Act Permit	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	Hydraulic Project Approval	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	Local Building or Site Development Permits	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	Local Clearing and Grading Permit	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	National Pollutant Discharge Elimination System (NPDES) Baseline General for Construction	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	Shoreline Permit	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	State Waste Discharge Permit	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	TESC Plans Completed	<input type="checkbox"/>
Other Federal Agencies - Does the project involve any federal properties, approvals or funding from other/additional federal agencies? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please describe.			

Part 4 - Environmental Considerations
Will the project involve work in or affect any of the following? Identify proposed mitigation. Attach additional pages or supplemental information if necessary.
1. Air Quality - Identify any anticipated air quality issues. <ul style="list-style-type: none"> • Is the project exempt from Air Quality conformity requirements? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify exemption - please refer to Appendix G in the CE Guidebook for a list of exemptions. • Is the project included in the Metropolitan Transportation Plan? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, date Metropolitan Transportation Plan was adopted • Is the project located in an Air Quality Non-Attainment Area or Maintenance Area for carbon monoxide, ozone or PM 10? <input type="checkbox"/> Yes <input type="checkbox"/> No

Part 4 - Environmental Considerations

2. Critical and Sensitive Areas

• Is this project within a sole source aquifer? Yes No

If located within a sole source aquifer, is the project exempt from EPA approval?

If Yes, please list exemption

If no, date of EPA approval

• Will this project impact Species/Habitat other than ESA listed species?
(If No, explain your answer) Yes No

• Is this project within one mile of a Bald Eagle nesting territory, winter concentration area
or communal roost? Yes No

• Will blasting, pile driving, concrete saw cutting, rock drilling or rock scaling activities occur within one mile
of a Bald Eagle nesting area? Yes No

• Are wetlands present within the project area? Yes No

If yes, estimate the impact in acres

Please attach a copy of the proposed mitigation plan.

3. Cultural Resources/Historic Structures - Identify any historic, archaeological or cultural resources present within the project's Area of Potential Effects.

• Does the project fit into any of the exempt types of projects listed in Appendix J of the CE Guidebook?
(If Yes, note exemption below). Yes No

If No:

Date of DAHP concurrence:

Date of Tribal consultation(s) (if applicable):

Adverse effects on cultural/historic resources? Yes No

If Yes, date of approved Section 106 MOA

4. Floodplains and Floodways

Is the project located in a 100-year floodplain? Yes No

If Yes, is the project located within a 100-year floodway? Yes No

Will the project impact a 100-year floodplain? (If Yes, describe impacts.) Yes No

Part 4 - Environmental Considerations

5. Hazardous and Problem Waste - Identify potential sources and types(s).

- a) Does the project require excavation below the existing ground surface? Yes No
- b) Will groundwater be encountered? Yes No
- c) Will any properties be acquired as part of the is project? Yes No
- d) Is this site located in a n undeveloped area (i.e. no buildings, parking, storage areas or agriculture)? Yes No
- e) Is the project located within a one-mile radius of a known Superfund Site? Yes No
- f) Is this project located within a ½-mile radius of a site or sites listed on any of the following Department of Ecology databases? (If Yes, check the appropriate boxes below.) Yes No
 - Voluntary Cleanup Program (VCP), State Cleanup Site (SCS), or Independent Cleanup Program (ICP)
 - Underground Storage Tank (UST)
 - Leaking Underground Storage Tank (LUST)
 - Confirmed and Suspected Contaminated Sites List (CSCSL)
- g) Has site reconnaissance (windshield survey) been performed? Yes No
(Please identify any properties not identified in the Ecology or ERS database search as an attachment -- name,address and property use).
- h) Based on the information above and project specific activities, is there a potential for the project to generate, acquire or encounter contaminated soils, groundwater or surface water? .. Yes No

Please explain:

If you responded **Yes** to any of the following questions (5A – 5C, 5F and 5H), contact your Region LPE for assistance as a *right-sized* HazMat Analysis Report/Memorandum most likely will be required.

6. Noise

- Does the project involve constructing a new roadway? Yes No
- Is there a change in the vertical or horizontal alignment of the existing roadway? Yes No
- Does the project increase the number of through traffic lanes on an existing roadway? Yes No
- Is there a change in the topography? Yes No
- Are there auxiliary lanes extending 1½ miles or longer being constructed as part of the is project? .. Yes No

If you answered Yes to any of the preceding questions, identify and describe any potential noise receptors within the project area and subsequent impacts to those noise receptors. Please attach a copy of the noise analysis if required.

If impacts are identified, describe proposed mitigation measures.

Part 4 - Environmental Considerations

7. 4(f)/6(f) Resources: parks, recreation areas, wildlife refuges, historic properties, wild & scenic rivers, scenic byways

- a. Please identify any 4(f) properties within the project limits and the areas of impacts.

- b. Please identify any properties within the project limits that used funds from the Land & Water Conservation Fund Act.

- c. Please list any Wild and Scenic Rivers and Scenic Byways within the project limits.

8. Agricultural Lands - Are there agricultural lands within 300 feet of the project limits?..... Yes No
If Yes, please describe impacts.

Are impacted lands considered to be unique and prime farmland?..... Yes No
If Yes, date of project review by Natural Resource Conservation Service (NRCS)

9. Rivers, Streams (continuous or intermittent) or Tidal Waters

- a. Identify all waterbodies within 300 feet of the project limits or that will otherwise be impacted.

- b. Identify stream crossing structures by type.

10. Tribal Lands - Identify whether the project will occur within any Tribal lands, including reservation, trust and fee lands. Please do not list usual and accustomed area.

Part 4 - Environmental Considerations

11. Water Quality/Stormwater

Will this project's proposed stormwater treatment be consistent with either WSDOT's HRM, DOE's stormwater management manual for eastern/western Washington or a local agency equivalent manual? Yes No
If No, explain proposed water quality/quantity treatment for the new and any existing impervious surface associated with the proposed project.

Amount of existing impervious surface within the project limits:
Net new impervious surface to be created as a result of this project:

12. Previous Environmental Commitments

Describe previous environmental commitments that may affect or be affected by the project - If any.

13. Environmental Justice

Does the project meet any of the exemptions noted in Appendix L of the NEPA CE Guidebook? Yes No
If Yes, please note the exemption and appropriate justification in the space below.

If No, are minority or low-income populations located within the limits of the project's potential impacts? Yes No
If No, attach appropriate data to support findings. If Yes, describe impacts and attach appropriate supporting documentation. Findings should be confirmed using at least two information sources. Please refer to the NEPA CE Guidebook for more information.

Part 5 - Biological Assessments and EFH Evaluations		
1. Do any listed species potentially occur in the project's action area and/or is any designated critical habitat present within the project's action area? (If No, attach species listings.) <input type="checkbox"/> Yes <input type="checkbox"/> No		
Affected ESA Listed Species	2. Will any construction work occur within 0.25 mile of any of the following?	3. Does the project involve blasting, pile driving, concrete sawing, rock-drilling or rock-scaling activity within one mile of any of the following?
Oregon Spotted Frog proposed critical habitat or suitable habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Yellow-billed Cuckoo suitable habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Spotted Owl management areas, designated critical habitat or suitable habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Marbled Murrelet nest or occupied stand, designated critical habitat or suitable habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Western Snowy Plover designated critical habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is the project within 0.25 mile of marine waters? If Yes explain potential effects on Killer Whales and on Marbled Murrelet foraging areas.	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Killer Whale designated critical habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Grizzly Bear suitable habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Gray Wolf suitable habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Canada Lynx habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Columbia White-tailed Deer suitable habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Woodland Caribou habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Streaked Horned Lark designated critical habitat or suitable habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Taylor's Checkerspot designated critical habitat or suitable habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Mazama Pocket Gopher designated critical habitat or suitable habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Eulachon designated critical habitat or suitable habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Rockfish proposed critical habitat or suitable habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
A mature coniferous or mixed forest stand?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Will the project involve any in-water work? <input type="checkbox"/> Yes <input type="checkbox"/> No		
5. Will any construction work occur within 300 feet of any perennial or intermittent waterbody that either supports or drains to waterbody supporting listed fish? <input type="checkbox"/> Yes <input type="checkbox"/> No		
6. Will any construction work occur within 300 feet of any wetland, pond or lake that is connected to any permanent or intermittent waterbody? <input type="checkbox"/> Yes <input type="checkbox"/> No		
7. Does the action have the potential to directly or indirectly impact designated critical habitat for salmonids (including adjacent riparian zones)? <input type="checkbox"/> Yes <input type="checkbox"/> No		
8. Will the project discharge treated or untreated stormwater runoff or utilize water from a waterbody that supports or drains into a listed-fish supporting waterbody? <input type="checkbox"/> Yes <input type="checkbox"/> No		
9. Will construction occur outside the existing pavement? If Yes go to 9a. <input type="checkbox"/> Yes <input type="checkbox"/> No		
9a. Will construction activities occurring outside the existing pavement involve clearing, grading, filling or modification of vegetation or tree-cutting? <input type="checkbox"/> Yes <input type="checkbox"/> No		
10. Are there any Federally listed Threatened or Endangered plant species located within the project limits? If Yes, please attach a list of these plant species within the action area. <input type="checkbox"/> Yes <input type="checkbox"/> No		
11. Does a mature coniferous or mixed forest stand occur within 200' of the project site? <input type="checkbox"/> Yes <input type="checkbox"/> No		



**Washington State
Department of Transportation**

**NEPA Categorical Exclusion
Documentation Form**

Federal Aid Project Number	Date	Intent of Submittal <input type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Re-Evaluate
Agency	Project Title	
County		
Beginning MP:	Township(s):	
Ending MP:	Range(s):	
Miles:	Section(s):	

Part 1 - Project Description

Part 2 - Categorical Exclusion & STIP

- Identify the CE from 23 CFR 771.117 (CE Guidebook - Appendix A) that fits the entire project
- Per 23 CFR Part 452(l) identify the subsequent project phase identified on the STIP? ROW Construction
- Attach a copy of the STIP page to the CE documentation form.

NEPA Approval Signatures

_____ Date _____ Local Programs Environmental Engineer _____ Date _____

_____ Date _____ Federal Highway Administration _____ Date _____

Completed by (Print Official's Name):	Telephone (include area code):	Email address:
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25.1 General Discussion

The Real Estate Services website is located at www.wsdot.wa.gov/realestate.

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 (R/W) to be sub-delegated to any agency or any agency with Certification Acceptance (CA) status. The Washington State Department of Transportation (WSDOT) has overall responsibility to the Federal Highway Administration (FHWA) for the acquisition of R/W on all FHWA funded transportation projects in the state.

If there is federal funding on ANY phase of the project (P.E., R/W, or construction), R/W must be acquired in accordance with the requirements of this manual, in order for the project to be eligible for federal funding (49 CFR 24.101). R/W acquired prior to July 1, 1971, is exempt. Projects that do not use FHWA funding on any phase may choose not to follow the requirements of this chapter as outlined in [RCW 8.26.010\(2\)](#). In addition the local agency must comply with Title VI requirements identified in [Chapter 28](#).

The acquisition process is regulated by [Chapter 8.26 RCW](#) and [WAC 468-100](#).

WSDOT may, by written agreement, 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 (23 CFR 710.201 (h)). It is suggested that the ROW Phase Questionnaire (Form LPA-002) be completed during finalization of design, Guidance is provided in the [Right of Way Manual](#) M 26-01.

.11 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.

.12 WSDOT Services – WSDOT is committed to an ongoing program which will provide effective assistance and guidance to local acquiring agencies. To this end, WSDOT will designate a LAC for each region to provide information and establish appropriate state staff contacts, provide training and educational opportunities for local agencies through workshops and acquisition course offerings, and provide mutually acceptable technical and advisory services as necessary to accomplish R/W activities which includes appraisal, appraisal review, acquisition/negotiation, relocation, and property management activities (also collectively referred to as acquisition or acquisition process).

WSDOT will consult and advise the local agency concerning real property interests’ R/W activities to ensure that R/W is acquired and cleared in accordance with provisions of state and federal laws and FHWA directives.

At the earliest possible date, the local agency should notify the LAC of upcoming federal-aid projects which have R/W activities. In addition, the local agency should advise the LAC of the need for WSDOT assistance.

.13 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 R/W services must meet the consultant contracting requirements as described in [Chapter 31](#). See [Chapter 31](#) for information regarding consultant agreements.

25.2 Right of Way Acquisition Procedures

When an agency intends to use federal funds in any phase of a project, the agency must assure their approved R/W procedures (Form LPA-001 & LPA-003) are current prior to initiating R/W activities, and must demonstrate at the time of certification that current staff is qualified and that their procedures meet LAG manual requirements. R/W procedures are normally considered current if they are less than three years old, and there have been no changes to staff approved to perform R/W activities within the agency.

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 R/W based upon the submitted procedures.

The responsibilities and expectations for each of the agency R/W positions are defined in the Right of Way Procedures form (LPA-001). 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. An agency with

minimal staff may be approved to acquire a single project with direct supervision by the Region LAC. 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 R/W 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 approved R/W manual.
2. A listing of the agency's 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 R/W for federal aid projects need to be aware that their actions must conform to the Uniform Act and [49 CFR Part 24](#).
3. A listing of all current staff, including their position(s), who are specified to perform each function, and a brief statement of their qualifications pertaining to the function they are performing. See minimum qualifications for appraisal (Subsection 25.51), appraisal review (Subsection 25.6), and acquisition (Subsection 25.91).
4. Appraisal waiver procedure (see Subsection 25.52, and Form LPA-003).
5. A procedure for handling administrative settlements including the approving authority(s) and process (see [Subsection 25.11](#)).

Local Agencies must have a relocation appeal procedure in place, prior to starting relocation activities for any projects involving relocation assistance, as required by 49 CFR 24.10.

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.

.21 Determining Whether or Not Right of Way (Acquisition) is Needed – See [Appendix 25.174](#) and [25.175](#)

1. **R/W (acquisition) Needed** is defined as land or property rights 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 PS&E (such as placing personnel, materials, equipment and machinery outside of existing R/W). If the agency, either through early acquisition (Section 25.43) or

through transfer of property acquired for another use or purpose not associated with the current project, incorporates this land or property rights into the project, the agency will provide adequate documentation in the NEPA Categorical Exclusion Documentation Form showing when and why the property was purchased. If the property was purchased for use on the project (e.g. advanced/early acquisition), then the R/W must have been acquired in accordance with the requirements of this manual.

Advanced/early acquisition is defined as prior land acquisition that was completed specifically for the current project. This does not include properties within the existing R/W that were purchased as part of a previous project. Regardless of the funding source, advanced/early R/W acquisition parcels must be included in the R/W Certificate. Contact the LAC if you have questions.

- If it is later determined that R/W is required, either a R/W Project Funding Estimate (PFE) or a True Cost Estimate, as applicable, a Right of Way 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 R/W (acquisition) Needed** means that the proposed project can be built entirely within the existing property rights. Existing R/W 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 generally considered R/W acquisition.

If it can be documented that the land or property rights were purchased for a purpose other than the transportation related project being certified, and that the land/property rights are no longer required for the original purpose, then the Uniform Act and 49 CFR Part 24 requirements do not apply. This would be considered existing right of way.

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 (Appendix 43.62) and prior to the obligation of funding. This can be accomplished by applying the Sufficient Property Rights Flowcharts found in Chapter 25 of the LAG (Appendix 25.174 and Appendix 25.175). The agency will complete and sign the Design Approval Documentation form (Appendix 43.62) which 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 (Appendix 25.176) 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. The agency should retain appropriate documentation to support their No ROW determination in case the project is selected for a review. 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).

No ROW Compliance Reviews (NRCR)

In order to be reasonably certain that local agencies are accurate in their statement to WSDOT that “No ROW” is required for their project in accordance with the Local Agency Guidelines; WSDOT will perform spot check reviews on a random sample of selected local agency projects that state they have “No ROW” needs. WSDOT will select projects authorized for construction between two certain dates and will likely focus on those projects involving the construction of street widening, trails, sidewalks, and bridges.

