



U.S. Department of Transportation
Federal Highway Administration



Adapted From:
**FHWA Contract
Administration
Core Curriculum**



Disclaimer

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Federal-aid Highway Program (FAHP) Basics Review



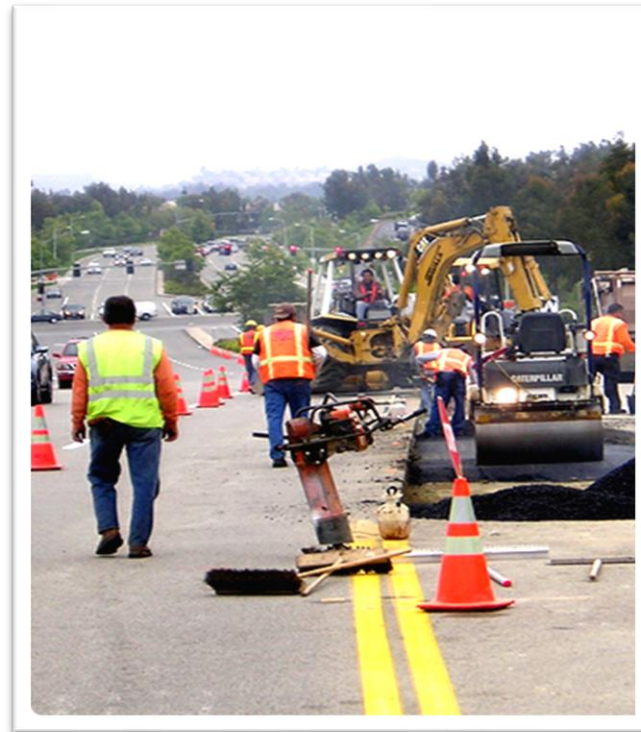


Purpose of the FAHP

Support Federal-aid system by providing financial assistance for:



