



## Florida Department of Transportation

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### **PROGRAM MANAGEMENT BULLETIN 18-07**

DATE: August 14, 2018

TO: Directors of Transportation Operations, Directors of Transportation Development, District Program Management Administrators, District Directors of Traffic Operations, District Work Program Administrators, District Local Programs Administrators, District Financial Services Directors

FROM: Stefanie D. Maxwell, P.E., Manager, Program Management Office  
*Stefanie D. Maxwell*

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SUBJECT: Local Agency Program- Project Delivery Methods under the Federal-Aid Highway Program

### **REQUIREMENTS**

Per the [Stewardship and Oversight Agreement](#), in enacting *Title 23 United States Code (USC), Section 106(c)* Congress recognized the need to give states more authority to carry out Federal-Aid Highway Program project responsibilities traditionally handled by the Federal Highway Administration (FHWA). Under this assignment of responsibilities, the Florida Department of Transportation (Department) may permit local agencies to carry out the Department's assumed responsibilities on locally administered projects. The Department is responsible for Local Agency compliance with all applicable Federal laws and requirements. The *LAP Manual, FDOT Topic No. 525-010-300* sets forth the Department's policy and program guidance for Federal-Aid project delivery.

In general, when establishing a locally administered Federal-Aid project it is appropriate to execute a *LAP Agreement, FDOT Form No. 525-010-40* (also see *LAP Manual, Chapter 5*) with a LAP Certified agency. The LAP Agreement is the preferred mechanism for Federal-Aid projects administered by Local Agencies because the Department has established oversight policies and

procedures in the LAP program that ensure the required federal provisions and related federal requirements are met throughout the duration of the project.

Any local public agency delivering Federal-Aid highway construction projects, or a phase of work leading to construction, or activities specifically identified in the definition of “construction” in ***Title 23 of the United States Code, Section 101(a)(4)*** requires the execution of a LAP Agreement with the Department.

In limited circumstances, a Local Agency may deliver a Federal-Aid highway project, but would not be required to enter into a LAP Agreement with the Department and, therefore; would not be required to be “LAP Certified” per ***Chapter 2*** of the ***LAP Manual***. Exceptions to the LAP process include:

- Purchase of buses for transit purposes
- Planning studies
- Research studies
- Leasing of equipment or services (e.g. ferry boat or water taxi)
- Work by a public utility company or railroad when the inherent nature of the operation makes it necessary that adjustments to the public utility or railroad’s facilities are required to deliver the Federal-aid transportation project.
- Intelligent Transportation Systems (ITS) operations scopes that are limited to Local Agency forces performing operations and maintenance functions.
- The cost of equipment purchased with Federal-Aid funds, including ITS and other traffic control devices, when limited to the replacement of existing components or a new model/version of the existing component. Installation cannot require additional design work, installation must be completed by Local Agency forces, and the installation must be locally funded.

Expanded guidance for equipment purchased with Federal-Aid funds is provided in ***Table 1: Federal-Aid Equipment Purchases and Eligible Project Delivery Methods*** below. The combination of project funding sources (federal, state, local), procurement methods for installation of the equipment, and the entity that performs the installation of equipment purchased with Federal-Aid funds generates six (6) scenarios, as shown in the table below, for project delivery under a LAP Agreement or a JPA Agreement. Equipment purchases are funded with Federal-aid.

**Table 1: Federal-Aid Equipment Purchases and Eligible Project Delivery Methods**

Transaction	Labor/Installation Funding Type		Installation Forces		LAP Certification Required	Agreement Type	Federal Requirements
	Federal-Aid Funds	Local Funds	Local Agency Forces	Contractor			
FDOT GIVES EQUIPMENT TO LOCAL		X	X		No	JPA	<ul style="list-style-type: none"> <li>• Cost-effectiveness Finding required for Local Agency installation</li> <li>• Buy America, NEPA, Uniform Act apply</li> <li>• FDOT Form No. 525-010-42 (Final Inspection and Acceptance of Federal-Aid project) submitted by Local Agency</li> <li>• FDOT provides Final Project Acceptance by signing FDOT Form No. 525-010-42</li> </ul>
FDOT GIVES EQUIPMENT TO LOCAL		X		X	Yes	LAP	<ul style="list-style-type: none"> <li>• <b>All LAP program requirements</b></li> <li>• Full construction contract requirements including FHWA 1273</li> <li>• Buy America, NEPA, Uniform Act apply</li> <li>• FDOT Form No. 525-010-42 (Final Inspection and Acceptance of Federal-Aid project) submitted by Local Agency</li> <li>• FDOT provides Final Project Acceptance by signing FDOT Form No. 525-010-42</li> </ul>
FDOT REIMBURSES LOCAL FOR EQUIPMENT (replacement, no new design)		X	X		No	JPA	<ul style="list-style-type: none"> <li>• Cost-effectiveness Finding required for Local Agency installation</li> <li>• Buy America, NEPA, Uniform Act apply</li> <li>• FDOT holds 5% retainage</li> <li>• FDOT Form No. 525-010-42 (Final Inspection and Acceptance of Federal-Aid project) submitted by Local Agency</li> <li>• FDOT provides Final Project Acceptance by signing FDOT Form No. 525-010-42</li> </ul>