These NRCRs could be performed by any of the following: LPRM; Local and/or Assistant Local Programs Engineers; or the Local Agency Coordinator. NRCR results will be provided to the local agency upon completion of the review. If it is found that the agency did not acquire sufficient property rights to construct, operate, and maintain their project, WSDOT’s response could include one or more of the following:

- Plan for corrective action.
- Limit or withhold the agency’s Approved ROW Procedures to the extent deemed necessary.
 1. Allow certification on future federal aid projects on a project-by-project basis.
 2. Direct WSDOT supervision for all URA compliant ROW projects.
- Loss of federal aid on future ROW projects.
- Loss of federal aid on the project reviewed. If this is the outcome of the review, FHWA will participate in the joint conference.

.22 Acquiring Right of Way – Acquisition of R/W may be performed by the following entities:

- By a local agency that is adequately staffed, equipped, and organized to discharge its R/W responsibilities and has R/W 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.

.23 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 purchasing 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.

.24 Determining Acquisition of Property and/or (Sufficient) Property Rights-
See [Appendix 25.175](#)

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 (see .23 above).

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 (mutual benefit). 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.

All rights acquired for the project, including advanced/early acquisitions (see Appendices [25.174](#) and [25.175](#)), must be shown on the right of way plan (see Section 25.4-.41). See also *Right of Way Manual* M 26-01 Section 6-5.

25.3 Preliminary R/W Activities

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 R/W 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 and have completed Appendix F.

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

25.4 Right of Way Acquisition

When there is federal participation in **any** phase of a project (PE, RW and/or CN), federal regulations **must** be followed. A checklist of Federal Aid Requirements is included in [Appendix 25.178](#), with useful reminders and should be used as guidance to ensure compliance.

.41 Acquisition With Federal Funds – Prior to the authorization of federal funds for R/W, 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.

- Local Agency Agreement Supplement.
- Estimate of probable R/W costs and expenses broken down by parcel. There are two types of estimates:
 - **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 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 R/W staff with appropriate experience, including qualified consultants, may also prepare a PFE.
 1. 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.
 2. As a minimum, the PFE contains the following information.
 - a. 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.
 - b. 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:

1. Inspect the project and becomes familiar with the engineering features of the plan.
2. View individual parcels to determine the effects of acquisition.
3. 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.

4. 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 (Form LPA-210). (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.)
5. Prepares project and sales vicinity map.
6. Prepares PFE Parcel Worksheet for each parcel on the project.
7. Includes any applicable damage studies.
8. Includes cost-to-cure documentation for estimates and/or bids.
9. Includes applicable Assumptions and Limiting Conditions if data Package will be referred to in the preparation of Abbreviated Appraisals.

See [Appendix 25.172](#) for a sample estimate summary and a sample neighborhood analysis and Form LPA-215 PFE Parcel Worksheet. See also *Right of Way Manual* Section 4-2 for the requirements for a PFE (42.1, paragraphs E, F, and G do not apply to local agencies).

- **True Cost Estimate** can be used only when all parcels are to be appraised or donated. The R/W PFE **must** be used if the agency wishes to make use of the appraisal waiver procedure (see [Subsection 25.52](#)). 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.

- Approved R/W plan (part of Approved Design Documentation [Appendix 43.62](#)).
- WSDOT approved relocation plan (if relocation is required, contact the LAC for assistance).

A R/W 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.

The Agency's R/W 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 R/W 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. Please contact the Local Agency Coordinator if other acceptable survey practices are proposed to establish the alignment.
- Sufficient information for preparation of legal descriptions of the affected properties and types of property interests to be acquired.
- Design features, width of the new highway (alignment), grade changes, and other detail 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 parcel(s) to be acquired, including any easement areas; the calculated area(s) of the remainder parcel(s).

It is advised that a draft of the R/W plan be submitted to the LAC for review and comment prior to its approval by the Agency.

As a "best practice" it is recommended R/W plans illustrate the following additional information:

- For affected parcels, improvements within 100' feet of the existing R/W, 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.

Once FHWA approval has been obtained for the obligation of funds for the R/W Phase, Local Programs will notify the local agency of authorization to proceed with R/W acquisition. No acquisition costs are eligible prior to this authorization.

.42 R/W 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 R/W 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 R/W Map and funding estimate package requirements in Section 25.41 also apply if federal funds are in PE or Construction phases.**

Note: A PFE is not required unless the local agency intends to use the appraisal waiver 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 appraisal waivers.**

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

.43 Early Acquisitions – *Early acquisition* is defined in federal regulations, at 23 CFR 710.105, 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).

In each case, federal guidelines must be followed in the acquisition process. The Agency should place copies of any documentation pertaining to early 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.

For all early acquisitions, the local agency must complete Appendix F in order to 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. Appendix F is submitted with the NEPA Categorical Exclusion Documentation Form (formerly known as an ECS). The timing of the Appendix F submission can create risk for the local agency, since the local agency’s decision to perform early acquisition takes place in advance of Appendix F submission and approval. If Appendix F cannot be approved, then the agency cannot incorporate the parcel into the project. If the project cannot be built with the parcel, then the entire project may be ineligible for federal funding.

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 advance R/W 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 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.

Early Acquisition Alternatives. There are five alternative methods (item #4 has two methods) of early 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 (b) 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).
 - The acquisition must fully comply with title VI of the Civil Rights Act of 1964.
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.

Refer to the NEPA Categorical Exclusions – A Guidebook for Local Agencies Appendix F for documentation requirements.

The federal reference for this option is 23 CFR 710.501(a).

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.

Refer to the NEPA Categorical Exclusions – A Guidebook for Local Agencies Appendix F for documentation requirements.

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.

The federal reference for this option is 23 CFR 710.501(b).

3. **Federal-Funded Early Acquisition.** If a local agency is interested in pursuing federally funded early acquisition, contact your LAC.
 4. **Hardship Acquisition and Protective Buying.** 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.
- 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.

- 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 Advance 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.

.44 Voluntary Acquisition – A process called “Voluntary Acquisition,” under 49 CFR 24.101(b)(1), 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. (See 49 CFR §24 Appendix A, §24.101(b)(1)(i).)
- 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.

Since most acquisitions are for property needed for roadway projects, the only occasion where a voluntary acquisition may normally apply is to mitigation sites, and **only** if it can be shown that there are other viable mitigation sites being considered for acquisition. Trail projects typically do not meet the voluntary acquisition requirements. If local agency would like to treat any acquisitions for trails as voluntary, please contact your LAC for guidance.

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 WAC 468-100-101 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.

Note: Real estate transactions using this process are subject to real estate excise tax. Also, the statutory evaluation allowance (RCW 8.25.020) will not be reimbursable, as it is only required for acquisitions made under threat of eminent domain (see Subsection 25.96).

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

Per 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.

.51 Appraisal – The requirements pertaining to the appraisal of property to be acquired are given 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.

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.

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 (49CFR 24.103(a)(2)(i) and Appendix 24.103(a)(1)). Forms LPA-217 and LPA-218 are available for use but are not required if the agency has a similar form.

A complete explanation of requirements for an acceptable appraisal report can be found in *Right of Way Manual* M 26-01 [Chapter 4](#).

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 an attempt to contact the property owner either by phone or in person.

.52 Appraisal Waiver (commonly referred to as Administrative Offer Summary (AOS)) – In accordance with 49 CFR 24.102(c)(2)(ii), an appraisal and appraisal review can be waived in certain cases. To qualify, the just compensation, based on the R/W Project Funding Estimate, must be no greater than the appraisal waiver limit as defined in the agency’s approved R/W procedures (typically \$25,000), the acquisition **must be uncomplicated**, and the only damages will be 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 appraisal waiver 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 appraisal 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.

In March 2013, WSDOT updated its AOS policy. The local agency must update their Appraisal Waiver Procedure (Form LPA-003), 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 Appraisal Waiver 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.

Appraisal Waiver (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.

Under Condition B, if the owner requests an appraisal, the local agency **is required** to provide and pay for one that meets the standards outlined in [Subsection 25.51](#). See also Form LPA-003 Appraisal Waiver Procedure.

25.6 Appraisal Review

The requirements pertaining to appraisal review of the property to be acquired is provided in *Right of Way Manual* M 26-01 [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 R/W 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.

The reviewing appraiser shall place in the parcel file a signed and dated statement (Form LPA-214b Local Agency 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.

.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 (49 CFR Part 24.2(27)).

For partial acquisitions, the review appraiser determines (if staff) or recommends (if fee) 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.

See *Right of Way Manual* Section 5-5.2 for detailed instructions regarding the review appraiser's responsibilities for reporting and documenting uneconomic remainders.

25.7 Agency Concurrence for Setting Just Compensation

In conformance with 49 CFR 24.102(d), 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 Form LPA-214b 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 either 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 R/W after being informed of their right to receive just compensation. If an appraisal waiver 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 Appraisal Waiver Procedure. (The threshold for offering an appraisal depends on the Agency's approved Appraisal Waiver Procedure in place at the time of the offer). The local agency is responsible for providing and paying for this appraisal.

25.8 Title

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 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. See [Chapter 8](#) of the [ROW Manual](#) for guidance.

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

Various requirements in negotiating an acquisition of property are found in [Right of Way Manual](#) Section 3-4.1C.

.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.

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 if stated in the local agency's Approved Procedures. 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.

.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 Appraisal Waiver Procedure). The LPA's current approved Appraisal Waiver 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. 49 CFR §24.102(e) provides description of what must be included in the summary statement.

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.

For an AOS offer letter template, see LPA-350. The local agency should review their current approved Appraisal Waiver Procedure to confirm that the correct language is being used in the offer letter.

.94 Donation (see Also Section 25.10 Donated Property) – A donation may be accepted only after the owner has waived, in writing, their right to just compensation and has released the local agency from its obligation to have the property appraised (see sample donation letter in [Appendix 25.177](#)). This applies to individuals, businesses, corporations, and other private entities. Donations from government agencies are exempt from these requirements. If a donation is accepted in advance of NEPA clearance, additional documentation will be needed in the NEPA Categorical Exclusion Documentation Form.

.95 Dedication – R/W 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 defined in Subsection 25.22 item 2.). As such, dedicated land is not required to be included in a right of way certification.

.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 ([RCW 8.25.020](#)). 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.

.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 R/W 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. For an AOS offer letter sample, see LPA-350.
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 R/W 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.**

25.10 Donated Property

Donations of right of way can be accepted only after the owner has been fully informed by the local agency of their rights to receive just compensation and has released the local agency from its obligation to have the property appraised (49CFR 24B, Sec. 24.108). A copy of the notice issued to the property owner informing them of their rights available and the donation statement signed by the owner must be included in each parcel file ([Appendix 25.177](#)). The donation statement from the owner might also be accomplished by having language similar to that found in [Appendix 25.177](#) included in the conveyance instrument or agreement, or in an email to the property owner to which the property owner has replied affirming their understanding of their right and releasing the local agency of its obligation. 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 in advance of NEPA clearance, additional documentation will be needed in the NEPA Categorical Exclusion Documentation Form and Appendix F. The value of publicly-owned real estate donated after June 8, 1998, is eligible for match credit.

For donation letter examples, see [Appendix 25.177](#).

25.11 Administrative Settlements

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.

An administrative settlement or stipulated settlement is a negotiated settlement of a R/W 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 (see Subsection 25.100).

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.

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

The regulations governing relocation assistance are covered in [49 CFR Part 24](#).

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.

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

To maintain a project's federal aid eligibility, a relocation plan needs to be submitted and approved prior to starting R/W activities, even if there are no federal funds in a R/W Phase. **This is also true in the case of advanced acquisition** (see [Subsection 25.43](#)).

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

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

After R/W acquisition has been completed and about one month before the federal aid project is to be advertised for contract, the R/W certification on agency letterhead must be submitted to the Region Local Programs Engineer. FHWA does not formally approve Certificates 1, 2, and time-based Certificate 3s. For these types of 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 Excepted Parcel Certificate 3s, the actual certification date is the FHWA approval letter date. ROW certification is a requirement for construction authorization. Since local agencies are expected to go to ad within six weeks of construction authorization (See [Chapter 22, 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.)

For specifics on certification types, definition, procedures, requirements, and examples, see [Right of Way Manual Chapter 17](#).

25.14 ROW Certification vs URA Compliance Letter

The provisions of 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 R/W Procedures requires the LAC to review parcel files prior to making first offers, your agency must comply.

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. See [Appendix 25.171](#) for case studies.

RW Documentation Requirements Based on Funding Source When a Project has RW Acquisition	ROW Certificate	URA Compliance Letter
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)

Per 23CFR 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 49CFR Part 24. The requirements of 49CFR 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.

Title 23 requires that acquiring agencies comply with 49CFR Part 24. The requirements of 49CFR 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 R/W requirements listed in 23 CFR 710, environmental requirements, Buy America, and Title VI requirements.

WSDOT Oversight – Criteria and Process:

Criteria to be eligible for a URA Compliance Letter:

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

Process:

- Region Local Programs confirms:
 - The agency will not seek federal funds in ROW or CN phases of the proposed project and federal funds will be in PE phase only
 - The agency does not have any federal funds in the project and it has been federalized due to NEPA
 - There are no federal funds in the project but the project involves interstate

- Local Programs Program Management authorize/obligate funds
- Local Programs send a URA Compliance Letter to the local agency
 - Cc of letter should go to the local agency's ROW section
 - **LAC to send a clarifying email to the R/W section with additional right of way information**
- A copy of the URA Compliance Letter will be included in the agency file
- Local Programs ROW enters the letter into a tracking sheet
- Local Programs ROW will perform annual ROW URA Compliance Reviews similar to the PMRs for the purpose of reviewing projects that have been issued a URA Compliance Letter

Oversight Requirements:

- Tracking of URA Compliance Letters
- URA ROW Compliance Reviews. A compliance review will be done for all projects involving interstate with 100% local funds. For all other projects eligible for a URA letter, a 25% random sample of projects will be selected for compliance reviews.

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 will 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. WSDOT will perform a CR on a random sample (not less than 25%) of the projects receiving URA Compliance Letters once the project has been advertised for construction. A 100% of the local agency led interstate projects will be reviewed by WSDOT.

These CRs will be:

- Performed by LPRM and will use the same oversight checklists as the certification reviews described in Chapter 15-17 of the ROW Manual.

CR Preparation – LPRM through the Region Local Programs Engineer will schedule a CR with the Agency and will request that the LAC and the agency staff person responsible for the Program Administration function under their Approved ROW Procedures participate in the review. The local agency should have all pertinent documentation ready for the scheduled review. All deficiencies will be identified for the agency at the time of the CR. Copies of documentation not available at the time of the review shall be submitted to Local Programs within 30 calendar days. After the 30-day period, the final CR letter will be sent to the agency.

CR Deficiencies – If no major deficiencies are found in the local agency's ROW 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 with 60 days. If the deficiencies include issues that cannot be fixed, WSDOT will issue a letter advising what action will be taken and next steps.

If deficiencies exist in the agency's ROW procedures, management practices, or if specific project errors are found, WSDOT's administrative response might be one or more of the following:

- No action against the agency if WSDOT determines the deficiencies to be minor.
- 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 Approved ROW Procedures to the extent deemed necessary.
 1. Allow certification on future federal aid projects on a project-by-project basis.
 2. Direct WSDOT supervision for all URA compliance ROW projects.
- Loss of federal aid on future ROW projects.
- Loss of federal aid on the project reviewed. If this is the outcome of the review, FHWA will participate in the joint conference.

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

If using FHWA funding, the acquiring agency shall establish property management policies and procedures that will assure control and administration of R/W, excess lands, and improvements acquired. These procedures shall establish:

1. Property records showing:
 - a. An inventory of all improvements acquired as a part of the R/W.
 - 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 R/W when such clearance is performed separately from the control for the physical construction of the project.
3. The methods for managing the rodent control program.
4. The methods for employing private firms or public agencies for the management of real property interests.
5. The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

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.

Should rights of way, including uneconomic remnants, acquired with FHWA funds become excess, they may be disposed of 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.

If the disposal is to a private party, the agency must determine fair market value (either through the appraisal process or by public sale). 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 of any rights of way or uneconomic remnants sold at less than fair market value.

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 R/W limits. Allowing an airspace lease 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 R/W 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 R/W 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

.151 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 R/W 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.

Diaries are further discussed in *Right of Way Manual* Chapters [3](#), [6](#), [8](#), [9](#), [12](#) and [15](#).