Planning and Design



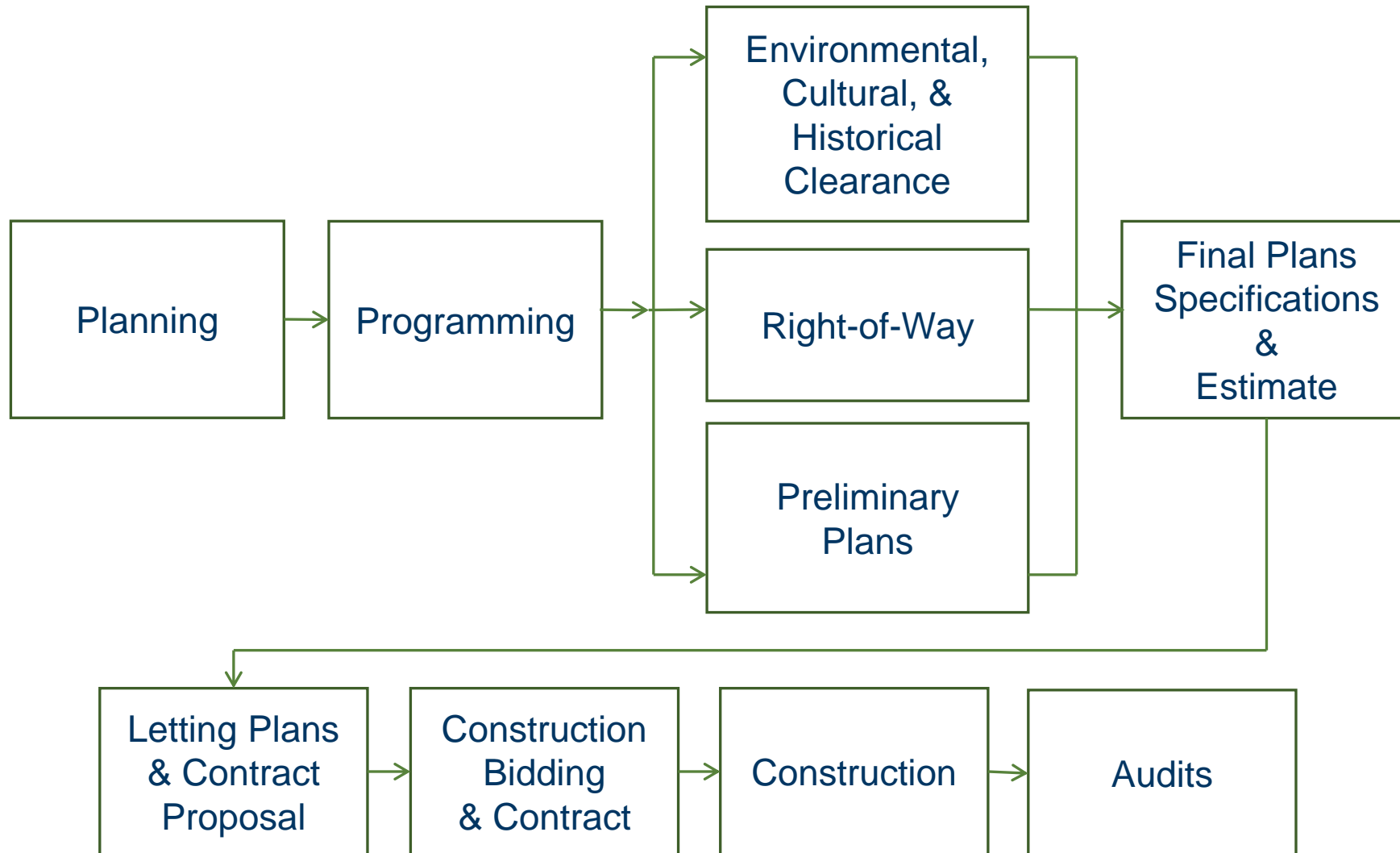
Construction



Asset Management



Federal-aid Project Flowchart

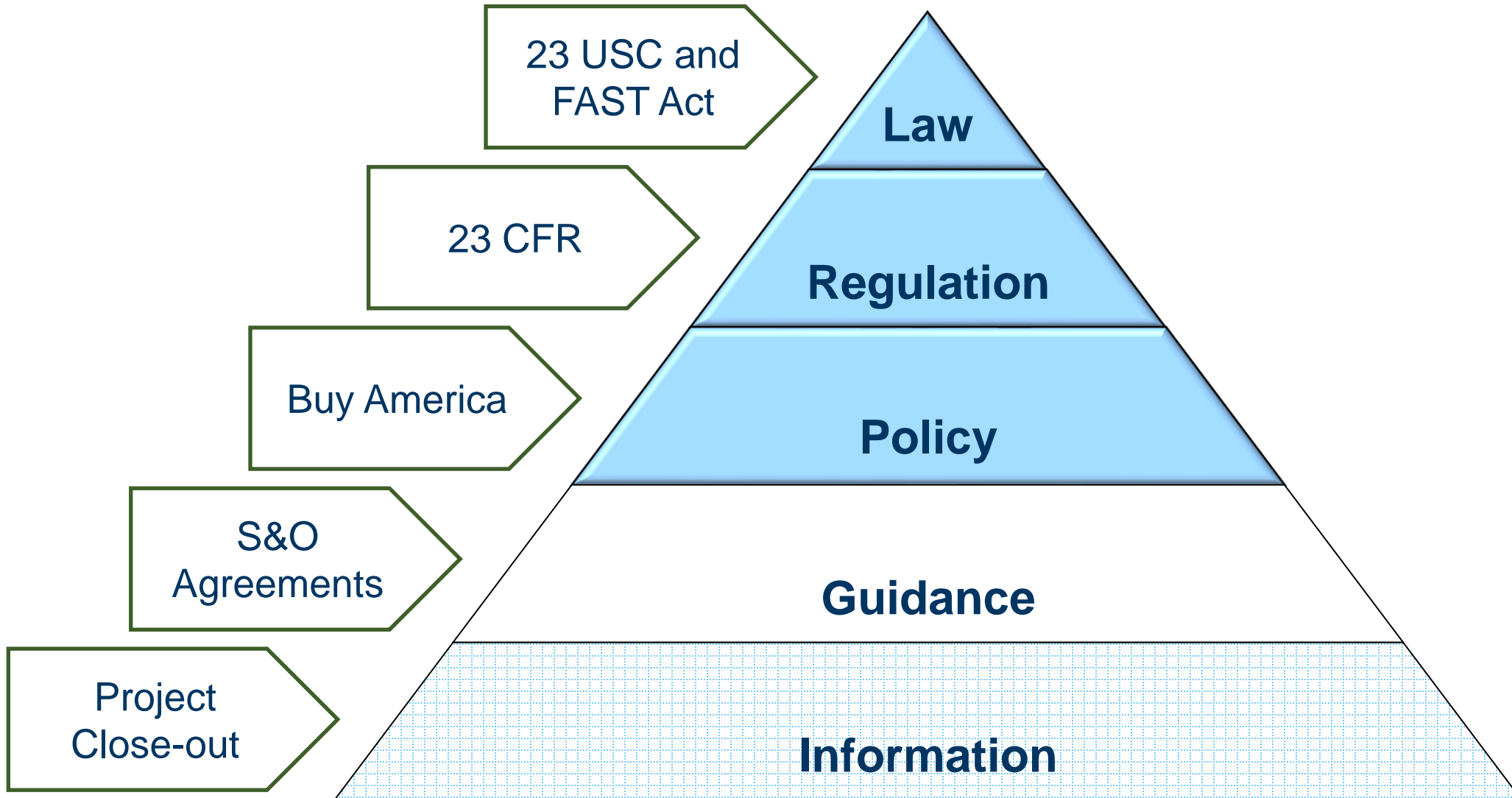




Administering the FAHP

- FHWA is charged with
 - Implementing the FAHP in cooperation with the State and local agencies
- States and local agencies must meet general FAHP requirements and those outlined in the S&O Agreement

Hierarchy of FAHP Requirements



Contract Administration: Pre-award Phase





Plans, Specifications, Estimates

What does the regulation require?

Plans and Specifications
Location
Design features
Construction requirements
With sufficient detail to: <ul style="list-style-type: none">• Facilitate the construction, the contract control and the estimation of construction costs of the project

Estimate
Anticipated cost of the project
With sufficient detail to: <ul style="list-style-type: none">• Provide an initial prediction of the financial obligations to be incurred by the State and FHWA• Permit an effective review and comparison of the bids received.



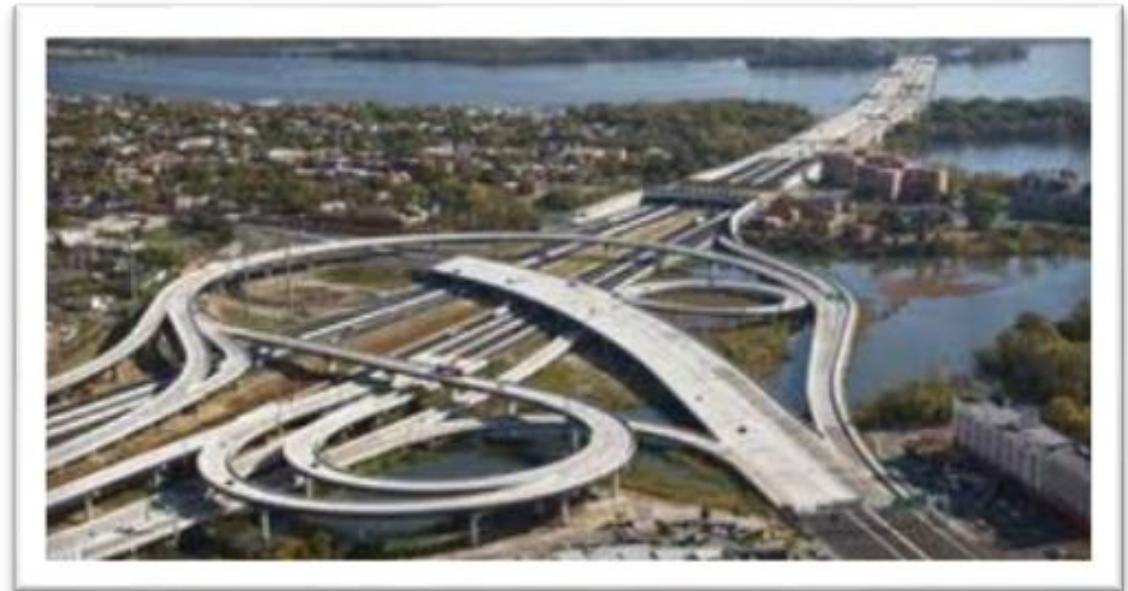
A Few Bid Package Requirements

- Disadvantaged Business Enterprise (DBE)
- Right-of-way (ROW) clearances, including Utility and Railroad coordination
- Form FHWA-1273
- On-the-job training (OJT)
- Non-collusion statements



Time-related Incentive/Disincentive Clauses

- Intended for projects with high traffic disruption potential
- Not intended to be used routinely
- Differs from liquidated damages
- Recommended caps are 5% for incentives; none for disincentives





Price Adjustment Clauses

- Quality Price Adjustment Clauses
- Commodity Price Escalation Clauses





Standardized Changed Conditions Clauses

Three different clauses

- Differing site conditions
- Suspensions of work ordered by the Engineer
- Material changes in the scope of the work



Differing Site Conditions

- Type I Condition
 - Subsurface or latent physical conditions that differ materially from the contract
- Type II Condition
 - Unknown physical conditions of an unusual nature that differ from those ordinarily encountered



Suspensions of Work Ordered by Engineer

- Allows adjustment of contract terms if the performance of all, or a portion, of the work is suspended or delayed by the Engineer for an unreasonable period of time
- Must be in writing



Material Changes in Scope of Work

- Permits adjustment of the contract terms if the Engineer orders an alteration of the work or in the quantities that ***significantly changes*** the character of the work
- Must be in writing



Does the Contractor Have a Valid Claim Under the Clause?