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FDOT REIMBURSES LOCAL FOR EQUIPMENT (upgrade of existing components/new design)		X	X		Yes	LAP	<ul style="list-style-type: none"> <li>• Cost-effectiveness Finding required for Local Agency installation</li> <li>• <b>All LAP Program requirements</b> triggered by upgrade of existing components and/or new design required.</li> <li>• Full construction contract requirements including FHWA 1273</li> <li>• Buy America, NEPA, Uniform Act apply</li> <li>• FDOT Form No. 525-010-42 (Final Inspection and Acceptance of Federal-Aid project) submitted by Local Agency</li> <li>• FDOT provides Final Project Acceptance by signing FDOT Form No. 525-010-42</li> </ul>
FDOT REIMBURSES LOCAL FOR EQUIPMENT AND INSTALLATION	X		X		Yes	LAP	<ul style="list-style-type: none"> <li>• Cost-effectiveness Finding required for Local Agency installation</li> <li>• <b>All LAP program requirements</b></li> <li>• Full construction contract requirements including FHWA 1273</li> <li>• Buy America, NEPA, Uniform Act apply</li> <li>• FDOT Form No. 525-010-42 (Final Inspection and Acceptance of Federal-Aid project) submitted by Local Agency</li> <li>• FDOT provides Final Project Acceptance by signing FDOT Form No. 525-010-42</li> </ul>

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FDOT REIMBURSES LOCAL FOR EQUIPMENT AND INSTALLATION	X			X	Yes	LAP	<ul style="list-style-type: none"> <li>• All LAP program requirements</li> <li>• Full construction contract requirements including FHWA 1273</li> <li>• Buy America, NEPA, Uniform Act apply</li> <li>• FDOT Form No. 525-010-42 (Final Inspection and Acceptance of Federal-Aid project) submitted by Local Agency</li> <li>• FDOT provides Final Project Acceptance by signing FDOT Form No. 525-010-42</li> </ul>

Notes to **Table 1**: All equipment purchased with Federal-Aid Highway Program funding. The type of Federal-Aid funds used to purchase the equipment or used to fund the installation of the equipment may result in additional requirements not included here. Equipment purchased by local agency or the Department must be competitively bid. Service contracts are subject to Buy America and other federal requirements as indicated here: <https://www.fhwa.dot.gov/construction/contracts/provisions.cfm>.

## **SELECTING A DEPARTMENT FUNDED AGREEMENT**

Procedure [350-020-301](#), Financial Provisions for all Department Funded Agreements (Procedure), defines a Joint Participation Agreement (JPA) as an agreement, typically between the Department and a local agency, where the local agency provides goods or services on behalf of the Department (or a vendor relationship). The Procedure defines a Grant Disbursement Agreement as an agreement that provides state or federal financial assistance to a recipient or sub recipient. Recipients and sub recipients are subject to programmatic requirements provided in the Catalog for Federal Domestic Assistance (CFDA).

Determinations must be made for the projects not being delivered via the LAP Program as to whether these are vendor or subrecipient relationships.

For a vendor relationship, a JPA must be utilized and must contain the applicable financial provisions of [350-020-301](#). Funds approval requests should utilize Contract Type AK (Project Participation) and an object code that describes the work being performed. For programming instructions related to vendor agreements, see [Local Agency Program Chapter 17](#).

For a subrecipient relationship, a Grant Disbursement Agreement must be utilized and must be in compliance with **2 CFR 200** and contain the applicable financial provisions of [350-020-301](#). Funds approval requests should utilize Contract Type GD (Grant Disbursement Agreement), object code 780000, and CFDA number 20.205. For programming instructions related to subrecipient agreements, see [Part IV, Chapter 4, Section F. Non-Traditional Federal Awards](#).