25.17 Oversight of Consultants Hired to Perform ROW Activities

The Local Agency (typically the person approved to perform the “Program Administration” function on the Approved R/W Procedures) is responsible for overseeing the delivery of the ROW Program on federal aid roadway projects for their agency. The agency must ensure R/W activities are carried out in compliance with federal and state laws, regulations, policies and procedures. Oversight of ROW consultants includes, but may not be limited to:

- use of consultant contract approved by WSDOT (not yet required);
- management of R/W contracts;
- management of deliverables (ROW plans, PFEs, relocation plans, administrative settlement justifications, recommendations/requests for payment, files, etc.);
- reviews and approves actions and decisions recommended by consultants; and
- overall responsibility for decisions that are outside the purview of consultant functions.

25.18 Document Retention

The acquiring agency shall maintain all records of its R/W activities for at least three years after payment of the final voucher for the project, not per parcel, to demonstrate compliance with 23 CFR 710.201(f).

25.19 Appendices

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

- 25.171 ROW Certification vs URA Compliance Letter Case Studies
- 25.172 Sample Neighborhood Description
- 25.173 Sample Administrative Settlement
- 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 Donation Statements – Sample
- 25.178 Federal Aid Requirement Checklist
- 25.179 Acquisition Process Flowchart

25.20 Local Programs Right of Way Services Website

- Right of Way Services Home
 - Laws & Regulations
 - Manuals & Resources
 - Clarification & Guidance
 - ROW Training & Education
 - LPA Forms & Brochures

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 **ROW/PR** is 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. Continue to Final ROW Determination.</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 Sections A “No”, your agency does not own the existing ROW, and the answers to Sections 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

26.1 General Discussion

Under, a 10 percent aspirational goal was established for the participation of Disadvantaged Business Enterprises (DBEs) in transportation contracting, in an effort to valuate 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 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. A local agency that is 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 for failure to comply with the requirements of WSDOT's DBE Plan.

Each federally-assisted contract/subcontract must include the following assurance:

- *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 DBE participation, only DBE firms that are currently certified by OMWBE may be used by prospective bidders on federally funded projects. Firms listed on the OMWBE’s Suspension List cannot count towards DBE participation on new contracts. A directory of certified DBE firms is maintained and published by OMWBE. The directory and suspension list can be accessed via OMWBE’s website at www.omwbe.wa.gov/directory-of-certified-firms or by calling 360-664-9770 or toll free (866) 208-1064.
3. **Establishment of Project DBE 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 DBE participation. To initiate this review, the local agency must submit an engineer’s estimate for a construction project or a detailed scope and estimate for a consultant agreement with their suggested DBE 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. No construction funding will be obligated prior to the project review for DBE goals. PE costs will be obligated but the Local Agency cannot advertise for consultant Services until a DBE goal has been evaluated for the scope of work to be advertised.

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 which utilizes one set of bid documents, the total project is considered a federal aid project for DBE 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 the overall goal:

- Mandatory Goal
- Zero Goal

The Local Programs Project Development Engineer will then establish a DBE goal for the construction contract or consultant agreement. The methodology employed by WSDOT determining state and local agency project contract or consultant goals is 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 DBEs to perform the type(s) of work.

- d. Potential subcontractable items of the work.
- e. Total dollar value of the contract.

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

B. Goal Setting Process

- a. Review the department's overall DBE goal and the means to meet the goal.
- b. If the contract includes federal funds, a DBE goal is considered.
- c. If the contract or agreement amount is under \$100,000.00 then no goal is set.
- 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/consultant is required to perform at least 30% of the project total). Typically, this work is not considered when evaluating for DBE 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 DBE participation.
 - i. Mobilization is not an item that is considered when determining which items a prime contractor will subcontract to another contractor. This is not to say that subcontractors (DBE or non-DBE) 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 DBE goal.
 - ii. Availability of ready, willing and able DBE's to perform the type(s) of subcontract work as identified in the DBE Directory (by description of work).
 - iii. Force Account work will be considered at 50%
- g. No DBE goal shall be set at less than 2%.

4. DBE Provisions in the Plans, Specifications, and Estimates (PS&E) –

After the goal has been 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 DBE requirements in the PS&E, when a mandatory goal is established, [DOT Form 272-056](#), Disadvantaged Business Enterprise Utilization Certification ([Appendix 26.52](#)), and [DOT Form 422-031](#), DBE Written Confirmation Document will be included. This form shall be in the proposal given to each bidder. This form is available from the Region Local Programs Engineer. When a zero goal is established the DBE Utilization Certification and the DBE Written Confirmation Document forms are not required.

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 Disadvantaged Business Enterprise Utilization Certification and Written Confirmation form completed by the contractor.

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

2. **Is the DBE Firm Certified by OMWBE** – The DBE firm named by the contractor in the bid proposal shall be certified as a DBE firm by OMWBE to be eligible for work on a FHWA funded project. To verify whether a firm is certified as a DBE 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.wa.gov/directory-of-certified-firms and document your effort in the project file. It is important to also check OMWBE’s List of Suspended DBE Firms. Firms on the Suspended List cannot be used to meet a contract goal on a new contract. In addition, any work performed on a contract received during the suspension cannot be counted toward WSDOT’s overall DBE goal. 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 DBE firms that are suspended at the time fixed for the bid opening will not be accepted by the local agency for participation, as a Condition of Award (COA) Contractor, in 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 DBE goal. The bidder can meet this requirement in either of two ways:
 1. The bidder can meet the established DBE goal, documenting they have obtained enough commitments for participation by DBE firms to meet the goal; or
 2. Document that the bidder made adequate Good Faith Efforts (GFE) to meet the established DBE goal. A bidder is required to submit GFE documentation with their proposal only in the event that the bidder’s efforts to solicit sufficient DBE participation were unsuccessful.

GFE means that the bidder must show that it took all necessary and reasonable steps to achieve the DBE goal, and by their scope, intensity, and appropriateness to the objective, the bidder could reasonably be expected to obtain sufficient DBE participation, even if the bidder were not fully successful in meeting the established DBE 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 DBE 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.

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.

- 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 DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.
- B. **After Award** – The Local Agency will request that the apparent low bidder submit a description of the specific items of the work each DBE subcontractor named in the DBE Utilization Certification will perform, within five (5) working days following the award. This description, dollar amount, and name of the DBE 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 DBE goal, the bidder will have the right to reconsideration but only for the purpose of reassessing the GFE documentation that was originally submitted with their bid, and determined to be inadequate. The Local Agency will, before awarding the contract to the next successful bidder, notify the bidder that they have five (5) working days (from the date of notification) to request reconsideration or forfeit the right for 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.

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 DBE and the remainder is done by the contractor or another subcontractor, the DBE’s work must be shown in detail. Also, any DBE suppliers and manufacturers shall be shown.

Send a copy of this letter, a copy of the “Disadvantaged Business Enterprise Utilization Certification and a copy of the “DBE 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 DBE 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 bid on prime contracts or bid or quote subcontracts (successful and unsuccessful) on USDOT-assisted projects, including both DBEs and non-DBEs. 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.
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 DBE 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.

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 DBE 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. Additional forms are available from your Region Local Programs Engineer.

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 are being made to subcontractors within the allowed timeframe. 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 and Upon Completion** – For all federal aid projects, the contractor shall submit Local Agency Monthly Report of Amounts Credited as DBE Participation, DOT Form 422-103 ([Appendix 26.51](#)), to the local agency. On this form, the contractor shows the actual amount paid to the DBE firm for the contact work and the date payment was made. The local agency shall forward a copy to the Region Local Programs Engineer. This completed form is required monthly and a final at the completion of the project must be submitted to the Local Programs Project Development Engineer as specified on the form.

In addition, for each contract, local agencies must document (in the form of a Written Certification) that it has reviewed the contracting records and monitored the work site and determined that work committed to the DBEs at contract award (and subsequently) was actually performed by said DBEs – See [Appendix 26.56](#).
9. **Records and Reports** – The local agency will maintain such records and provide such reports as necessary to ensure full compliance with WSDOT's DBE Participation Plan.

Upon request from the OMWBE, WSDOT, or the USDOT (or its operating administrations), 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 of the most qualified firm and before the negotiations with the most qualified firm can begin, the Local Agency must submit the DBE 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 DBE firms are certified to perform the scope of work and any GFE documentation that was submitted as part of the DBE Plan before concurrence to execute the agreement is given to the Local Agency.
2. **Monitoring the DBE's during the life of the Agreement** – The Local Agency must place a special emphasis on the approved DBE 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 DBE 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 DBE 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 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 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 are being made to subconsultants within the allowed timeframe. 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 and Upon Completion** – For all federal aid projects, the prime consultant shall submit Local Agency Monthly Report of Amounts Credited as DBE Participation, DOT Form 422-103 (Appendix 26.51), to the local agency. On this form, the consultant shows the actual amount paid to the DBE firm for the contact work and the date payment was made. The local agency shall forward a copy to the Region Local Programs Engineer. This completed form is required monthly and a final at the completion of the project must be submitted to the Local Programs Project Development Engineer as specified on the form.

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 DBEs at contract award (and subsequently) was actually performed by said DBEs – 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 DBE Participation Plan.

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

26.5 Appendices

- | | |
|-------|--|
| 26.51 | Local Agency Monthly Report of Amounts Credited as DBE Participation |
| 26.52 | Disadvantaged Business Enterprise Utilization Certification |
| 26.53 | DBE 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 |

Local Agency Monthly Report of Appendix 26.51 Amounts Credited as DBE Participation



**Washington State
Department of Transportation**

Local Agency Monthly Report of Amounts Credited as DBE Participation

Check appropriate reporting period and enter reporting year. <input type="checkbox"/> Final		Federal Aid Number	
Reporting Month _____ Reporting Year _____		Local Agency Project Number	
Contractor		Agency	
DBE Participant Name and Federal Employer I.D. Number	Contract Type	Date of Payment	*Dollar Credit Amount
<p>Contract Type: P = Prime A = Agent V = Service Provider S = Subcontractor R = Regular Dealer J = Joint Venture M = Manufacturer</p>			
<p>I, the undersigned, do hereby certify that in connection with all work on the project for which this statement is submitted, each DBE participant contracted by me has been paid on the dates shown. *Further, I certify that the amounts shown under "Dollar Credit Amount" are in accordance with the "DBE Eligibility" portion of the DBE Special Provision.</p>			
Signature		Title	

This form is due on the 20th of the month following the end of the previous Month.

DOT Form 422-103
Revised 08/2016

Appendix 26.52

Disadvantaged Business Enterprise Utilization Certification



Washington State
Department of Transportation

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, a Disadvantaged Business Enterprise (DBE) Utilization Certification. The Contracting Agency shall consider as non-responsive and shall reject any Bid Proposal that does not contain a DBE Utilization Certification which properly demonstrates that the Bidder will meet the DBE 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 DBE Utilization Certification shall be deemed a part of the resulting Contract.

Box 1: _____ certifies that the DBE 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 DBEs. (If necessary, use additional sheets.)

Box 2: _____

Column 1 Name of DBE (See Instructions)	Column 2 Project Role (See Instructions)	Column 3 Description of Work (See Instructions)	Column 4 Amount Subcontracted to DBE (See Instructions)	Column 5 Amount to be Applied Towards Goal (See Instructions)

Disadvantaged Business Enterprise _____
Condition of Award Contract Goal **Box 3**

Total DBE Commitment _____
Box 4

5 By checking Box 5 the Bidder is stating that their attempts to solicit sufficient DBE 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 272-056
Revised 07/2016



**Washington State
Department of Transportation**

**Disadvantaged Business Enterprise (DBE)
Written Confirmation Document**

See Contract Provisions: *DBE Document Submittal Requirements*
Disadvantaged Business Enterprise Condition of Award Participation

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

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

PART A: To be completed by the bidder

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

Contract Title: _____

Bidder's Business Name: _____

DBE's Business Name: _____

Description of DBE's Work: _____

Amount to be Applied Towards DBE Goal: _____

Amount to be Subcontracted to DBE*: _____
*Optional Field

PART B: To be completed by the Disadvantaged Business Enterprise

As an authorized representative of the 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 the Bidder's Disadvantaged Business Enterprise Utilization Certification.

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 thru 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 Yes or No	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	
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				
17(a). First Name		17(b). Last Name	17(c). 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
20. Is the DBE Interviewee shown on the DBE Payroll? (Review payroll)				<input type="checkbox"/> Yes <input type="checkbox"/> No

DOT Form 272-052
Revised 05/2015

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 Yes/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? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, please explain:			
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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Revised 05/2015

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.

Distribution: Region EEO Officer, WSDOT Office of Equal Opportunity

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 thru 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 Firm’s 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 Manager/Site Supervisor shown on any other firms invoice? If yes, please explain: <input type="checkbox"/> Yes <input type="checkbox"/> No			

DOT Form 272-051
Revised 05/2015

22. Who does the DBE's Project Manager/Site Supervisor report to within his/her organization? Name: _____ Title: _____	
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? If 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>	

Distribution: Region EEO Officer, WSDOT Office of Equal Opportunity



DBE Written Certification

Project Number	Federal-Aid Project Number
----------------	----------------------------

Contract Title

Agency's Certification

I certify that the contracting records and on-site performance of the Disadvantaged Business Enterprises has been Monitored.

X

Project Manager or Engineer Signature Required

Printed Signature Name

Date of Signature

Original to: WSDOT HQ Local Programs DOT

Copies to: Region Local Programs Project Manager or Project Engineer File

29.1 General Discussion

This chapter summarizes the regulations and implementing requirements local agencies shall follow regarding services, programs, and activities in or that affect the public right of way.

Section 504 of the Rehabilitation Act of 1973 (Section 504) states that no person with a disability shall be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity that receives Federal funding. This includes both transportation and non-transportation funding. Transportation funding includes funding from the United States Department of Transportation (USDOT) or the operating administrations under it (Federal Highway Administration, Federal Transit Administration, Federal Railroad Administration, Federal Aviation Administration, Research and Special Programs Administration, National Highway Traffic Safety Administration, or the U.S. Coast Guard).

Section 504 extends to the entire operations of a recipient or subrecipient, regardless of the specific funding source of a particular operation. USDOT Section 504 Regulations (49 CFR Part 27.5) define a recipient as any public entity that receives Federal financial assistance from the USDOT or its operating administrations either directly or through another recipient. An example of a recipient is WSDOT an example of a subrecipient is a local agency receiving USDOT funds through WSDOT, for projects/programs/activities administered by the local agency.

All public entities shall follow *the Americans with Disabilities Act of 1990 (ADA)*, regardless of funding sources. The ADA is mirrored after Section 504 but extends the reach of Federal accessibility laws to include those agencies that are not recipients or subrecipients of Federal funding. Title II (28 CFR Part 35) of the ADA specifically pertains to state and local governments.

The respective Federal funding agency (FHWA) and WSDOT will ensure that local agencies comply with Section 504 and the ADA. For more information about Section 504 and the ADA, please see WSDOT Local Program's ADA/Section 504 website: www.wsdot.wa.gov/LocalPrograms/ADA

Local agency public works staff should also refer to Chapter 42 of the Local Agency Guidelines (LAG) for technical information specific to public right-of-way facilities.

29.2 Assurances

Each local agency that receives federal funding from the USDOT or its operating administrations (such as FHWA) shall submit a written assurance that all of its services, programs, and activities will be conducted in compliance with Section 504 and the ADA. The assurance shall be signed by the Agency Executive, and submitted to each agency (such as WSDOT) administering funds for the USDOT or an operating administration.

Federal aid projects administered through WSDOT require a Local Agency Agreement between the local agency and WSDOT. That agreement may serve as the local agency's assurance of compliance with Section 504 and the ADA as long as it is signed by the Agency Executive and states the following:

In accordance with Section 504 and the ADA, the Agency shall not discriminate on the basis of disability in any of its programs, services, or activities.

29.3 Administrative Requirements

The following list and [Appendix 29.11](#) summarize some of the key requirements of Section 504 and the ADA. Note that when a requirement cites a number of employees, that number is the number of paid permanent, temporary, and contract employees regardless of whether the employees are full or part time.