Group Activity

- Review the scenario
- Determine if there are grounds for action



Materials Requirements



- Patented or proprietary products
- Domestic steel and iron products
- State-owned, furnished, or designated materials
- Convict-produced materials
- Salvaged materials



Using Patented or Proprietary Items (for projects awarded before 10/28/2019)

- Discourages use of brand or trade names
- Requires use of “equal to” phrasing when trade or brand names cannot be avoided
- Requires inclusion of equivalent materials and products in specifications
- Projects awarded before 10/28/2019, 23CFR635.411(a)-(e) remains in full effect



- FHWA does not pay a premium or royalty for patented or proprietary materials, specifications, or products



Using Patented or Proprietary Items (for projects awarded on or after 10/28/2019)

- 23 CFR 635.411(a)-(e) is no longer in effect
- Patented or proprietary products no longer require FHWA approval
- Patented or proprietary materials, specifications, or processes are eligible for Federal-aid funds.
- Certifications, PIFs, and Experimental Product Work Plans are no longer required.
- Premiums/royalties for proprietary products are eligible for Federal-aid funds.
- Administer active construction projects under regulations in effect at contract award.
- In-State or local material preferences still prohibited.



Using Patented or Proprietary Items (for projects awarded on or after 10/28/2019)

- Contracting agencies may now:
 - Specify proprietary products,
 - Reference single trade name materials in PS&E package,
 - List proprietary products on APLs/QPLs,
 - Use AASHTO or ASTM specifications where only one manufacturer can meet the requirements, and
 - Specify proprietary products in design-build RFP.



Buy America Requirements

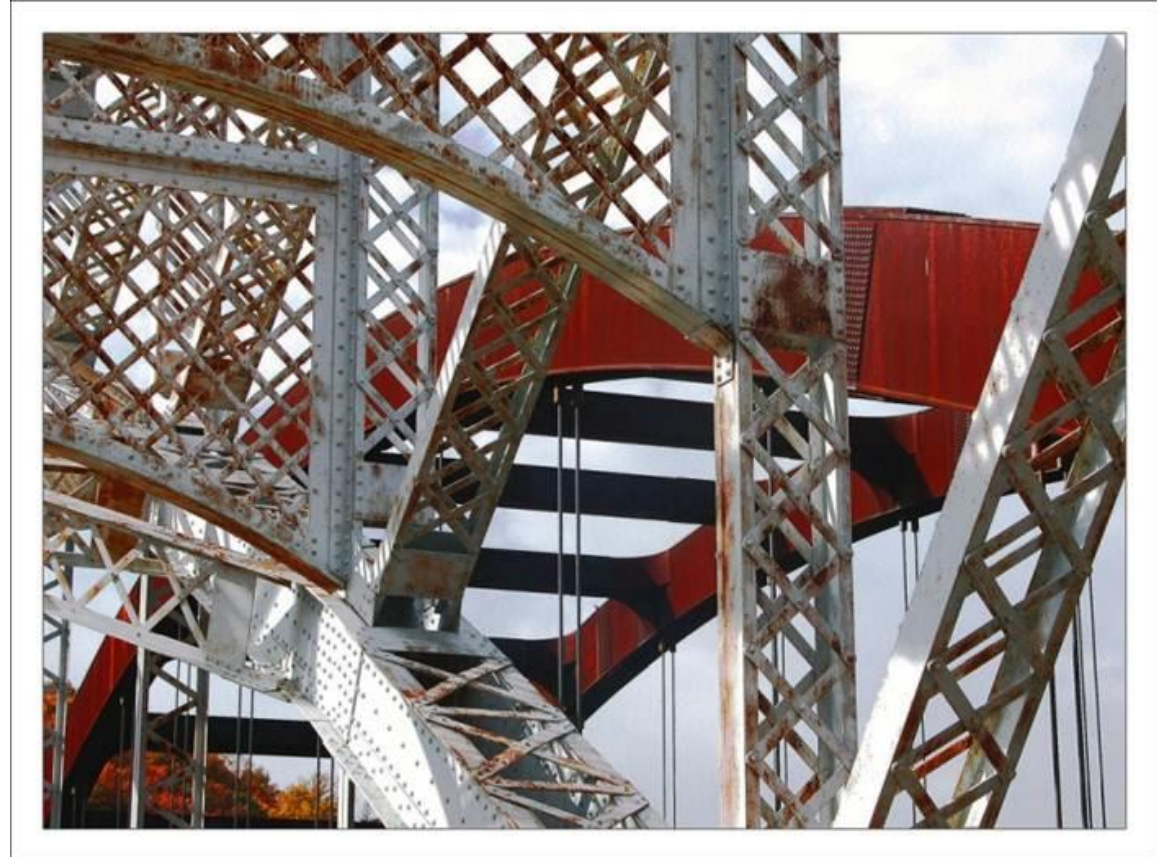
- Domestic manufacturing of all steel and iron materials permanently incorporated in a Federal-aid project funded under Title 23 U.S.C.
- Includes the application of a coating