When a LAP Agreement is required, use [Form No. 525-010-40](#) and the related exhibits as applicable.

## **COMMENTARY**

The purchase of “traffic control devices” must conform to ***Chapter 316.0745 Florida Statutes***. Purchases of traffic control devices must conform to the Department’s Approved Products List (APL). Conformity is also required by ***Florida Administrative Code 14-15.010 Manual on Uniform Traffic Control Devices*** and ***Florida Administrative Code 14-15.012 Manual on Speed Zoning for Highways, Roads, and Streets in Florida***. The requirement is applicable to all transportation projects in the State of Florida and does not change in response to source of funding for a transportation project- federal, state, or local funds.

Contracts used to procure equipment must be competitively bid and conform to the Federal-Aid Construction and Service contract requirements proscribed by the federal regulations. A summary of the requirements is also found on the FHWA website at this link: <https://www.fhwa.dot.gov/construction/contracts/provisions.cfm>. Stockpiling equipment purchases for later installation is not an eligible activity under the Federal-Aid Highway Program.

Cost- Effectiveness Findings are required for Force Account work, construction work by Public (Local Agency) forces, per ***Title 23 of the Code of Federal Regulations (CFR) subpart 635B and Chapter 24 of the LAP Manual.***

Certifications or Public Interest Findings (PIFs) are required for the purchase of proprietary products per ***Department Topic No. 630-020-005 Proprietary Products Review and Certification*** and the ***FHWA Contract Administration Core Curriculum Manual section III.B.8.1.v.***

Equipment purchased with Federal-Aid funds triggers Buy America, National Environmental Policy Act (NEPA), and Federal Uniform Act requirements for the installation of the equipment. These requirements apply when the installation is funded by any source. The type of Federal-Aid funds used to purchase the equipment or used to fund the installation of the equipment may result in additional requirements not included in Table 1. Verify with the FDOT program manager any additional requirements prior to executing an agreement for project delivery.

This bulletin is not applicable to projects delivered by the Department on behalf of a local agency. Off-system project delivery by the Department is subject to [Program Management Bulletin 15-03](#). Installation of Federal-Aid purchased equipment by the Department at multiple locations under one or more contracts may require a Public Interest Finding or additional documentation by FHWA. Contact the FHWA, Florida Division Office for additional information.

## **BACKGROUND**

In July of 2003, May of 2014, and June of 2015, the Federal-Aid Office issued FedTech Bulletins regarding the Lap Agreement vs. JPA Agreement: Appropriate use in the Federal-Aid Highway Program. The latest revision in 2015 provided more restrictive guidance based on the federal regulations and information from the FHWA, Florida Division Office. ***FedTech Bulletin 15-02*** clarified how to handle agreements for equipment purchases related to ITS infrastructure based on the definition of construction and how the Department provides oversight for these ITS Federal-Aid projects not being delivered via the LAP Program. It also clarified those activities that did not meet the federal definition of construction for the Federal-Aid Highway Program.

Since 2015, the number of projects and potential project delivery methods has expanded creating a need for additional guidance on potential methods for project delivery when Federal-Aid funding may apply to limited components of the project delivery process or be used in combination with state or local fund sources.

***Title 23 of the United States Code, Chapter 1 Federal-Aid Highways, Section 101(a)(4): Construction.***—*The term “construction” means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a highway or any project eligible for assistance under this title, including bond costs and other costs relating to the issuance in accordance with section 122 of bonds or other debt financing instruments and costs incurred*

*by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program. Such term includes-*

- (A) Preliminary engineering, engineering, and design-related services directly relating to the construction of a highway project, including engineering design, project development and management, construction project management and inspection, surveying, mapping (including the establishment of temporary and permanent geodetic control in accordance with specifications of the National Oceanic and Atmospheric Administration), and architectural-related services;*
- (B) Reconstruction, resurfacing, restoration, rehabilitation, and preservation;*
- (C) Acquisition of rights of way;*
- (D) Relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;*
- (E) Elimination of hazards of railway-highway grade crossings;*
- (F) Elimination of roadside hazards;*
- (G) Improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and*
- (H) Capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.*

## **IMPLEMENTATION**

The requirements identified herein are effective immediately. The *LAP Manual (Topic No. 525-010-300)* will be updated accordingly.

## **CONTACT**

Please direct questions or comments to:

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