- Each agency, regardless of the number of employees and funding sources, shall ensure that its services, programs, and activities are accessible to persons with disabilities. Some things this includes are:
 - Transportation and community evacuation elements of emergency management programs/plans.
 - Communications. Communications with persons with disabilities shall be as effective as communications with other persons. This applies to all forms of communications, including information posted on an agency's website (ref. Section 508 of the Rehabilitation Act and the ADA), emergency services communications, pedestrian signal systems, etc.
 - Maintenance of programs and facilities. This includes maintaining accessibility of pedestrian facilities that may be impacted by overgrown vegetation, snow/ice, severe heaving/cracking of surfaces, construction work zones, etc. Pedestrian signals/pushbuttons must also be accessible and maintained in working order.
 - New construction and altered facilities.
- Each agency regardless of the number of employees shall designate at least one person as its ADA/504 Coordinator. The individual designated as the ADA/504 Coordinator is responsible for coordinating ADA/Section 504 compliance throughout the agency. The agency shall provide the name, office address, and telephone number of the ADA/504 Coordinator both internally and externally. This information is required to be posted in areas likely to be viewed by employees and the general public (such as the agency's Web page, etc.).
- Each agency regardless of the number of employees shall adopt and publish grievance/complaint procedures. These procedures shall be posted internally and externally and be made available in alternative formats that address the needs of persons with mobility, visual, and hearing disabilities. This information is required to be posted in areas likely to be viewed by employees and the general public (such as the agency's Web page). An example of grievance procedures can be found on WSDOT Local Program's ADA/Section 504 website: An example of grievance procedures can be found on the U.S. Department of Justice website at www.ada.gov/pcatoolkit/chap2toolkit.htm.

- Each agency, regardless of the number of employees, shall provide public notice of its ADA provisions. This notice shall contain a brief description about how the agency will address ADA accessibility in its employment, communications, policies, and resolution of complaints. This notice shall be placed in locations and/or facilities that are accessible internally and externally and be available in alternative formats that address the needs of persons with mobility, visual, and hearing disabilities. Information placed on the agency's Web page counts as posting externally. An example of a public notice can also be found at the DOJ website referenced above.
- Each agency, regardless of the number of employees, shall conduct a self-evaluation of its policies, programs, services, and activities to determine whether Section 504/ADA accessibility requirements are being met. This includes all public right-of-way facilities. See Appendix 29.11. Each agency shall provide an opportunity for interested parties (i.e., persons with disabilities/advocacy groups) to participate in the process. Resources to identify disabled users of the public right of way can be found on WSDOT Local Program's ADA/Section 504 website: www.wsdot.wa.gov/LocalPrograms/ADA
- Each agency with 50 or more employees shall develop a transition plan (See Section 29.4) when structural modifications, identified through a self-evaluation process, are necessary to achieve program accessibility under the ADA. While Section 504 regulations contain similar requirements, there is no employee threshold and the regulation is not as descriptive as the ADA regulations. Therefore, each agency with fewer than 50 employees that is a recipient or subrecipient of Federal financial assistance shall develop a program access plan. See Section 29.4 for the requirements of these plans.

An agency's self-evaluation and transition plan must cover all of the agency's programs (including facilities), services, and activities. The information contained in this chapter is intended to provide local agency transportation departments (i.e., public works) with guidance/expectations for addressing ADA accessibility requirements associated with public right-of-way facilities.

29.4 Transition Plan, Program Access Plan, and Accessible Pedestrian Signal and Pushbutton Policy

Each agency shall provide an opportunity for interested parties (i.e., persons with disabilities/advocacy groups) to participate in the process to develop a transition plan or program access plan. A list of potential interest groups can be found on WSDOT Local Program's ADA/Section 504 website: www.wsdot.wa.gov/LocalPrograms/ADA

FHWA considers transition plans and program access plans to be living documents. The applicable plan should be used in conjunction with the planning and prioritizing of projects, and for monitoring progress on completing modifications. If the time period of the plan is longer than one year, the plan shall identify steps that will be taken during each year of the transition period. FHWA also recommends that the plan be updated annually until all planned modifications have been completed.

Transition Plan

As stated in [Section 29.3](#) of this chapter, agencies with 50 or more employees (ADA), regardless of funding source, shall develop a transition plan when structural modifications are necessary to achieve ADA compliance. Based on the agency's self-evaluation, at a minimum the plan shall:

- Identify the physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities, including those within the public right of way.
- Describe in detail the methods that will be used to make the facilities accessible.
- Specify the schedule for each facility and/or obstacle to be retrofitted. FHWA recommends that an agency include the estimated cost of each modification as part of the schedule, to assist in the budget and/or Transportation Improvement Program (TIP) preparation.
- Identify the official responsible for implementation of the plan. This is typically the agency's Executive, or the agency's designated ADA/504 Coordinator who has the authority to act on behalf of the agency's Executive.

For examples of transition plans, see the ADA/Section 504 website: www.wsdot.wa.gov/LocalPrograms/ADA

Program Access Plan

As stated in [Section 29.3](#) of this chapter, agencies with fewer than 50 employees and a recipient of Federal financial assistance are required to develop a compliance planning document. Similar to a transition plan, agencies shall:

- Identify the physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities, including those within the public right of way.
- Describe in detail the methods/actions needed to make the facilities accessible.
- Specify a schedule (milestones) of when the agency plans to make the necessary modifications.
- While the following ADA/Section 504 website does not contain an example entitled "Program Access Plan, it does contain examples of transition plans, which are similar. www.wsdot.wa.gov/LocalPrograms/ADA

Accessible Pedestrian Signal and Pushbutton (APS) Policy

Based on input from the U.S. Department of Justice (DOJ), it is FHWA's policy to require recipients and subrecipients (of FHWA funding) to establish a "reasonable and consistent" policy for installing accessible pedestrian signals and pushbuttons (APS) on all alteration and new construction projects, consistent with the requirements of Title II of the ADA (28 CFR Part 35.151) and Section 504 regulations (49 CFR Part 27.7(c)). This policy should be part of a transition plan, compliance planning document, or a stand-alone document if a transition plan or program access plan has not yet been completed. FHWA and WSDOT will work with local agencies to ensure that all new and altered pedestrian signal and pushbutton installations are usable by persons with visual disabilities.

29.5 Requirements for New Construction and Alterations in the Public Right of Way

Title II of the ADA requires that new and altered facilities be designed and constructed to be readily accessible to and usable by persons with disabilities.

New Construction

New construction projects address the construction of a new roadway, interchange, or other transportation facility where none existed before. New construction is expected to meet the highest level of ADA accessibility unless it is structurally impracticable to achieve full compliance. Full compliance will be considered structurally impracticable only when, in rare circumstances, the unique characteristics of terrain prevent full compliance.

Alterations

The vast majority of construction projects undertaken by local agency public works/transportation departments are classified as alterations. An alteration is a change that affects or could affect the usability of a facility or part of a facility. Alterations include reconstruction, major rehabilitation, widening, resurfacing (e.g., asphalt overlays and mill and fill), signal installation and upgrades, and projects of similar scale and effect. Alterations to existing facilities shall meet new construction standards unless it is technically infeasible to do so. If full ADA compliance cannot be achieved in an alteration, the agency shall alter the facility to provide the maximum degree of accessibility possible. The feasibility meant by this standard is physical possibility only. Neither cost nor schedule are factors in determining whether the ADA standards can be met, nor are they factors in determining the feasibility of complying with the standard.

An alteration project shall be planned, designed, and constructed so that the required accessibility improvements occur at the same time as the alteration. If a project involves resurfacing the street, connections between the sidewalk and street crossings (i.e., curb ramps) are considered to be within the scope of the alteration project. Any accessibility issues shall be addressed in conjunction with the resurfacing project, either prior to or at the same time as the resurfacing project. For the requirements for curb ramps during resurfacing projects, see USDOJ-USDOT's Joint Technical Assistance document, dated July 8, 2013 and the Supplement to this document, dated December 1, 2015; and a FHWA recorded webinar from FHWA, dated March 1, 2016. All documents are available on WSDOT Local Program's ADA/Section 504 website: www.wsdot.wa.gov/LocalPrograms/ADA

Safe Harbor for Alterations

Both the Section 504 and ADA requirements contain a "safe harbor" provision. However, there is a difference in the timeline associated with the Section 504 safe harbor provision and the ADA safe harbor provision.

If an agency receives Federal financial assistance from USDOT – either directly or through another USDOT recipient (such as WSDOT), the agency is subject to the 2004 ADA Accessibility Guidelines (2004 ADAAG).

This became effective in 2006 when the USDOT adopted the 2004 ADA Accessibility Guideline (2004 ADAAG) into its Section 504 regulations. This document is known as the 2004 ADA Standards. The 2004 Standards have a “safe harbor” provision for curb ramps. The provision is that if a curb ramp was constructed or altered prior to November 29, 2006, and complies with either the 1991 ADA Standards for Accessible Design (1991 ADA Accessibility Guidelines) or the Uniform Federal Accessibility Standards (UFAS), it does not need to be modified as part of a roadway resurfacing project. If this is not the case, or if the curb ramp is in disrepair then the curb ramp and its detectable warnings (truncated domes) must shall be brought into compliance with the 2004 Standards) at the time of an alternation. As mentioned above in Section 29.1, if an agency receives Federal financial assistance from USDOT – either directly or through another DOT recipient (such as WSDOT), then the agency is subject to the 2004 ADAAG as part of the USDOT Section 504 regulations.

For those agencies who are not a recipient or subrecipient of Federal financial assistance from USDOT, the safe harbor provision in the 2010 ADA Standards for Accessible Design (2010 Standards) applies. Under the 2010 Standards’ safe harbor provision, if curb ramps were built or altered (in existing facilities) prior to March 15, 2012 and if they comply with the 1991 Standards or the UFAS, they do not need to be modified as part of a resurfacing project.

However, if an existing curb ramp does not comply with either the 1991 Standards or the UFAS (including if the curb ramp is in a state of disrepair), then the Safe Harbor provision does not apply and the curb ramp would need to be brought into compliance with the 2010 Standards at the time of roadway alteration.

When curb ramps or abutting sidewalks abutting ramps are altered, they shall be reconstructed to meet the 2010 Standards. For additional curb ramp design guidance, see LAG manual Chapter 42.

Documentation for Structural Impracticability and Maximum Extent Feasible

While ADA/Section 504 regulations do not require documentation of the application of structural impracticability nor maximum extent feasible, both FHWA and the U.S. Access Board recommend that these instances be documented so the agency can support its decisions if challenged at a later date. The documentation of these instances should reveal the standard of care that guided engineering judgments. While careful documentation will not protect an agency against complaint, evidence of the considerations that led to the specific project solution may be persuasive in discussions with stakeholders or in court.

As described in the *Design Manual* M 22-01, WSDOT has a documentation procedure for applications of maximum extent feasible in alteration projects on state routes. If a local agency applies maximum extent feasible to a pedestrian facility located on a state route, it is WSDOT’s expectation that the agency follow the WSDOT documentation procedure described in the *Design Manual* M 22-01. The completed documentation should be contained in local agency project files to document the agencies design efforts in complying with the ADA/Section 504 requirements.

If a local agency finds the need to apply maximum extent feasible to a pedestrian facility that is not located on a state route, the WSDOT documentation procedure does not need to be followed. However, it is highly recommended that the agency develop its own documentation protocol for such situations that is consistent with the FHWA and U.S. Access Board recommendations.

29.6 Monitoring and Enforcement

Responsibility for monitoring and enforcement of Section 504 rests with the Federal funding agency (such as FHWA). Section 504 regulations require WSDOT, as a recipient, to monitor and enforce the compliance with both Section 504 and the ADA of any entity receiving disbursement of either state or Federal funding through WSDOT. While USDOJ has the ultimate enforcement authority for ADA compliance, USDOJ has delegated monitoring and enforcement responsibility to several Federal executive agencies including the USDOT and its operating administrations (such as FHWA). FHWA monitors WSDOT and local agency compliance through various means such as process and program reviews, construction inspections, PS&E reviews, and complaint investigations. If noncompliance is found, and the noncompliance is not corrected to FHWA's satisfaction, FHWA may terminate or refuse to grant federal funding.

29.7 Laws

- 29 USC 794 - Section 504 of the Rehabilitation Act of 1973 (as amended by the Civil Rights Restoration Act of 1987)
- 42 USC 12111 - Americans with Disabilities Act (Title II)

29.8 Regulations

- 28 CFR Part 35 (Title II) "Nondiscrimination on the Basis of Disability in State and Local Government Services"
- 49 CFR Part 27 (Section 504) "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"
- 49 CFR Part 37 "Transportation Services for Individuals with Disabilities (ADA)"
- 49 CFR Part 38 "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"

29.9 Resources

- Chapters [1510](#) and [1515](#) of the *Design Manual* M 22-01
- [Chapter 42](#) of this manual

29.10 Appendices

- [29.11](#) ADA Title II and Section 504 of the Act Regulatory References

Appendix 29.11

ADA Title II and Section 504 of the Act Regulatory References

ADA Title II and Rehabilitation Act Section 504 Regulatory References	Requirements for all agencies	Requirements for agencies with less than 50 employees	Requirements for agencies with 50 or more employees
Programs, services, and activities: Ensure that programs, services, and activities are accessible to persons with disabilities. (28 CFR Part 35.150(a) and (c))	✓		
ADA/504 Coordinator: Designate at least one responsible employee (ADA/504 Coordinator) and make the name and contact information available internally and externally. (28 CFR Part 35.107(a) and 49 CFR Part 27.13(a))	✓		
Complaint/grievance procedures: Adopt and publish complaint/grievance procedures (28 CFR Part 35.107(b) and 49 CFR Part 27.13(b))	✓		
Notice of ADA provisions: Provide a public notice of how the agency will address ADA accessibility in its employment, communications, policies, and resolution of complaints (28 CFR 35.106)	✓		
Self-evaluation²: Evaluate all services, policies, and practices for barriers which restrict / limit persons with disabilities from access to services, programs, and activities. (28 CFR Part 35.105(a) and 49 CFR Part 27.11(c)(2)(i) and (v))	✓		
Self-evaluation²: Maintain the completed self-evaluation on file and make it available for public inspection for at least three years following its completion. (28 CFR Part 35.105(c) and 49 CFR Part 27.11(c)(3)(ii):	✓		
Transition Plan²/Program Access Plan: Develop a transition plan or program access plan that outlines the structural modifications that must be made to those services, programs, and activities that are not accessible (28 CFR Part 35.150(d) and 49 CFR Part 27.11(c)(2)(ii))		✓ (program access plan)	✓ (transition plan)(posted on website)
Accessible Pedestrian Signal and Pushbutton (APS) policy²: Develop a “reasonable and consistent” policy for installing accessible pedestrian signals and pushbuttons when a transition plan has not yet been completed. (28 CFR Part 35.130 and 35.160a(1), and 49 CFR Part 27.7(c))	✓		
<p>Note:</p> <p>¹Employees include paid permanent, temporary, and contract employees regardless of whether the employees are full or part time.</p> <p>²Complete self-evaluations, and develop transition plans, program access plan and APS policies by engaging persons with disabilities and/or their advocates (28 CFR Parts 35.105 and 35.150, and 49 CFR Part 27.11(c)(2)).</p>			

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:

1. **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.
2. **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](#)).
3. **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.
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.

31.3 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 *Consultant Service Manual* Appendix Y).
5. 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/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.
 - 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/fix 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.”
 2. 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.
 3. 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](#)).

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.

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. Establish controls to prevent overpayment of the agreement.
11. Submit Local Agency Monthly Report of Amounts Credited as DBE, DOT Form 422-103, to Region Local Programs Engineer.
12. 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.
13. 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 and 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.

Appendix 31.92(a) Submittal Information Form (Prime)

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

Sole Proprietor

Partnership

C – Corp.

Limited Partnership

Subchapter S Corp.

Limited Liability Company

Annual Gross Receipt

\$0 to \$1 Million

\$1 Million to \$5 Million

\$5 Million to \$10 Million

\$10 Million to \$15 Million

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.

Submittal Information Form (Sub-consultant)

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

Sub-consultant

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

- Form type selection options: Sole Proprietor, Partnership, C - Corp., Limited Partnership, Subchapter S Corp., Limited Liability Company.

Annual Gross Receipt

- Annual gross receipt selection options: \$0 to \$1 Million, \$1 Million to \$5 Million, \$5 Million to \$10 Million, \$10 Million to \$15 Million, 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.

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.