Circumstances that May Allow Use of Non-domestic Steel or Iron

- Minimal use
- Temporary use
- Alternate bid procedures
- Buy America waivers





Buy America Project Waiver Process

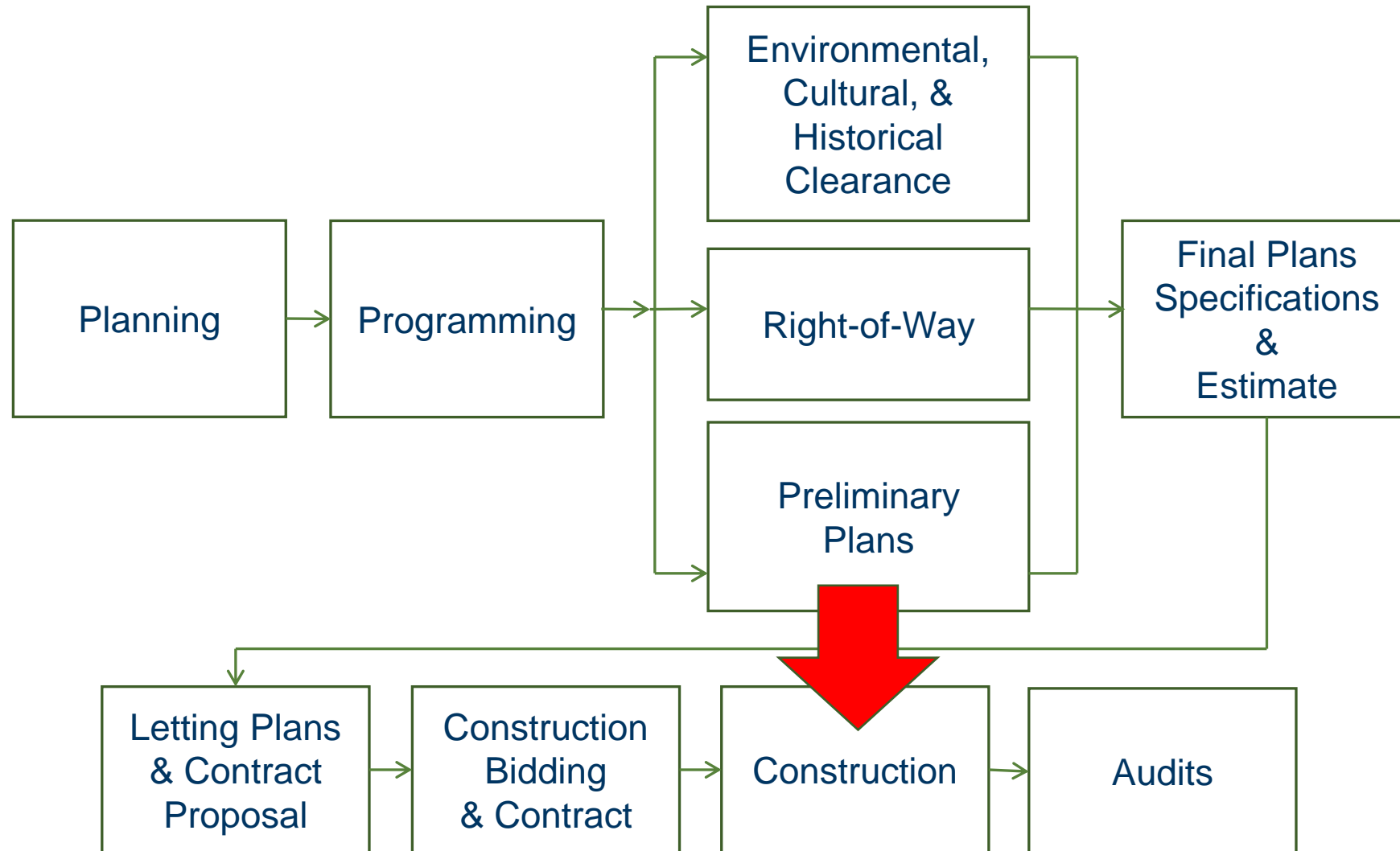
- STA requests waiver through the Division with supporting documents
- Division provides initial review with recommendations to FHWA headquarters (HICP-20)
- FHWA hosts public comments period and in-depth reviews
- STA must resolve all comments before the waiver request is published in the Federal Register

Contract Administration:

Supervising Agency Requirements in Post-award / Construction Phase



Federal-aid Project Flowchart





What Is Responsible Charge?

STA and LPA must provide a full-time employee to be in responsible charge of the project

- STA: The person in responsible charge must be a full-time State engineer
- LPA: The person in responsible charge must be a full-time employee of the LPA



Lesson 4.1: Federal-aid Essentials Video



Supervising Agency Requirements



Hiring Construction Managers and Inspectors

- Once a project is advertised, an agency may procure construction managers and inspectors under the Brooks Act
- These individuals cannot be in responsible charge





Review Questions



- i. Based on the information provided, would this individual be deemed in “responsible charge” of the Federal-aid project?

Labor and Employment-related Post-award Requirements



Post-award Requirements

- Hiring preferences and provisions
- Employment practices
- Wages
- Accident prevention
- Training



Hiring-related Requirements

- In-state or local labor hiring preferences
- Appalachian resident preferences
- Indian employment
- Veterans employment provision
- Convict labor
- Project labor agreement





Requirements Compiled in Form FHWA-1273

- Nondiscrimination
- Non-segregated facilities
- Prevailing wage rates (Davis-Bacon and Related Acts)
- Contract work hours and Safety Standards Act provisions
- Subletting or assigning the contract
- Safety (accident prevention)
- False statements concerning highway projects



Davis-Bacon Act



- Where are prevailing wages required?
- What records must be maintained to verify Davis-Bacon?
- To whom do prevailing wages apply?



When to Use Prevailing Wage Rates

- Federal-aid construction contracts and subcontracts, within Federal highway ROW
- Prime contract value of at least \$2,000
- Based on Site of Work
- 10-day Rule



Copeland Act

- Prohibits contractors or subcontractors from inducing an employee to give up compensation to which he or she is entitled
- Requires contractors and subcontractors to submit weekly statements of compliance



On-the-Job Training

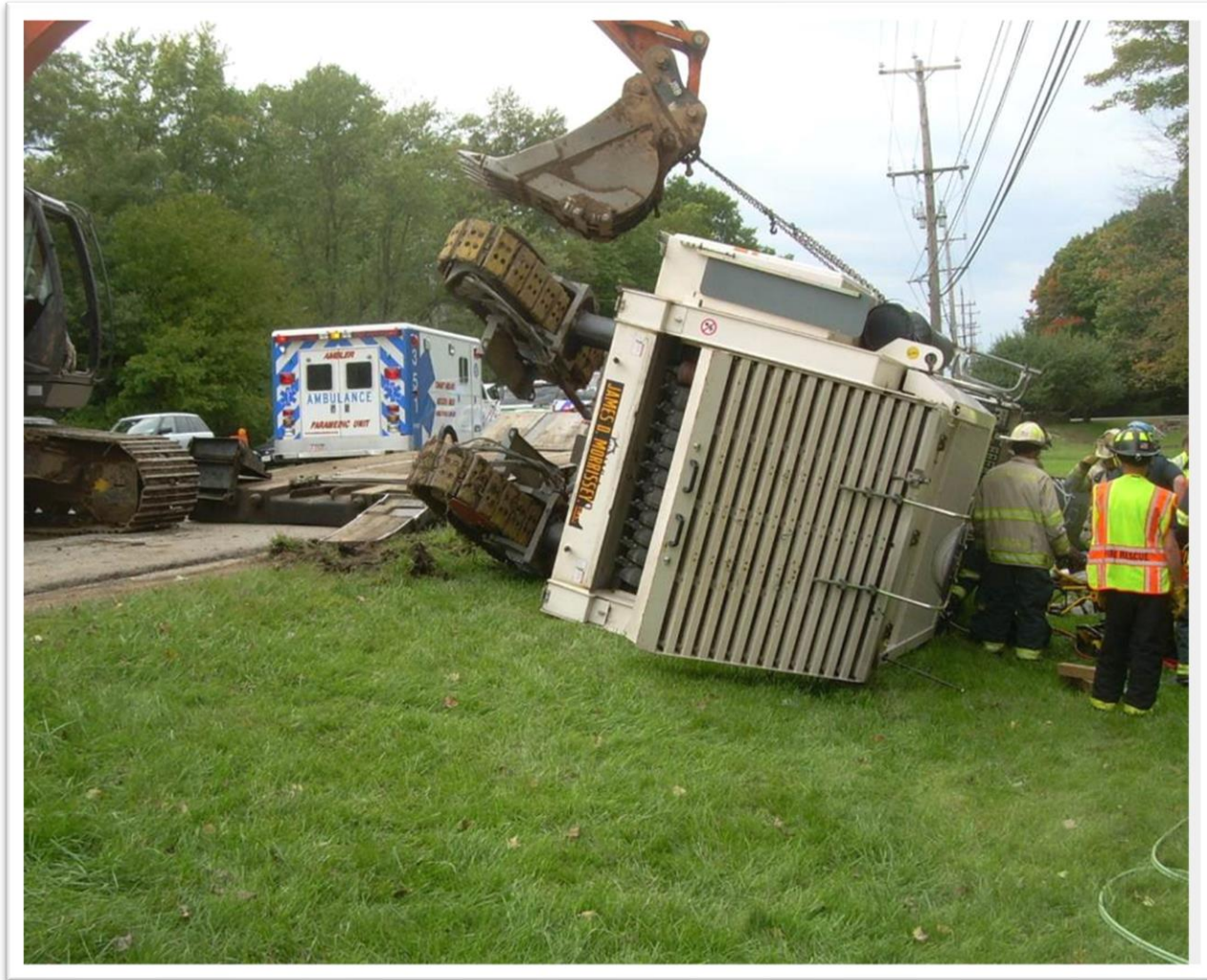
- State submits recommended statewide goals annually
- State assigns contract training goals
- Contractor provides actual training and documentation
- Determine effectiveness of training
- State reports accomplishments on a calendar year basis