Appendix 31.96

Performance Evaluation Consultant Services



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
Superior	Above Reqmnts	Meets Reqmnts	Below Reqmnts
4	3	2	1
Poor			
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)	
<u>10</u> <u>9</u> Superior	<u>8</u> <u>7</u> Above Reqmnts
<u>6</u> <u>5</u> Meets Reqmnts	<u>4</u> <u>3</u> Below Reqmnts
<u>2</u> <u>1</u> 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: <u>\$5,000.00</u>	
	Sub-Total	<u>\$524,420.00</u>

*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

Date

WHEREAS, the _____ County Department of Community Development/Division of Emergency Management has reported to the Board of County Commissioners, that beginning on _____, 19___, unusual weather conditions, consisting of heavy snowfall followed by rain, have caused a disaster by creating extensive flooding in parts of _____ County; and

WHEREAS, extensive damage has occurred and is still occurring to county roads and bridges, private roads, homes, businesses, and farmland; and

WHEREAS, persons and property are and will be damaged unless further efforts are taken to reduce the threat to life and property; and

WHEREAS, there is a present emergency which necessitates activation of the _____ County Disaster Preparedness Plan and utilization of emergency powers granted pursuant to RCW 36.40.180 and RCW 38.52.070(2), therefore

BE IT RESOLVED BY THE BOARD OF _____ COUNTY COMMISSIONERS:

SECTION 1

It is hereby declared that there is an emergency due to the flooding conditions in _____ County. Therefore, designated departments are authorized to enter into contracts and incur obligations necessary to combat such disaster, protect the health and safety of persons and property, and provide emergency assistance to the victims of such disaster.

SECTION 2

Each designated department is authorized to exercise the powers vested under Section 1 of this resolution in the light of the urgency of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements).

- Board of County Commissioners
- Click here to enter text. County, Washington
- Chairperson, Click here to enter text.
- Commissioner, Click here to enter text.
- Commissioner, Click here to enter text.

Note: Mailed to all county newspapers on above date.

cc: Washington State Emergency Management, re. notification by phone
Washington State Department of Transportation, Region Local Programs Engineer

JAY INSLEE
Governor



STATE OF WASHINGTON
Office of the Governor

PROCLAMATION BY THE GOVERNOR

15-15

WHEREAS, from November 13 through 18, 2015, a series of severe storms struck Washington State, producing high winds and extreme rainfall resulting in major flooding, saturated soils, landslides, stream bank and slope erosion, fallen tree limbs, broken and uprooted trees, and flying debris; and

WHEREAS, throughout the State, these storms caused three confirmed deaths, injuries to citizens, significant power outages, evacuations, temporary road closures and detours, rail line closures, ferry system and airline cancellations, and extensive damage to homes, businesses, public utilities, public facilities, electrical power systems, infrastructure, and property, in addition to creating sheltering needs for impacted citizens, threatening fragile and at-risk populations, and jeopardizing the health and safety of citizens with special medical needs; and

WHEREAS, erosion, landslides, and flooding resulting from these storms has been exacerbated in some areas of the State due to major wildfire damage in July through September 2015 that left large areas of land burned clear of trees and other vegetation; and

WHEREAS, blocked and damaged roadways caused by these storms resulted in limited access impacts complicating the provision of response and recovery efforts by emergency responders, businesses, and utilities to address the aftermath of these storms; and

WHEREAS, state agencies and local jurisdictions are coordinating resources to address damaged and blocked roadways, assess damage caused by the storms, and implement damage repairs; and

WHEREAS, the storm damage and its effects continue to impact the life and health of our citizens, as well as the property and infrastructure of Washington State, all of which is a public disaster that affects life, health, property, or the public peace; and

WHEREAS, the Washington State Military Department activated the State Emergency Operations Center, implemented emergency response procedures, and is coordinating resources to support local officials in alleviating the immediate social and economic impacts to people, property, and infrastructure, and is continuing to assess the magnitude of the event.

NOW, THEREFORE, I, Jay R. Inslee, Governor of the state of Washington, as a result of the above-noted situation and under Chapters 38.08, 38.52, and 43.06 RCW, do hereby proclaim that a State of Emergency exists in all counties in the state of Washington, and direct the plans and procedures in the *Washington State Comprehensive Emergency Management Plan* be

implemented. State agencies and departments are directed to utilize state resources in accordance with the Washington State Comprehensive Emergency Management Plan and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the event.

As a result of this event, I also hereby order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of the Adjutant General, to perform such duties as directed by competent authority of the Washington Military Department in addressing this event. Additionally, the Washington State Military Department, Emergency Management Division, is instructed to coordinate all incident-related assistance to the affected areas.

Signed and sealed with the official seal of the state of Washington this 18th day of November, A.D. Two-thousand and Fifteen at Olympia, Washington.

By:

_____/s/_____
Jay Inslee, Governor

BY THE GOVERNOR:

_____/s/_____
Secretary of State



Washington State
Department of Transportation

Detailed Damage Inspection Report
FHWA Emergency Relief

Applicant Click here to enter text.		County Choose an item.	FHWA Disaster No. Click here to enter text.
Location of Damage Click here to enter text. Route is on BIA's inventory classified as Tribal Transportation Facility (TTF): <input type="checkbox"/>		Milepost From MP To MP	Revision Number Click here to enter text.
Cause and Description of Damage Click here to enter text.			Local/State Project or No(s) Click here to enter text.
Functional Class Choose an item.			

A breakdown of the cost estimate can be provided as a separate document attached to the DDIR. If the cost estimate (including preliminary and construction engineering) increases by 10% a revised DDIR must be approved by FHWA.

Temporary/Emergency Repair (work that is necessary to restore essential traffic, minimize the extent of damage, or protect the remaining facilities.) Click here to enter text.		Temporary/Emergency Repair <input type="checkbox"/> 100% Federal Aid Original Estimate Click here to enter text. Revised Estimate Click here to enter text.
Method of Work: <input type="checkbox"/> Local/State Force Account <input type="checkbox"/> Emergency Contract		
Incidental Repair (The remaining portion of the work that is completed during the temporary/emergency repair.) Click here to enter text.		Incidental Restoration Federal Aid % <input type="checkbox"/> 86.5% <input type="checkbox"/> 90.66% <input type="checkbox"/> 100% Original Estimate Click here to enter text. Revised Estimate Click here to enter text.
Method of Work: <input type="checkbox"/> Local/State Force Account <input type="checkbox"/> Emergency Contract		
Permanent Restoration (This work is eligible for Federal participation at the normal pro-rata share and is administered using normal Federal-aid procedures.) Click here to enter text.		Permanent Restoration Federal Aid % <input type="checkbox"/> 86.5% <input type="checkbox"/> 90.66% <input type="checkbox"/> 100%
		Preliminary Engineering Click here to enter text.
		Right of Way Click here to enter text.
		Construction Click here to enter text.
		Total Perm. Restoration Click here to enter text.
		Revised Total Perm. Restoration Click here to enter text.
Method of Work: <input type="checkbox"/> Local/State Force Account <input checked="" type="checkbox"/> Contract		
		WSDOT Annual Indirect Cost Rate Click here to enter text.
		Total Estimated Cost Click here to enter text.
		Revised Total Estimated Cost Click here to enter text.
Recommendation for Eligibility <input type="checkbox"/> Yes <input type="checkbox"/> No	Local Agency Representative	Date
Recommendation for Eligibility <input type="checkbox"/> Yes <input type="checkbox"/> No	State Representative	Date
FHWA Recommendation <input type="checkbox"/> Eligible <input type="checkbox"/> Ineligible	FHWA Engineer	Date

Instructions for filling out form

Location of Damage: Provide the name or route number of road, bridge number(s) if applicable and any other pertinent information to help identify the location of the damage.

Description of Damage: Describe how the event caused the damage, what damage the event caused, and why the damage is eligible for ER funding.

Functional Classification: Select from dropdown See functional classification mapping application (<http://www.wsdot.wa.gov/mapsdata/travel/hpms/functionalclass.htm>).

- Rural or Urban Interstate
- Rural or Urban Other Freeway/Expressway
- Rural or Urban Principal Arterial
- Rural or Urban Minor Arterial
- Rural or Urban Major Collector
- Urban Minor Collector

Temporary/Emergency Repair: Describe the work and provide a total cost estimate of work that is necessary to restore essential traffic, minimize the extent of damage, or protect the remaining facilities. A breakdown of the cost estimate can be provided as a separate document attached to the DDIR. Work in this box typically requires minimal preliminary engineering, geotechnical studies, structural analysis, or environmental review. These repairs are usually within the capabilities of the State and local maintenance forces and most will be performed on a force account or an emergency contract basis. Temporary/Emergency Repair Work is categorically excluded from NEPA requirements under 23 CFR 771.117(c)(9). This work must meet the emergency provisions of all other environmental regulations, such as ESA, Section 106, 4f. Most of these emergency provisions require that the regulatory agency be notified prior to beginning work.

Incidental Repair Work: Describe the work and provide a total cost estimate of work that was completed incidental to the Temporary/Emergency Repair Work. A breakdown of the cost estimate can be provided as a separate document attached to the DDIR. This work was not necessary to restore essential traffic, minimize the extent of damage, or protect the remaining facilities; this work is eligible for federal participation at the normal pro rata share for the facility type. Work in this box typically requires minimal preliminary engineering, geotechnical studies, structural analysis, or environmental review. These repairs are usually within the capabilities of the State and local maintenance forces and most will be performed on a force account or an emergency contract basis. Incidental Repair Work is generally categorically excluded from NEPA requirements under 23 CFR 771.117(c)(9). This work must meet the emergency provisions of all other environmental regulations, such as ESA, Section 106, 4f. Most of these emergency provisions require that the regulatory agency be notified prior to beginning work.

Permanent Restoration Work (Describe the work and provide a cost estimate for work performed as part of the Permanent Restoration. A breakdown of the cost estimate can be provided as a separate document attached to the DDIR. Permanent restoration shall be administered using normal Federal aid procedures that include written authorization, NEPA clearance, design approval, permits, right of way certification, PS&E, advertisement period, etc. The federal participation on eligible work will be at the normal pro rata share for the facility type (Interstate 90.6% Non-Interstate 86.5%) regardless of when the work is done. Betterments typically fall into this category of work; proper justification documentation for the betterments should be attached. Funding for this work may not be needed immediately (especially construction funding). Include documentation if funding is not needed immediately.

Local Agency Bid Proposal Package

Local Agency Proposal Package Data Entry

Local Agency Proposal Certification for Federal-Aid Contracts (DOT Form 272-040A)

Local Agency Proposal Bond (DOT Form 272-001A)

Local Agency Non-Collusion Declaration (DOT Form 272-036I)

Local Agency Disadvantaged Business Enterprise Utilization Certification (DOT Form 272-056)

Disadvantaged Business Enterprise Documentation Reminder

Local Agency Disadvantaged Business Enterprise (DBE) Written Confirmation Document (DOT Form 422-031)

Local Agency Ad and Award Contract Proposal - Signature Page (DOT Form 272-036J)

Local Agency Proposal - Signature Page (DOT Form 272-036K)

Local Agency Subcontractor's List (DOT Form 271-015A)

(This form (DOT 271-015A EF) must be included in the bid proposal package, if the bid on a prime contract is expected (per the Engineer's Estimate) to cost one million dollars or more.)

Local Agency Performance Bond (DOT Form 272-002A)

Local Agency Payment Bond (DOT Form 272-003A)

Local Agency Contract - Highway Construction (DOT Form 272-006A)

Local Agency Contract - Building Construction (DOT Form 272-008A)

Local Agency Contractor Prequal. Questionnaire and Affid. for Region Ad and Award Contracts (\$100,000 or Less) (DOT Form 272-063A)

[List View](#)

[Close](#)

1. Local Agencies must use DOT Form 272-056 and 422-031 on all projects that have an established DBE goal.
2. Local Agencies may delete DOT Form 272-063A.

Note: This package is available electronically at www.wsdot.wa.gov/forms. Follow the instructions to download the package. The Local Agency Bid Proposal Package is located behind the “agreement and Contract Forms” button.

Local Agency Bid Proposal Package - Data Entry

Enter the Appropriate Information for the Local Agency Proposal Package

Local Agency:

Local Agency Address:

City

State

Zip Code

Is this Bid Package for a Federal or State project?

Federal State

Enter the Road or Bridge Name

Enter the Mileposts (include "MP") or Project Limits

Enter the Project Title

Enter Agency Job Number(s)

Enter the Federal Aid Number(s) and TA Number

Local Agency Bid Proposal Package – Data Entry
(Page 1 of 3)

Local Agency Bid Proposal Package - Data Entry

Enter the Federal Aid Number(s) and TA Number

Bid Open Time (24 hour clock)

Enter the Agency street address for the Bid Opening

Enter the Bid opening Location. Include the room number if applicable

City Zip Code

Enter the Agency mailing Post Office Bix or Street Address for mail in Bids

Address

City Zip Code

Enter the Fax Number for Bid Changes

Expedite / Bidx.com Option

This field shows the Bid Opening information that will print on the Cover Page exactly as displayed. Please verify and correct any incorrect information

"Sealed bids will be received by at , , Washington, until , or at " ,

Local Agency Bid Proposal Package – Data Entry
(Page 2 of 3)

Local Agency Bid Proposal Package - Data Entry

"Sealed bids will be received by at , , , Washington , until , or at " , , Washington until :00 AM on the date scheduled for opening bids.

Click on forms to include in this Bid Package

Enter Correct Page Letter

- | | |
|---|-------|
| <input type="checkbox"/> Certification for Federal Aid Contracts (272-040A)
Required for all Federal Aid jobs over \$100,000 | _____ |
| <input type="checkbox"/> Proposal Bond (272-001A)
Use when bid bond is required | _____ |
| <input type="checkbox"/> Non-Collusion Declaration (272-036I)
Required for all Federal Aid jobs | _____ |
| <input type="checkbox"/> DBE Documentation Reminder Page
Required for Federal Aid jobs with DBE Condition of Award goals | _____ |
| <input type="checkbox"/> DBE Utilization Certification (272-056)
Required for Federal Aid jobs with DBE Condition of Award goals | _____ |
| <input type="checkbox"/> DBE Written Confirmation Document (422-031)
Required for Federal Aid jobs with DBE Condition of Award goals | _____ |
| <input type="checkbox"/> Subcontractor's List (271-015A EF)
Required for all jobs over \$1,000,000 | _____ |
| <input type="checkbox"/> Region Ad and Award Contract Proposal - Signature Page (272-036J)
Used only for contracts \$50,000 or less when no bond is required | _____ |
| <input type="checkbox"/> Proposal - Signature Page (272-036K)
Required for all jobs over \$1,000,000 | _____ |

Local Agency Certification for Federal-Aid Contracts

The prospective participant certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is material representation of the fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

SR

DOT Form 272-040A
07/2011

Local Agency Proposal Certification for Federal-Aid Contracts (DOT Form 272-040A)

Local Agency Proposal Bond

KNOW ALL MEN BY THESE PRESENTS, That we,

of _____ as principal, and the

a corporation duly organized under the laws of the state of _____, and authorized to do business in the State of Washington, as surety, are held and firmly bound unto the State of Washington in the full and penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such, that whereas the principal herein is herewith submitting his or its sealed proposal for the following highway construction, to wit:

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, If the said proposal bid by said principal be accepted, and the contract be awarded to said principal, and if said principal shall duly make and enter into and execute said contract and shall furnish bond as required by the _____ within a period of twenty (20) days from and after said award, exclusive of the day of such award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

IN TESTIMONY WHEREOF, The principal and surety have caused these presents to be signed and sealed this _____ day of _____, _____.

(Principal)

(Surety)

(Attorney-in-fact)

SR

DOT Form 272-001A
07/2011

Local Agency Proposal Bond (DOT Form 272-001A)

Failure to return this Declaration as part of the bid proposal package will make the bid nonresponsive and ineligible for award.

NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
2. **That by signing the signature page of this proposal, I am deemed to have signed and to have agreed to the provisions of this declaration.**

NOTICE TO ALL BIDDERS

To report rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

SR

DOT Form 272-036I
07/2011

**Non-Collusion Declaration
(DOT Form 272-036I)**

Local Agency 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, a Disadvantaged Business Enterprise (DBE) Utilization Certification. The Contracting Agency shall consider as nonresponsive and shall reject any Bid Proposal that does not contain a DBE Utilization Certification which properly demonstrates that the Bidder will meet the DBE 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 DBE Utilization Certification shall be deemed a part of the resulting Contract.

Box 1: _____ certifies that the DBE 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 DBEs. (If necessary, use additional sheets.)