- Requires use of USDOL or FHWA-approved apprenticeship or training programs



Safety: Accident Prevention Requirements



- Comply with all Federal, State, and local laws
- Provide safeguards, safety devices, and personal protective equipment (PPE)
- Prevent work in unsanitary, hazardous, or dangerous locations
- Accommodate USDOL inspections



Project Safety Example #1





Project Safety Example #2





Project Safety Example #3





Job Site Posters



Job Safety and Health
It's the law!

OSHA
Occupational Safety and Health Administration
U.S. Department of Labor

EMPLOYEES:

- You have the right to notify your employer or OSHA about workplace hazards. You may ask OSHA to keep your name confidential.
- You have the right to request an OSHA inspection if you believe that there are unsafe and unhealthful conditions in your workplace. You or your representative may participate in that inspection.
- You can file a complaint with OSHA within 30 days of retaliation or discrimination by your employer for making safety and health complaints or for exercising your rights under the OSH Act.
- You have the right to see OSHA citations issued to your employer. Your employer must post the citations at or near the place of the alleged violations.
- Your employer must correct workplace hazards by the date indicated on the citation and must certify that these hazards have been reduced or eliminated.
- You have the right to copies of your medical records and records of your exposures to toxic and harmful substances or conditions.
- Your employer must post this notice in your workplace.
- You must comply with all occupational safety and health standards issued under the OSH Act that apply to your own actions and conduct on the job.

EMPLOYERS:

- You must furnish your employees a place of employment free from recognized hazards.
- You must comply with the occupational safety and health standards issued under the OSH Act.

This free poster available from OSHA –
The Best Resource for Safety and Health

Free assistance in identifying and correcting hazards or complying with standards is available to employers, without citation or penalty, through OSHA supported consultation programs in each state.

1-800-321-OSHA (6742)
www.osha.gov



Posters need to be:

- Current
- Accessible
- Legible
- Viewable



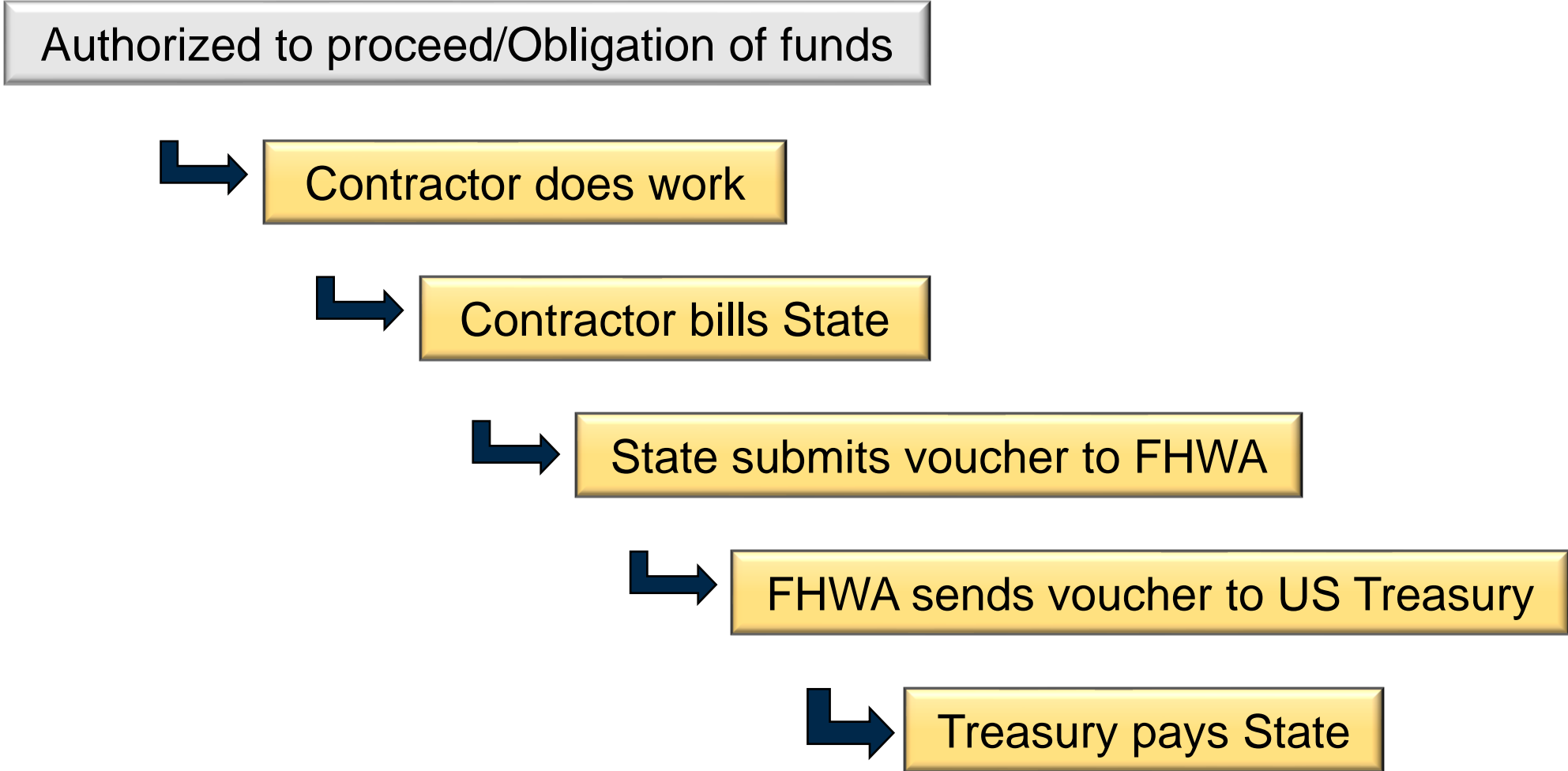
Posting Examples



Other Post-award Requirements



The Reimbursement Process





Construction Inspection



- Onsite Inspectors
- Contract Administration
- Documentation
- Records Management
- Coordination