Box 2: _____

Column 1 Name of DBE <small>(See instructions)</small>	Column 2 Project Role <small>(See Instructions)</small>	Column 3 Description of Work <small>(See Instructions)</small>	Column 4 Amount Subcontracted to DBE <small>(See Instructions)</small>	Column 5 Amount to be Applied Towards Goal <small>(See Instructions)</small>

Disadvantaged Business Enterprise
Condition of Award Contract Goal _____
Box 3

Total DBE Commitment _____
Box 4

By checking Box 5 the Bidder is stating that their attempts to solicit sufficient DBE 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 272-056
Revised 07/2016

Local Agency Disadvantaged Business Enterprises Utilization Certification (DOT Form 272-056)



Washington State
Department of Transportation

**Disadvantaged Business Enterprise (DBE)
Written Confirmation Document**

See Contract Provisions: *DBE Document Submittal Requirements*
Disadvantaged Business Enterprise Condition of Award Participation

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

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

PART A: To be completed by the bidder

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

Contract Title: _____

Bidder's Business Name: _____

DBE's Business Name: _____

Description of DBE's Work: _____

Amount to be Applied Towards DBE Goal: _____

Amount to be Subcontracted to DBE*: _____
*Optional Field

PART B: To be completed by the Disadvantaged Business Enterprise

As an authorized representative of the 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 the Bidder's Disadvantaged Business Enterprise
Utilization Certification.

Name (printed): _____

Signature: _____

Title: _____

Address: _____ Date: _____

DOT Form 422-031
Revised 07/2016

**Local Agency Disadvantaged Business Enterprise (DBE)
Written Confirmation Document (DOT Form 422-031)**

Local Agency Signature Page

The undersigned hereby agrees to pay labor not less than the prevailing rates of wages in accordance with the requirements of the special provisions for this project.

Receipt is hereby acknowledged of addendum(s) No.(s) _____, _____ & _____

Signature of Authorized Official(s)

Proposal Must be Signed →

Firm Name _____

Address _____

State of Washington Contractor's License No. _____

Federal ID No. _____

Note:

- (1) This proposal form is not transferable and any alteration of the firm's name entered hereon without prior permission from the will be cause for considering the proposal irregular and subsequent rejection of the bid.
- (2) Please refer to section 1-02.6 of the standard specifications, re: "Preparation of Proposal," or "Article 4" of the Instruction to Bidders for building construction jobs.
- (3) Should it be necessary to modify this proposal either in writing or by electronic means, please make reference to the following proposal number on in your communication _____.
- (4) RCW 47.28.030 (2) applies: No bid deposit or performance bond shall be required but it shall be specified in the bidding proposal that each month the contractor may be required to submit paid invoices showing that disbursements have been made to laborers, materialmen, mechanics, and subcontractors due such persons from the previous progress payment. If such disbursements have not been made, the monthly progress payment shall be withheld pending receipt of the paid invoices.

SR

DOT Form 272-036J
07/2011

**Local Agency Signature Page
(DOT Form 272-036J)**

Local Agency Proposal - Signature Page

The bidder is hereby advised that by signature of this proposal he/she is deemed to have acknowledged all requirements and signed all certificates contained herein.

A proposal guaranty in an amount of five percent (5%) of the total bid, based upon the approximate estimate of quantities at the above prices and in the form as indicated below is attached hereto:

- Cash In the Amount of _____
- Cashier's Check _____ Dollars
- Certified Check (\$ _____) Payable to the Agency
- Proposal Bond In the Amount of 5% of the Bid

Receipt is hereby acknowledged of addendum(s) No.(s) _____, _____ & _____

Signature of Authorized Official(s)

Firm Name _____

Address _____

State of Washington Contractor's License No. _____

Federal ID No. _____

Note:

- (1) This proposal form is not transferable and any alteration of the firm's name entered hereon without prior permission from the _____ will be cause for considering the proposal irregular and subsequent rejection of the bid.
- (2) Please refer to section 1-02.6 of the standard specifications, re: "Preparation of Proposal," or "Article 4" of the Instruction to Bidders for building construction jobs.

SR

DOT Form 272-036K
07/2011

Local Agency Proposal - Signature Page (DOT Form 272-036K)

Local Agency Name
Local Agency Address

Local Agency Subcontractor List

Prepared in compliance with RCW 39.30.060 as amended

To Be Submitted with the Bid Proposal

Project Name _____

Failure to list subcontractors with whom the bidder, if awarded the contract, will directly subcontract for performance of the work of heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW, and electrical, as described in Chapter 19.28 RCW or naming more than one subcontractor to perform the same work will result in your bid being non-responsive and therefore void.

Subcontractor(s) with whom the bidder will directly subcontract that are proposed to perform the work of heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW, and electrical as described in Chapter 19.28 RCW **must** be listed below. The work to be performed is to be listed below the subcontractor(s) name.

To the extent the Project includes one or more categories of work referenced in RCW 39.30.060, and no subcontractor is listed below to perform such work, the bidder certifies that the work will either (i) be performed by the bidder itself, or (ii) be performed by a lower tier subcontractor who will not contract directly with the bidder.

Subcontractor Name _____
 Work to be Performed _____

Subcontractor Name _____
 Work to be Performed _____

Subcontractor Name _____
 Work to be Performed _____

Subcontractor Name _____
 Work to be Performed _____

Subcontractor Name _____
 Work to be Performed _____

* Bidder's are notified that is the opinion of the enforcement agency that PVC or metal conduit, junction boxes, etc, are considered electrical equipment and therefore considered part of electrical work, even if the installation is for future use and no wiring or electrical current is connected during the project.

SR

DOT Form 271-015A
Revised 08/2012

Local Agency Subcontractors List (All Contracts Over \$1,000,000) (DOT Form 271-015A)

Local Agency Contract Bond - Highway Construction

KNOW ALL MEN BY THESE PRESENTS, That

of _____, as Principal, and
as Surety, are jointly and severally held and bound unto the _____, in the penal sum of

Dollars (\$ _____), the payment of which we jointly and severally bind ourselves,
our heirs, executors, administrators, and assigns, and successors and assigns, firmly by these presents.

The CONDITION of this bond is such that WHEREAS, on the
day of _____ A.D., _____, the said

Principal, herein, executed a certain contract with the _____, by the terms, conditions, and provisions of
which contract the said

Principal, herein, agree to furnish all material and do certain work, to wit: That

will undertake and complete the construction of _____,

according to the maps, plans and specifications made a part of said contract, which contract as so
executed, is hereunto attached, is now referred to and by reference is incorporated herein and made a
part hereof as fully for all purposes as if here set forth at length. This bond shall cover all approved
change orders as if they were in the original contract. Similarly, the bond shall cover payment of all
taxes incurred on said contract under title 50 and 51 Revised Code of Washington (RCW) and all taxes
imposed on the Principle under Title 82 RCW.

NOW, THEREFORE, if the Principal herein shall faithfully and truly observe and comply with the
terms, conditions, and provisions of said contract in all respects and shall well and truly and fully do and
perform all matters and things by them undertaken to be performed under said contract, upon the terms
proposed therein, and within the time prescribed therein, and until the same is accepted, and shall pay all
laborers, mechanics, subcontractors, and material men, and all persons who shall supply such contractor
or subcontractor with provisions and supplies for the carrying on of such work, and shall pay all taxes
pursuant to Title 50, and 51, and 82 RCW, and shall in all respects, faithfully perform said contract
according to law, then this obligation to be void, otherwise to remain in full force and effect.

SR

DOT Form 272-002A EF
07/2011

Local Agency Performance Bond (DOT Form 272-002A)

Local Agency Payment Bond

PUBLIC WORKS PAYMENT BOND

to [City of _____ or _____ County], WA

Bond No. _____

The [City of _____ or _____ County], Washington ([City or County]) has awarded to _____ (Principal), a contract for the construction of the project designated as _____, Project No. _____, in [location], Washington (Contract), and said Principal is required under the terms of that Contract to furnish a payment bond in accord with Title 39.08 Revised Code of Washington (RCW) and (where applicable) 60.28 RCW.

The Principal, and _____ (Surety), a corporation organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the [City or County], in the sum of _____ US Dollars (\$ _____) Total Contract Amount, subject to the provisions herein.

This statutory payment bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW 39.08, 39.12, and 60.28 including all workers, laborers, mechanics, subcontractors, and materialmen, and all person who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and all taxes incurred on said Contract under Titles 50 and 51 RCW and all taxes imposed on the Principal under Title 82 RCW; and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any changes, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the surety.

PRINCIPAL

SURETY

Principal Signature Date

Surety Signature Date

Printed Name Date

Printed Name Date

Title

Title

Name, address, and telephone of local office/agent of Surety Company is:

Approved as to form:

[City or County] Attorney, [City of _____ or _____ County] Date

DOT Form 272-003A
08/2012

Local Agency Payment Bond (DOT Form 272-003A)

Local Agency Contract

THIS AGREEMENT, made and entered into this _____ day of _____, _____, between the _____, and the _____ under and by virtue of Title 47 RCW, as amended and

hereinafter called the Contractor.

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this agreement, the parties hereto covenant and agree as follows:

I. The Contractor shall do all work and furnish all tools, materials, and equipment for:

_____ in accordance with and as described in the attached plans and specifications, and the standard specifications of the _____ which are by this reference incorporated herein and made part hereof and, shall perform any changes in the work in accord with the Contract Documents.

The Contractor shall provide and bear the expense of all equipment, work and labor, of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in these Contract Documents except those items mentioned therein to be furnished by _____.

II. _____ hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the above described work and to complete and finish the same in accord with the attached plans and specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices at the time and in the manner and upon the conditions provided for in this contract.

SR

DOT Form 272-006A
07/2011

Local Agency Contract - Highway Construction (DOT Form 272-006A)
(Page 1 of 2)

III. The Contractor for himself/herself, and for his/her heirs, executors, administrators, successors, and assigns, does hereby agree to full performance of all covenants required of the Contractor in the contract.

IV. It is further provided that no liability shall attach to the State by reason of entering into this contract, except as provided herein.

IN WITNESS WHEREOF, the Contractor has executed this instrument, on the day and year first below written and has caused this instrument to be executed by and in the name of the day and year first above written.

Executed by the Contractor _____, _____.

(Contractor)

Local Agency: _____

Title: _____

By: _____

Date: _____, _____

SR

DOT Form 272-006A
07/2011

Local Agency Contract - Highway Construction (DOT Form 272-006A)
(Page 2 of 2)

Local Agency Contract

THIS AGREEMENT, made and entered into this day of , ,
between the, and

under and by virtue of Title 39 RCW, as amended and

hereinafter called the Contractor.

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this agreement, the parties hereto covenant and agree as follows:

I. The Contractor shall do all work and furnish all tools, materials, and equipment for:

in accordance with and as described in the attached Contract Drawings and Project Manual, which are by this reference incorporated herein and made a part hereof, and as directed shall perform any changes in the work in accord with the Contract Documents.

The Contractor shall provide and bear the expense of all equipment, work and labor, of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in these Contract Documents except those items mentioned therein to be furnished by .

II. hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the above described work and to complete and finish the same in accord with the attached Contract Drawings and Project Manual and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached Schedule of Values and Contracts Sum at the time and in the manner and upon the conditions provided for in this contract.

SR

DOT Form 272-008A
07/2011

Local Agency Contract - Building Construction (DOT Form 272-008A)
(Page 1 of 2)

III. The Contractor for himself/herself, and for his/her heirs, executors, administrators, successors, and assigns, does hereby agree to full performance of all covenants required of the Contractor in the contract.

IV. It is further provided that no liability shall attach to by reason of entering into this contract, except as provided herein.

IN WITNESS WHEREOF, the Contractor has executed this instrument, on the day and year first below written and has caused this instrument to be executed by and in the name of _____
the day and year first above written.

Executed by the Contractor _____ , _____ .

(Contractor)

Local Agency: _____
Title: _____
By: _____
Date: _____ , _____

SR

DOT Form 272-008A
07/2011

Local Agency Contract - Building Construction (DOT Form 272-008A)
(Page 2 of 2)

**Local Agency Contractor Prequalification
Questionnaire and Affidavit for Region Ad
and Award Contracts (\$100,000 or Less)**

Date	Submitted By	Business License No.
Address ((Street))		Telephone No.
City	State	Zip
Prequalification Requested For (Identify project by advertised name)		
What is the Value of Your Firm's Assets (Net Worth)? \$		
List Two Similar Projects Your Firm Has Completed in the Last Year. Give Owner's Name and Telephone Number.		
1.		
Owner:		Telephone No.:
2.		
Owner:		Telephone No.:
Were the projects listed above completed on time?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Does your firm owe any monies on any projects which were completed within the last year? (If Yes, provide a separate statement.)		<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you or your firm been convicted of any criminal act involving a contractor or contracts? (If Yes, provide a separate statement.)		<input type="checkbox"/> Yes <input type="checkbox"/> No
Affidavit		
State of	County of	
The undersigned, being duly sworn, deposes and says that the foregoing is a true statement of facts concerning the firm (or individual herein named). As of the date indicated: that the answers to the foregoing interrogatories are true; that this statement is for the express purpose of inducing the to award the firm (or individual) a contract and that the depository, vendor, or other agency herein named is hereby authorized to supply or its agents with any information necessary to verify this statement.		
Name of Firm (Be Exact): _____		
_____ Authorized Signature		_____ Authorized Signature
_____ Authorized Signature		_____ Authorized Signature
Sworn to before me this _____ day of _____, 20 _____		
_____ (Notary Public)		Corporate Seal(s)
Notary Seal		
Approved By _____ Region Administrator		Date _____

SR

DOT Form 272-063A
07/2011

**Local Agency Contractor Prequalification Questionnaire and Affidavit for
Region Ad and Award Contracts (\$100,000 or Less) (DOT Form 272-063A)**

**City Letter of Financial Responsibility
Appendix 44.72 (for State Ad and Award Only) – Example**

Re:

(State Ad and Award)

Award of Project

Attn:

Assistant Secretary, Local Programs

Gentlemen:

The Mayor of the city of _____ gives permission to award the above noted project after advertisement and bid opening, where the bid to be awarded is not more than 10 percent above the current engineer's estimate.

Should the award bid exceed the current municipal agreement dated _____ the city agrees to assume the responsibility for arranging project financing in excess of the agreement after the contract is awarded.

Mayor

Date

Chapter 46 Local Advertising and Award Procedures

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

Before construction begins, the local agency must submit the following information to the Region Local Programs Engineer:

- 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).