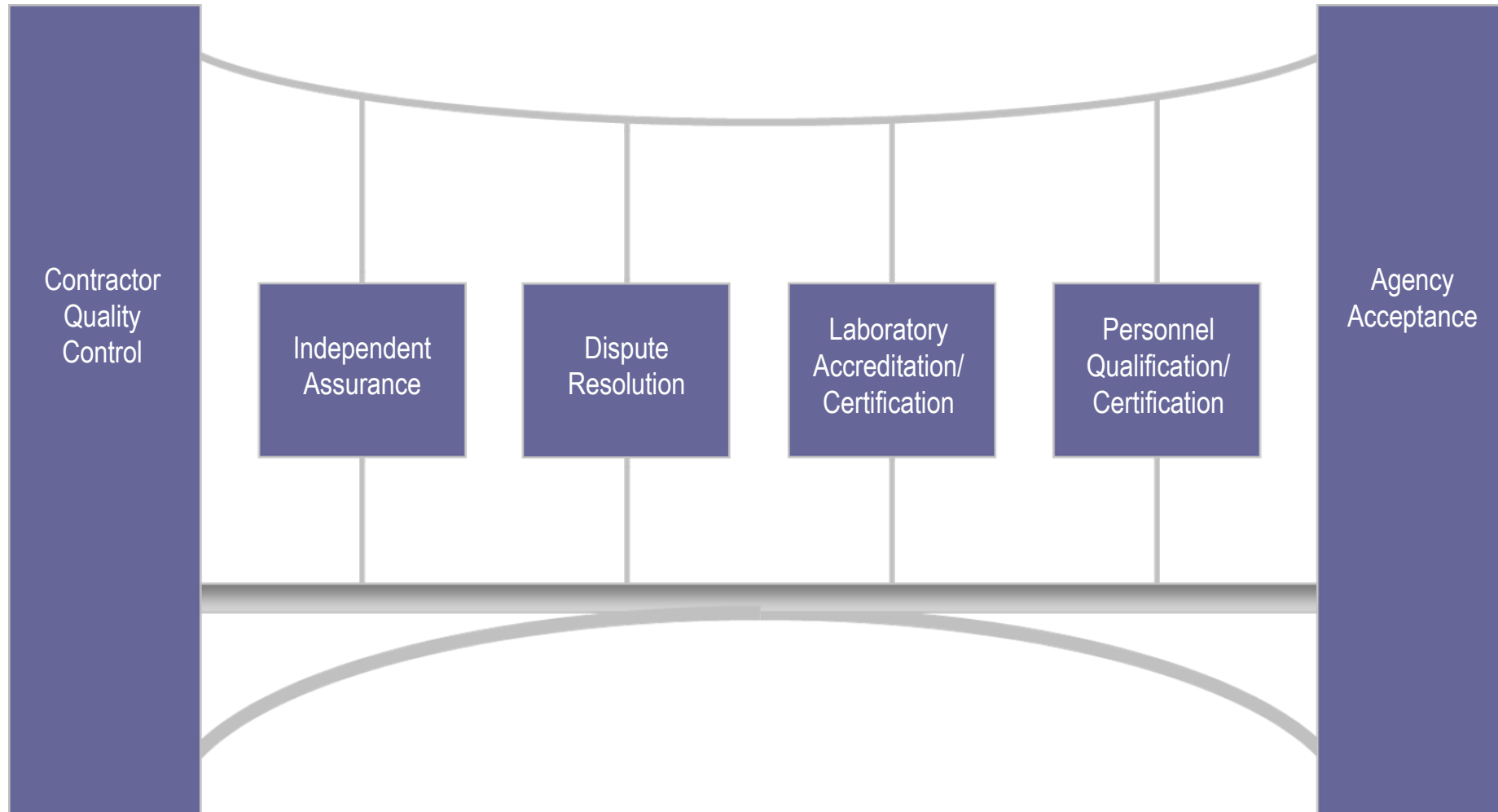
Lesson 4.3: Federal-aid Essentials Video



Construction Quality Assurance

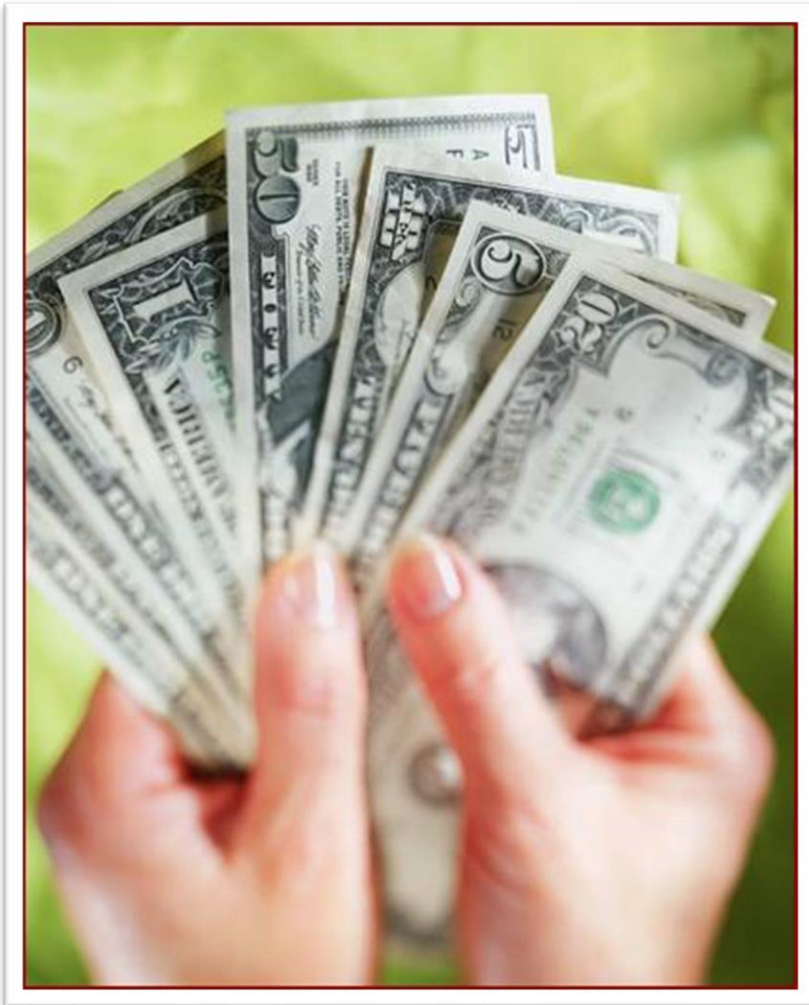


Materials Quality Assurance (QA) Program Requirements





Progress Payments



- Based on
 - An estimate prepared by the Engineer
 - Source documentation

- Include
 - Value of the work performed
 - Materials delivered
 - Stockpiled materials if certain provisions are met

Contract Changes and Other Post-award Issues



Contract Changes

- What constitutes a contract change?
 - A change which affects the cost, alters the termini, character, or scope of work

- What constitutes a “major” contract change?
 - A change which will significantly affect the cost of the project to the Federal government or alter the termini, character, or scope of work

▶ Components of Contract Changes



- Changes to plans
- Changes to specification
- Change in cost (+/-)
- Change in time (+/-)



Reviewing and Approving Change Orders

Main considerations of a review

- Federal-aid eligibility
- Impact on the original scope of the work
- Basis of payment
- Time adjustments

▶ **Avoiding Disputes: Partnering**

Establish a plan upfront that supports

- Communication
- Achievement of mutual goals
- Regular meetings





Claims

- Is FHWA participation in a claim automatic?
 - No

- When can FA funds participate in a claim?
 - When the claim can be supported by the facts
 - When the claim has a basis in the contract and under applicable State law



Time Extension and Claims Activity



Group activity

- Read the project description
- Answer the questions and prepare to share your answers



Managing Other Contract Issues

Other contract issues that can arise

- Management of contract time
- Contract termination
- Legal issues



Liquidated Damages for Time Overruns

- Each STA is required to develop and maintain its own LD rates
- STA rates are subject to verification and approval by the Division Administrator
- STA must review and adjust LD rates every 2 years, as needed
- STA LD rates may include costs of project-related delays or inconveniences to the STA or the public
- I/D amounts are shown separately from the LD amounts, and are to be based on road user costs



Contract Termination



Categorical reasons for termination are

- Cause or Convenience
- Default



Other Legal Issues

- Fraud
- Antitrust violations
- Embezzlement, theft, forgery, etc.
- Offenses showing a lack of business integrity or honesty

UP CLOSE and personal

Fraud Schemes & Scams

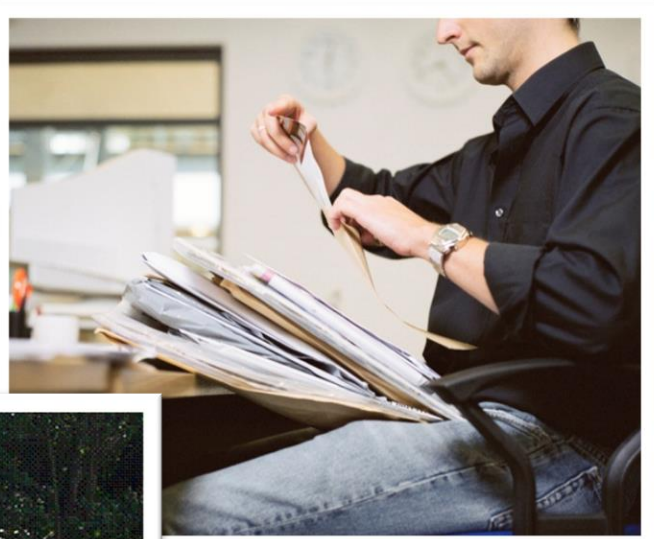
Project Closeout



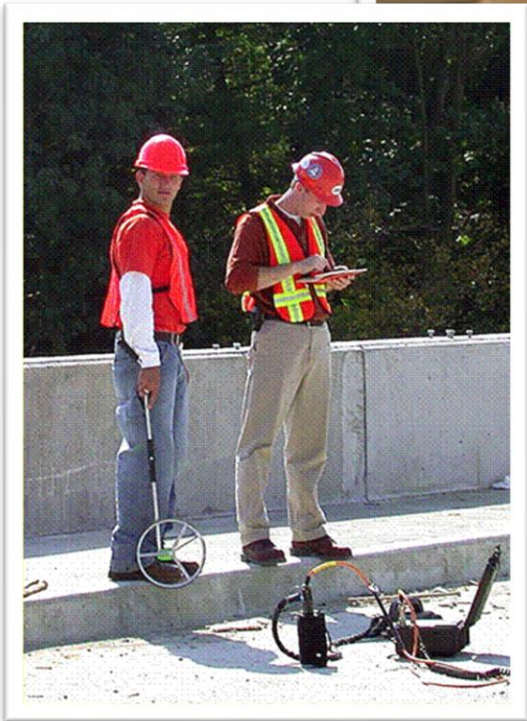
Project Closeout Processes

- Inspection verifies completion
- Assurances that project work is in accordance with contract requirements
- Project agreement closure
- Records retention