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](#) Request for Concurrence to Award - 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

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	7-16	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

Abbreviations and Glossary

Abbreviations

AASHTO – American Association of State Highway and Transportation Officials

ACHP – Advisory Council on Historic Preservation

ACP – Asphalt Concrete Pavement

ADA – Americans with Disabilities Act

ADT – Average Daily Traffic

AG – Agricultural

AG – Attorney General

AGC – Associated General Contractors

AMRL – AASHTO Materials Reference Laboratory

ANSI – American National Standards Institute

APBP – Association of Pedestrian and Bicycle Professionals

APE – Area of Potential Effects

APWA – American Public Works Association

ATB – Asphalt Treated Base

BA – Biological Assessment

BE – Biological Evaluation

BIC – Bridge Inspection Committee

BFRC – Benton-Franklin Regional Council

BMP – Best Management Practices

BMS – Bridge Management System

BO – Biological Opinion

BRAC – Bridge Replacement Advisory Committee

BRR – Bridge Replacement and Rehabilitation, a federal aid funding program administered by FHWA and WSDOT

CA – Certification Acceptance

CAAA – Clean Air Act Amendments of 1990

CAO – Critical Area Ordinance

CAPP – County Arterial Preservation Program

CCIS – Construction Contracts Information System
CCRL – Cement and Concrete Reference Laboratory
CE – Construction Engineering
CE (NEPA) – Categorical Exclusions
CE (SEPA) – Categorical Exemptions
CEQ – Federal Council on Environmental Quality
CFDA – Catalog of Federal Domestic Assistance
CFR – Code of Federal Regulations
CM/AQ – Congestion Mitigation and Air Quality Program
CMS – Congestion Management System
COA – Condition of Award
COE – U.S. Army Corps of Engineers
COG – Council of Governments
CRAB – County Road Administration Board
CRS – Cultural Resource Survey
C3R – Close, Repair, Rehabilitate, or Replace
CTR – Commute Trip Reduction
CUF – Commercially Useful Function (DBE)
CZMP – Coastal Zone Management Program
CZMA – Coastal Zone Management Act

DAF – Damage Assessment Forms
DB – Disadvantaged Business
DBE – Disadvantaged Business Enterprise
DCE – Documented Categorical Exclusion
DCD/DEM – Department of Community Development/Division of Emergency Management
DEIS – Draft Environmental Impact Statement
DFO – Disaster Field Offices
DHV – Design Hourly Volume
DIR – Damage Inspection Report
DNR – Department of Natural Resources
DNS – Declaration of Nonsignificance (SEPA Document)
DOC – Federal Department of Commerce

DOE – Washington State Department of Ecology
DOI – Federal Department of the Interior
DOT – Federal Department of Transportation (same as USDOT)
DPS – Distinct Population Segment
DRM – Disaster Recovery Manager
DSR – Damage Survey Reports
DS&S – Decent, Safe, and Sanitary (housing)
DT – Diagnostic Team
DV – Determination of Value

EA – Environmental Assessment; Economic Area
ECR – External Civil Rights
ECS – Environmental Classification Summary
EEO – Equal Employment Opportunity
EFH – Essential Fish Habitat
EIS – Environmental Impact Statement
EMD – Emergency Management Division
EO – Executive Order
EPA – Federal Environmental Protection Agency
EPM – *Environmental Procedures Manual*
EQA – Environmental Quality Administrator
ER – Emergency Relief
ERFO – Emergency Relief for Federally-Owned Lands
ESA – Endangered Species Act
ESU – Evolutionarily Significant Unit

FA – Federal Aid
FAA – Federal Aviation Administration
FAPG – Federal Aid Policy Guide
FBD – Ferry Boat Discretionary
FCR – Final Cost Report
FEIS – Final Environmental Impact Statement
FEMA – Federal Emergency Management Agency
FERC – Federal Energy Regulatory Commission

FFRF – Federal Forest Reserve Fund
FHWA – Federal Highway Administration
FLH – Federal Lands Highway
FMIS – Federal Management Information System
FMSIB – Freight Mobility Strategic Investment Board
FMV – Fair Market Value
FONSI – Finding of No Significant Impact
FTA – Federal Transit Administration
FWCA – Fish and Wildlife Coordination Act
FWPCA – Federal Water Pollution Control Act
F&WS – Federal Fish and Wildlife Service (also USFWS)

GAR – Governor’s Authorized Representative
GMA – Growth Management Act
GSP – General Special Provisions

HBRRP – Highway Bridge Replacement and Rehabilitation Program
HHS, HES – High Hazard Safety and Hazard Elimination & Safety Programs
HOV – High-occupancy Vehicle
HPA – Hydraulic Project Approval
HPR – Highway Planning and Research Projects
HQ – Headquarters
HRM – *Highway Runoff Manual*
HUD – Federal Department of Housing and Urban Development
H&LP – Highways and Local Programs

IC – Interstate Completion
IDT – Interdisciplinary Team
IM – Instructional Memorandum (FHWA document)
IM – Interstate Maintenance
IMS – Intermodal Management System
ISTEA – Intermodal Surface Transportation Efficiency Act of 1991
ITE – Institute of Transportation Engineers
KP – Kilometer Post

LA – Local Agency

LAG – *Local Agency Guidelines*

LF – Load Factor

LPA – Local Public Agency

LPE – Local Programs Engineer

LRFD – Load and Resistance Factor Design

LRP – Long-Range Plan

LTAA – Likely To Adversely Affect

LTAP – Local Technical Assistance Program

L&I – Washington State Department of Labor and Industries

MOA – Memorandum of Agreement

MP – Milepost

MPO – Metropolitan Planning Organization

MSA – Metropolitan Statistical Area

MSD – Material Sources Data

MUTCD – *Manual on Uniform Traffic Control Devices*

NAAQS – National Ambient Air Quality Standards

NACHP – National Advisory Council for Historic Preservation

NBI – National Bridge Inventory

NBIS – National Bridge Inspection Standards

NCHRP – National Cooperative Highway Research Program

NEPA – National Environmental Policy Act; see also SEPA

NHPA – National Historic Preservation Act

NHS – National Highway System

NICET – National Certification in Engineering Technologies

NLTA – Not Likely To Adversely Affect

NMFS – National Marine Fisheries Service

NOAA – National Oceanic & Atmospheric Administration

NPDES – National Pollutant Discharge Elimination System

NPS – National Park Service of the Federal Department of the Interior

NR – New/reconstruction

NWPMA – Northwest Pavement Management Association

NWP – Nationwide Permit (U.S. Army Corps of Engineers)

OA – Obligation Authority

OAHP – Office of Archaeological and Historic Preservation

OEO – WSDOT’s Office of Equal Opportunity

OFCCP – Office of Federal Contract Compliance Programs
(U.S. Department of Labor)

OFM – Washington State Office of Fiscal Management

OJT – On-the-Job Training

OMB – Federal Office of Management and Budget

OMWBE – Washington State Office of Minority and Women’s Business Enterprise

OST – Office of the Secretary of Transportation

PCAA – Washington State Planning and Community Affairs Agency

PCC – Portland Cement Concrete

PDA – Preliminary Damage Assessment

PDEIS – Preliminary Draft Environmental Impact Statement

PE – Preliminary Engineering; also Professional Engineer

PFE – Project Funding Estimate

PL – Public Law

PM – Project Manage

PM-10 – Particulate Matter - 10 Microes

PMR – Project Management Review

PMS – Pavement Management System

P&PSC – Planning and Programming

PPM – Policy and Procedure Memorandum

PR – Preliminary Report

PSRC – Puget Sound Regional Council

PS&E – Plans, Specifications, and Estimate

PTMS – Public Transportation Management System

RCW – Revised Code of Washington
RFP – Request for Proposal
RFQQ – Request for Quotation and Qualification
RLPE – Region Local Programs Engineer
ROD – Record of Decision
RRP, RRS – Railway-Highway Grade Crossing
RTPO – Regional Transportation Planning Organization
R&D – Research and Development
R/R – Railroad, Railway
R/W – Right of Way

SCS – Soil Conservation Service (U.S. Department of Agriculture)
SDWA – Safe Drinking Water Act
SEIS – Supplemental Environmental Impact Statement
SEPA – State of Washington Environmental Policy Act
SHPO – (Washington) State Historical Preservation Officer
SIP – State Implementation Plan
SMS – Safety Management System
SMSA – Standard Metropolitan Statistical Area
SOV – Single Occupancy Vehicle
SRTC – Spokane Regional Transportation Council
SSP – Stormwater Site Plan
STIP – Statewide Transportation Improvement Program
STP – Surface Transportation Program
STRAHNET – Strategic Highway Network
SWIBS – State of Washington Inventory of Bridges and Structures
SWRTC – Southwest Washington Regional Transportation Council
SWW – Southwest Washington

TCP – Traffic Control Plan
TCM – Transportation Control Measures
TCP – Traditional Tribal Property
TDM – Transportation Demand Management
TEA-21 – Transportation Equity Act for the 21st Century

TESC – Temporary Erosion and Sedimentation Control

TESC – The Evergreen State College

THPO – Tribal Historic Preservation Officer

TIB – Transportation Improvement Board

TIP – Transportation Improvement Program

TMA – Transportation Management Areas

TMS – Traffic Monitoring System

TRB – Transportation Research Board

TRICO – Tricounty

TRPC – Thurston Regional Planning Council

TSM – Transportation System Management

TSME – Transportation Systems Management Element

TS&L – Type, Size, and Location Stage of Design

TTP – Traditional Tribal Property

T2 – Technology Transfer

UBIT – Under Bridge Inspection Truck

USC – United States Code

USDA/USDOA – United States Department of Agriculture

USDOL – United States Department of Labor

USDOT – United States Department of Transportation (same as DOT)

USFS – United States Forest Service

USFWS – United States Fish and Wildlife Service (also F&WS)

UZA – Urbanized Area

VE – Value Engineering

WAC – Washington Administrative Code

WBE – Women’s Business Enterprise

WCOG – Whatcom Council of Governments

WDFW – Washington State Department of Fish and Wildlife

WOAP – Work Order Accounting Plan

WRIA – Water Resource Inventory Area

WS – Working Stress

WSBIS – Washington State Bridge Inspection System
WSEDES – Washington State Department of Emergency Services
WSDOT – Washington State Department of Transportation
WSEO – State of Washington Energy Office
WST2 – Washington State Technology Transfer
WUTC – Washington Utilities and Transportation Commission
YVCOG – Yakima Valley Council of Governments
2-R – Resurfacing and Restoration
3-R – Resurfacing, Restoration, and Rehabilitation

Glossary of Terms

ADA – The Americans with Disabilities Act of 1990 which mandates sweeping changes in building codes, transportation, and hiring practices to prevent discrimination against persons with disabilities, not just in projects involving federal dollars, but all new public places, conveyances, and employers.

Ad and Award – Advertising and award of a construction contract. Includes all aspects of contract administration.

Administrative Settlement – A negotiated settlement of a right of way acquisition case in which the acquiring agency has administratively approved payment in excess of fair market value as shown on the agency’s approved determination of value (DV).

Agency Administrator – A local agency official empowered by position or delegated the authority to administer transportation projects.

Agency-Force Work – Construction work done by an agency’s employees, or by one public agency for another.

Annual Average Daily Traffic (AADT) – The estimate of typical daily traffic on a road segment for all days of the week, Sunday through Saturday, over the period of one year.

Annual Element – The first year of a local agency’s six-year Street or Road Program which is reviewed each year by the Areawide Clearinghouse to ensure intergovernmental coordination of transportation programs.

Annual Seasonal Factors – The set of 12 factors, one for each month of the year, that is used to adjust coverage counts to estimates of AADT. Annual seasonal factors make use of the full year’s data collected by continuous counters.

Approval Authority – The position title designated in the Certification Acceptance Qualification Agreement as responsible for approving a document or stage of a federal aid transportation project.

APWA Amendments – A supplement to the WSDOT/APWA Standard Specifications.

Areawide Clearinghouse – A regional planning agency that reviews the transportation programs of constituent agencies to ensure areawide coordination.

Automatic Traffic Recorder – A device that records the continuous passage of vehicles across all lanes of a given section of roadway by hours of the day, days of the week, or months of the year.

CA – Certification Acceptance, the process of approving local agencies to administer their federal aid transportation projects.

CAAA – The Clean Air Act Amendments of 1990 identify “mobile sources” (vehicles) as primary sources of pollution and call for stringent new requirements in metropolitan areas and states where attainment of National Ambient Air Quality Standards (NAAQS) is or could be a problem.

CE (NEPA) – Categorical exclusions, actions that do not individually or cumulatively have a significant effect on the environment.

CE (SEPA) – Categorical exemptions, actions that do not individually or cumulatively have a significant effect on the environment. **CEQ** – Federal Council on Environmental Quality.

CFR – The codified administrative regulations of the federal government.

CM/AQ – The Congestion Mitigation and Air Quality Program is a \$6 billion funding program contained in Title I of ISTEA. Funds are provided for projects and activities which reduce congestion and improve air quality.

CMS – Congestion Management Systems require large metropolitan areas (200,000 population or more) and states to develop management plans which make new and existing transportation facilities more effective through the use of travel demand management and operational management strategies.

COG – Council of Governments is a voluntary consortium of local government representatives, from contiguous communities, meeting on a regular basis and formed to cooperate on common planning and to solve common development problems of their area.

C3R – Close, repair, rehabilitate, or replace options to improving existing public bridges.

CTR – The Commute Trip Reduction which requires major employers in the eight most populated counties in the state to take measures to reduce the number of single occupant vehicle (SOV) trips and the number of vehicle miles traveled (VMT) by their employees.

City/County, Local Agency, or Agency – Any municipal corporation within the state of Washington.

Class I Projects – Those projects likely to have a significant impact and requiring an EIS.

Class II Projects – Those projects with no significant impact and excluded from environmental documentation requirements.

Class III Projects – Those projects in which the significance of impacts is not established. Such projects require an EA to evaluate the extent of the project impacts.

Coastal Zone Management – Applicants for federal permits or licenses must certify that their project will comply with the State Coastal Zone Management Program (Shoreline Management Act–[RCW 90.58](#)–applies to projects within 61 m (200 feet) of a shoreline).

Coast Guard Permit – A permit issued by the Coast Guard for all structures in navigable waterways (Rivers and Harbors Act (33 USC9)).

Commitment File – A file containing a summary of local agency commitments made to other agencies or groups during project development which will be incorporated into the design and construction of a project.

Community – A major subdivision of a municipality, composed of neighborhoods, considered as a unit for planning purposes.

Completion Letter – A letter from the local agency Engineer notifying the construction contractor that a project is complete. A letter from the local agency notifying the Region Local Programs Engineer that the project is complete subject to inspection, audit, and acceptance by the state. The letter is required on competitive bid contracts and local agency force projects.

Construction – Those activities that are involved in the building of a new road facility or improvement of an existing facility to a higher geometric or structural standard or serve to increase the capacity or efficiency of an existing facility.

Consultant – An individual, public or private organization or institution of higher learning having expertise in professional disciplines applicable to transportation programs.

Consultant Service – Utilization of professional expertise external to an agency, on a contract basis, to perform a specific study, project, or task. Does not include personal-service contracts for routine, continuing, and necessary tasks.

Continuous Counter – An automatic traffic recorder that operates continuously for all hours of a year.

Corridor Hearing – See location hearing.

Coverage Count – A traffic count taken as part of the requirement for system-level estimates of traffic. The count is typically short-term, and may be volume, classification, or weigh-in-motion.

DBE – Disadvantaged business enterprise, a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Declaration of Nonsignificance (SEPA Document) – The written decision by the agency administrator that a proposal will not have a significant environmental impact and no EIS is required ([WAC 197-11-340](#)).

Declaration of Significance (SEPA Document) – The written decision by the agency administrator that a proposal could have significant adverse impact and, therefore, requires an EIS ([WAC 197-11-340](#)).

DEIS – Draft Environmental Impact Statement, a document identifying a course of action, alternative actions, analysis of the environmental impacts of alternates considered, and proposed mitigation of impacts. The DEIS is circulated to other agencies and the public for review and comment.

Design Hearing – A public hearing to examine the design features of a proposed transportation facility.

Design Report – A formal documentation of design considerations and conclusions reached in the development of a project. The design report is prepared to record the evaluations of the various disciplines which result in design recommendations. This report is then reviewed and, upon concurrence, results in approval of the design. For most projects, the Project Prospectus serves as the design report.

Determination of Value – The agency’s approved fair market value of a right of way acquisition.

Deviation or Design Deviation – Departure from applicable design standards.

Discipline Report – A report documenting findings concerning impacts of a project relative to an individual area of expertise (e.g., botany, acoustics, sociology). The report evaluates the impacts of the proposal and, where appropriate, includes recommendations concerning the course of action considered most desirable to fulfill the requirements of environmental laws and regulations addressed by the discipline.

DNS – Declaration of Nonsignificance (SEPA Document), the written decision by the agency administrator that a proposal will not have a significant environmental impact and no EIS is required ([WAC 197-11-340](#)).

Draft Environmental Impact Statement (DEIS) – A document identifying a course of action, alternative actions, analysis of the environmental impacts of alternates considered, and proposed mitigation of impacts. The DEIS is circulated to other agencies and the public for review and comment.

EA – Environmental Assessment, a document prepared for federally funded, permitted, or licensed projects, that are not categorical exclusions (CE) but do not appear to be of sufficient magnitude to require an EIS. The EA provides sufficient analysis and documentation to determine if a Finding of No Significant Impact (FONSI) can be adopted or if an EIS must be prepared.

EEO – Equal Employment Opportunity. A general term referring to all contract provisions relative to EEO.

EIS – Environmental Impact Statement, a detailed written statement of project environmental effects required by state and/or federal law. This term refers to either a Draft or Final Environmental Impact Statement, or both, depending on context.

Environmental Checklist (SEPA Document) – A local agency document used to determine whether an action will significantly impact the environment. The checklist form contained in [WAC 197-11-960](#) is used for all actions not categorically exempt or not clearly requiring an EIS.

Environmental Document – A term used for any document that identifies the social, economic, and environmental effects of a proposed action.

ER – Emergency Relief, a federal aid funding program administered by FHWA and WSDOT.

ESU – Evolutionarily Significant Unit. A designation the National Marine Fisheries (NMFS) uses for certain, genetically unique, local salmonid populations or “runs.” These designations are treated as individual species under the act.

Fair Offer – An offer to acquire real property for just compensation, which is the approved appraisal of the property’s fair market value.

Federal Aid Requirement Checklist – A list of requirements for acquiring right of way on federal aid projects.

Federal Aid Project Prospectus – Page 1 is used for the FHWA federal aid programing purposes. Pages 2 and 3 give the state and FHWA additional information about the proposed project.

FEIS – Final Environmental Impact Statement, a document containing an evaluation of the course of action that an agency intends to follow. It contains the same information required for the DEIS, with appropriate revisions reflecting comments received from circulation of the DEIS and from public meetings.

Final Estimate – An estimate of the total cost of a project prepared after completion of the construction contract and used as the basis for final payment to the contractor.

Financial Responsibility Letter – A letter from the local agency approving authority advising the Local Programs Engineer that a construction contract may be awarded and that the agency will arrange for project funding above the amount in the current Local Agency Agreement.

Flood Hazard – Construction affecting a flood-control zone, through flooding, erosion, or deposition of materials.

Flood Control Zone – A zone subject to flooding, as defined on maps available from the Region Local Programs Engineer. **FONSI** – Finding of No Significant Impact, a federal lead-agency document presenting the reasons why a proposal will not significantly affect the environment and an EIS will not be prepared. The FONSI includes the EA and references any other related environmental documents.

Force-Account Work – Construction work not covered in the contract documents and of a type not amenable to definition by a change order. Force-account reimbursement is used when it is difficult to provide adequate measurement or to estimate the cost of certain items of work. The contractor is reimbursed for the cost of the work plus profit using established weighted wage rates, equipment-rental rates, and the invoice cost of materials.

Foreslopes – The roadway fill slope or ditch in slope.

Functional Classification – The roadway classifications referred to in this manual are the federal functional classifications shown on the official functional class maps prepared by WSDOT Planning and Programming. Examples: principal arterial, minor arterial, collector arterial.

Functional Classification – The grouping of streets and highways into classes, or systems, according to the character of service they are intended to provide. The recognition that individual roads do not serve travel independently and most travel involves movement through a network of roads is basic to functional classification.

Functional System – Highways of a similar type as determined by functional classification.

FTA – Federal Transit Administration (formerly the Urban Mass Transit Administration, UMTA).

FWS – Is an abbreviated acronym for USFWS (the United States Fish and Wildlife Service).

GSP – General Special Provisions, construction contract specifications supplementing the Standard Specifications.

Hearing Summary – Summary of comments received from the hearings and those received from the evaluation of the DEIS.

Highway Traffic Data – Estimates of the amounts of person or vehicular travel, vehicle usage, or vehicle characteristics associated with a system of highways or with a particular location on a highway. These types of data include estimates of the number of vehicles traversing a section of highway or system of highways during a prescribed time period (traffic volume), the portion of such vehicles that may be of a particular type (vehicle classification), the weights of such vehicles including weight of each axle and associated distances between axles on a vehicle (vehicle weight), or the average number of persons being transported in a vehicle (vehicle occupancy).

HHS, HES – Hazard Elimination, a federal aid funding program administered by FHWA and WSDOT.

HOV – High-occupancy vehicle, e.g. bus, van, carpool.

HPA – Hydraulic Power Approval permit is issued by the Washington Department of Fish and Wildlife. The Hydraulic Code ([RCW 75.20.100-160](#)) requires that any person, organization, or government agency wishing to conduct any construction activity in or near state waters must do so under the terms of a permit (the Hydraulic Project Approval – HPA, to be exact) issued by the Washington State Department of Fish and Wildlife. State waters include all marine waters and fresh waters of the state.

IDT – Interdisciplinary Team, a team composed of appropriate disciplines that identifies and evaluates social, economic, and environmental impacts of proposed projects.

Improvement – Betterment in traffic service without major changes in the existing facility. This includes widening, signals, illumination, curbs, gutters, drainage, sidewalks, and other items which add value to the existing facility.

ISTEA – Intermodal Surface Transportation Efficiency Act of 1991.

Lead Agency – A federal, state, or local agency taking primary responsibility for preparing an environmental document.

Liquidated Damages – Amounts of money to be assessed against a contractor for late completion. These amounts must be related to the actual damages suffered by the owner because of the late completion.

Local Agency Agreement – An agreement to allocate federal funds to a transportation project. Negotiated between a local agency and WSDOT.

Local Agency, City/County, or Agency – Any municipal corporation within the state of Washington.

Local Match – That portion of a project's cost paid for with local agency funds.

Location Hearing – A public hearing to examine the location of a proposed transportation facility, also called corridor or route hearing.

LRP – Long-Range Plan is a 20-year forecast plan, now required at both the metropolitan and state levels, which must consider a wide range of social, environmental, energy, and economic factors in determining overall regional goals and how transportation can best meet these goals.

Maintenance – Those activities that ensure that the right of way and each type of roadway, roadway structure and facility remain, as nearly as practical in its original, as constructed condition or its subsequently improved condition, and the operation of roadway facilities and services to provide satisfactory and safe motor vehicle transportation.

Matching Funds – See local match.

MPO – Metropolitan Planning Organization is the agency designated by the Governor (or governors in multistate areas) to administer the federally required transportation planning in a metropolitan area. An MPO must be in place in every urbanized area over 50,000 population. The MPO is responsible for the long-range plans and the transportation improvement program. The official name for an MPO may also be Council of Governments, Planning Association, Planning Authority, Regional or Area Planning Council, Regional or Area Planning Commission.

MUTCD – *Manual on Uniform Traffic Control Devices for Streets and Highways*, USDOT and FHWA.

MSA and CMSA – Metropolitan Statistical Area is the census classifications for areas having a population over 50,000. The MSA may contain several urbanized areas, but contains one or more central city or cities. When the commuting patterns of two MSAs have caused them to merge, the result is a Consolidated Metropolitan Statistical Area (CMSA).

NAAQS – National Ambient Air Quality Standards were set by the Environmental Protection Agency to define air pollution. EPA established NAAQS measures for six pollutants: carbon monoxide, ozone, particulate matter, lead, sulfur dioxide, and nitrous oxide.

Neighborhood – A secondary subdivision of a municipality, a portion of a community, considered as a unit for planning purposes.

New Construction – The building of a new roadway or structure on substantially new alignment, or the upgrading of an existing roadway or structure by the addition of one or more lanes. If 50 percent or more of the project length involves vertical or horizontal alignment changes, the project is new construction. The following types of projects are not classed as new construction, and the 3-R standards apply:

- Modernization of an existing street or road by resurfacing, widening lanes, adding shoulders, or adding turn lanes at intersections.
- Temporary replacement of a street or roadway, immediately after the occurrence of a natural disaster or catastrophic failure, to restore the facility for the health, welfare, and safety of the public.

Nonparticipating Items – Items of project work that are not a part of the federal aid funding.

Notice of Intent – A federal notice, printed in the Federal Register, advising that an EIS will be prepared and considered for a proposal.

Obligation Authority – Under ISTEA, it is vested with WSDOT except for STP funded projects within TMA boundaries.

Opportunity for Hearing – Soliciting public interest in holding a hearing by publishing notice.

PL – Public law, the designation for a law passed by the U.S. Congress before codification into the USC.

P&PSC – Planning and Programming. WSDOT’s branch responsible for coordinating with local agencies on planning issues.

PONTIS – A bridge management system created cooperatively by FHWA, the state of California, and six “technical advisory” states. Meets ISTEA requirements.

Prequalifying Prospective Bidders – A process by which a contracting agency in advance of considering, opening, or accepting bids, or in advance of issuing bid proposals, establishes limitations on amounts and types of work contractors are permitted to bid on and to have underway at one time.

Preservation – Those specialized maintenance activities that serve to extend the originally estimated useful life of each type of roadway, roadway structure and facility but do not increase its capacity or efficiency.

Progress Billing – A request from a local agency or contractor to WSDOT for state/federal reimbursement for work completed on a federal aid transportation project during a defined time period.

Progress Estimate – An estimate of the total amount of work completed by a contractor as of the estimate date listed by work item.

Progress Payment – A payment by a public agency to a consultant or construction contractor for work completed on a federal aid transportation project during a defined time period.

Project – An undertaking to construct.

Project Application Checklist

Project Engineer – The person designated by a local agency to oversee development of a project.

Project Management Review (PMR) – A review of an agency’s project administration conducted by the WSDOT Local Programs Operations personnel.

Project Prospectus – A document prepared by a local agency and submitted to WSDOT describing a proposed transportation project. Used to support authorization of federal funds.

Proprietary Specifications – Those referring to specific products by trade name and model.

Prospectus Submittal Checklist – A checklist to help agencies assemble a complete Project Prospectus Package to submit for funding authorization.

Proximity Damages – An element of severance damages caused by the proximity of the remainder of a land parcel to the improvement being constructed, such as a highway. It may also arise from proximity to an objectionable site or improvement, or from all causes such as dirt, noise, or vibration.

Public Involvement Plan – A required, integral part of an environmental study plan which outlines procedures for presenting information to the public, obtaining public comment, and considering public opinion.

Quad County (Quad-Co) – A Regional Transportation Planning Organization that includes Adams, Grant, Kittitas, and Lincoln Counties.

Qualifying Low Bidders – A process by which a contracting agency proceeds, after bid opening, to consider the qualifications of the apparent low bidder to perform the work.

Record of Decision – A document prepared by the federal lead agency, after an EIS has been completed, outlining the final decision on a proposal. It identifies the decision, alternatives considered, and measures to minimize harm; and it outlines a monitoring or enforcement program.

Regional Administrator – The Engineer in charge of each of the six transportation regions in the state.

Regional Representative – A designee of the Regional Administrator responsible for WSDOT monitoring of a federally-assisted local agency project.

Region Local Programs Engineer – The region’s designated representative for local agency and WSDOT liaison.

Rehabilitation – Similar to “Restoration” except the work may include reworking or strengthening the base or subbase, recycling or reworking existing materials to improve their structural integrity, adding underdrains, improving or widening shoulders. Rehabilitation may include acquisition of additional right of way.

Relocation Plan – A plan for relocating persons and personal property displaced by public projects.

Remainder – The portion of a land parcel not acquired for public right of way.

Repair – Replacement or rebuilding of a facility which is worn out, destroyed, or damaged. Repair includes overlays 18-mm (0.75-inch) thick or thicker. Crushed surfacing placed to 18-mm (0.75-inch) thick or thicker and covering more than 10 percent of the original surface area may be considered repair.

Restoration – Work performed on pavement or bridge decks to render them suitable for resurfacing. This may include supplementing the existing roadway by increasing surfacing and paving courses to provide structural capability, and widening up to a total of 3 meters (10 feet). Restoration will generally be performed within the existing right of way.

Resurfacing – The addition of a layer or layers of paving material to provide additional structural integrity, improved serviceability, and rideability.

Right of Way Certification – A letter from a local agency to the Local Programs Engineer certifying that right of way has been acquired in accordance with federal regulations.

Right of Way Project Analysis – Required on all federal aid projects as part of the R/W Certification.

Roadway Width – The portion of a street or road, between curbs or including shoulders, intended for vehicular use. This definition is for use in Design Standards only.

ROD – Record of Decision, a document prepared by the federal lead agency, after an EIS has been completed, outlining the final decision on a proposal. It identifies the decision, alternatives considered, and measures to minimize harm; and it outlines a monitoring or enforcement program.

Route Hearing – See location hearing.

RRP, RRS – Railway-Highway Grade Crossing, a federal aid funding program administered by FHWA and WSDOT.

Rural Area – Any land area outside the boundaries of the federally-designated urban areas as shown on the official urban area maps on file at WSDOT.

Scoping – A process for identifying issues and alternatives for an EIS.

Section 4(F) Evaluation – A document presenting the consideration, consultations, mitigative measures, and alternatives studied for the use of properties identified in Section 4(F) of the U.S. Department of Transportation Act as amended (49 USC 1653H).

Section 4(F) Lands – Generally, public parks, recreation areas, wildlife refuges, and historic sites.

See Effects – Social, economic, and environmental effects.

SEPA Checklist – See “environmental checklist.”

Severance Damages – The reduction of the market value of a remaining area because of a partial acquisition of property or property rights (damage to the remainder). See also proximity damages.

Shoreline Management – See Coastal Zone Management.

Six-Year Road or Street Program – See TIP.

Small Business Concern – A small business as defined according to Section 3 of the Small Business Act and other relevant regulations.

Small Purchase Procedures – Procedures to utilize external personal service or equipment rental for routine, continuing, and necessary tasks.

Socially and Economically Disadvantaged Individuals – Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. These individuals must be U.S. citizens or lawfully admitted permanent residents.

Special Provisions – A portion of the construction contract specifications separate from the General Provisions and covering conditions unique to a specific project.

Standard Specifications – Sets of typical construction contract specifications.

Stipulated Settlement – Final settlement of a right of way acquisition case through the acquiring agency's attorney that is stipulated (agreed to) by the property owner and any other interested parties prior to trial, and evidenced by a stipulated Judgment and Decree of Appropriation being filed in the superior court having jurisdiction.

Study Plan – An outline of the study process for the development of a project requiring an environmental impact statement.

Surety – A bonding company, for example.

Surfaced Width – The portion of a street or road for use by moving vehicles, between curbs or shoulders, including turning lanes where such lanes are appropriate, but excluding parking lanes and/or shoulders.

TCM – Transportation Control Measures are implemented to enable nonattainment areas meet their emissions goals. They can include Transportation Demand Management measures, parking policies and pricing, or other system improvements which reduce congestion.

TDM – Transportation Demand Management measures try to reduce the proportion of SOV commuters. TDM measures can include portion of non-SOV modes of transportation, car and vanpool formation assistance, transit subsidies, and a variety of other measures.

TEA-21 – Transportation Equity Act for the 21st Century.

Tied Bids – The practice of letting a single construction contract for two or more projects. Usually done to take advantage of economies of scale, such as more favorable unit prices for larger quantities of material. Requires Local Programs approval prior to advertising.

TIP – Transportation Improvement Program is a three-year transportation investment strategy, required at the metropolitan level, and a two-year program at the state level, which addresses the goals of the long-range plans and lists priority projects and activities for the region. (At the state level, the TIP is also known as a STIP, not to be confused with a SIP.)

TMA – Transportation Management Areas. Any area over 200,000 population is automatically a Transportation Management Area, which subjects it to additional planning requirements but also entitles it to earmarked funds for large, urbanized areas under the Surface Transportation Program. There are three TMAs: PSRC, SWRTC, and SRTC.

Traffic Data Collection Session – The collection of highway traffic data for a defined period of time at a specific highway location.

Traffic Monitoring Guide (TMG) – The FHWA’s statement of good traffic monitoring practices. The TMG describes the number and duration of traffic data collection sessions and the adjustments that need to be made to the collected data in order to develop location or system level estimates of the average traffic volume. The TMG also describes vehicle classification and truck weight data collection programs.

Tri-County (Tri-Co) – A Regional Transportation Planning Organization that includes Ferry, Stevens, and Pend Orielle Counties.

True Cost Estimate – The most refined estimate of all acquisition costs of all parcels within a project.

TRS – Is a designation meaning Township, Range, and Section.

TS&L – The type, size, and location stage of design development of bridges. A specific report (TS&L Report) which must be prepared on major or unusual bridges.

Urbanized Area – An area with a population over 50,000 within boundaries established by the U.S. Census Bureau or by responsible state and local officials in cooperation with each other. There are nine in Washington: Seattle-Everett, Tacoma, Yakima, Spokane, Vancouver, Tri-Cities, Bellingham, Olympia-Lacey-Tumwater, and Kelso-Longview.

Urban Area – Any land area within the boundaries of the federally-designated urban areas (population over 5,000) as shown on the official urban-area maps on file at WSDOT.

UZA – Urbanized Area is a census classification for areas having a population of 5,000 or more which meet certain population density requirements.

Walkway – A continuous way designated for pedestrians and separated from through lanes for motor vehicles by a curb, space, pavement marking, or other barrier.

Wetlands – Lands covered by shallow water or lands where the water table is at or near the surface; includes marshes, swamps, bogs, natural ponds, wet meadows and river overflow.

Withholding Resolution – A resolution passed by the local agency legislative body authorizing WSDOT to withhold a portion of the agency’s fuel-tax allotment to pay for a transportation project being administered by the state.

WOAP – Work Order Accounting Plan.

4.61 Percent Program – “1/2¢ Gas Tax,” “Arterial Fund.”

6.92 Percent Program – “Gas Tax,” “Road” or “Street Fund” (formerly 6-7/8¢ Program).