Project Completion Procedures

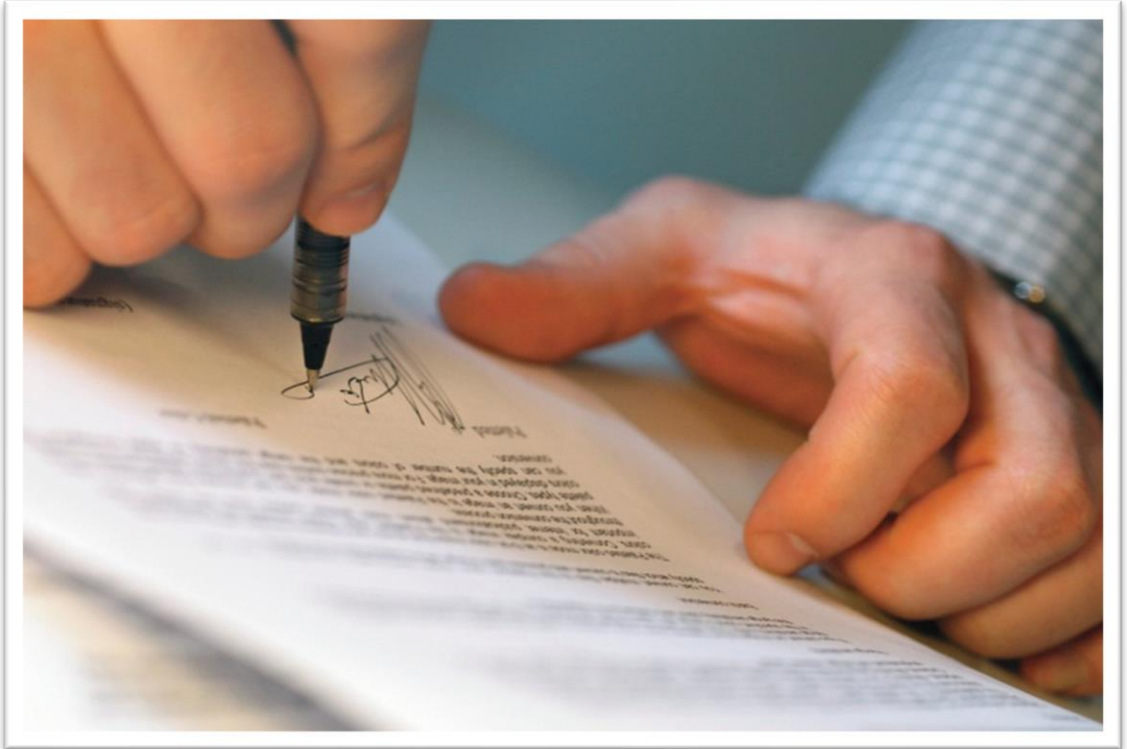


- Review project records
- Verify that work has been completed
- Prepare punch-list





Assurance Regarding Federal Interests

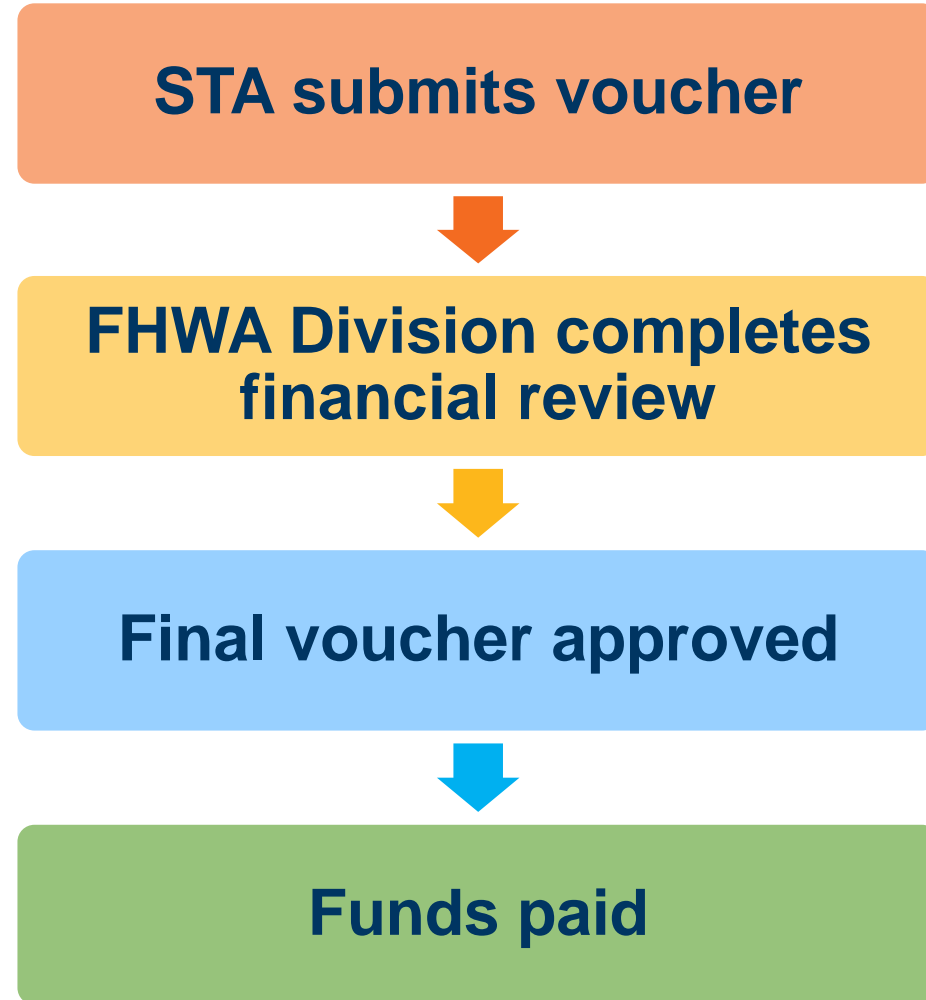


Final Acceptance

- Review project documents and changes since final inspection
- Technical review of project completion
- Verify FA funding participation



FA Agreement Closure (Final Voucher)





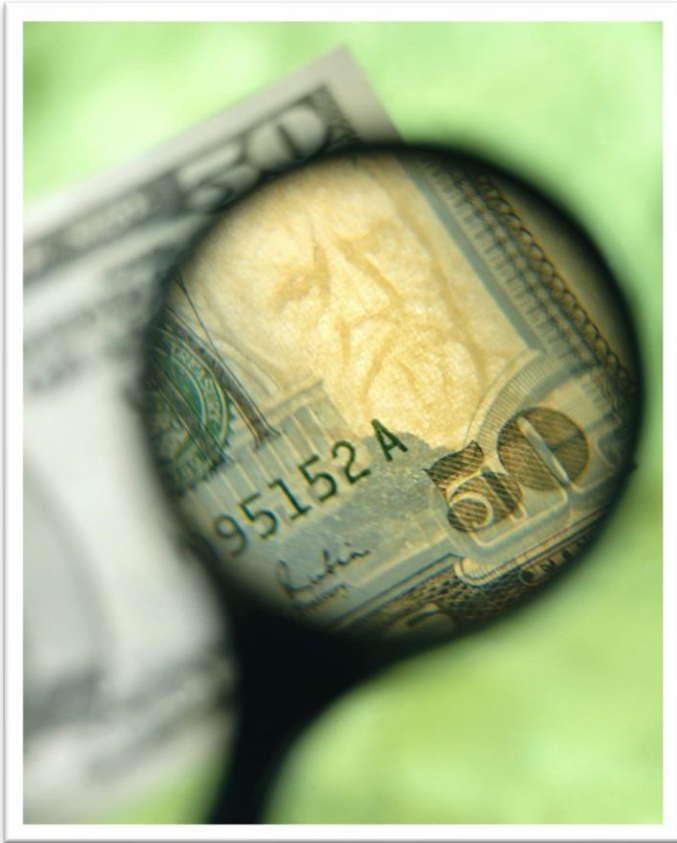
Records Retention

- Critical project correspondence
- Source documents
- 3 years minimum begins with “last action”
- Typically off-site centralized storage





Project Audits



- Audit can be performed by
 - State
 - FHWA/USDOT
 - Any other Federal agency

- Audits require clear, complete, and concise project documentation