



Federal Aid Technical Bulletin

Bulletin No. 15-02

Date: June 30, 2015 **(updated 8/15/2018)**

Subject: LAP Agreement vs. JPA Agreement: Appropriate use in the Federal Aid Highway Program

Note: *This Bulletin supersedes FedTech Bulletins 03-06 and 14-01*

- ***Additional Guidance on Project Delivery Methods issued by the Program Management Office as Program Management Bulletin [18-07](#) on 8/14/2018: <http://www.fdot.gov/programmanagement/Publications.shtm>***

Federal Aid Technical Bulletin 03-06 issued July 17, 2003, addressed when it is permissible to utilize a Joint Participation Agreement (JPA) for projects where reimbursement of eligible costs is expected from Federal Highway Administration (FHWA) under the Federal Aid Highway Program.

Federal Aid Technical Bulletin 14-01 issued May 22, 2014, expanded the description of and clarified when the use of a JPA is permissible for Intelligent Transportation Systems (ITS) projects involving equipment purchases and installation.

This Federal Aid Technical Bulletin supersedes, consolidates and clarifies the information in both prior Bulletins and establishes more restrictive guidance on when a JPA is permissible, consistent with recent interpretations of the federal regulations by the Florida Division Office of FHWA.

In general, when establishing a locally administered federal aid project it is appropriate to use a Local Agency Project (LAP) Agreement with the 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 undertaking construction work (highway and any appurtenant facilities such as a sidewalk or bike path), or any phase of work leading to construction (project development and environmental, design, right of way), or any type of activities specifically identified in the definition of "construction" in the federal regulations must be accomplished via the use of a LAP Agreement.

23 USC Section 101(a)(4) defines the term "construction" as follows:

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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.

There are a few exceptions to this general rule mandating the use of a LAP Agreement.

A JPA may be used for the following:

- Purchase of buses for transit purposes
- Planning studies
- Research studies
- Leasing of equipment or services (e.g. ferry boat or water taxi)
- ITS operations scopes that are limited to local agency in-house forces performing operations and maintenance functions may use a JPA.
- Under limited circumstances the cost of purchased ITS equipment can be eligible for federal reimbursement under a JPA with a local agency (agency doesn't have to be LAP certified), as follows:
 - The installation of the ITS equipment must be completed by the local agency's in-house forces using local agency funds (not federal funds).

- The installation must be limited to replacing existing components (new model/version of old component, needing no additional design work). It must not be an upgrade or enhancement to the existing system that would require new design services to implement the upgrade or enhancement, as that would require the use of a LAP Agreement.
- A Finding of Cost Effectiveness must be approved by the Department prior to executing the JPA.
 - The Finding of Cost Effectiveness must demonstrate that use of local agency in-house forces will complete the project more effectively than advertising and awarding the project to the lowest responsive bidder. The requirements for a Cost Effectiveness Finding are detailed in 23 CFR 635 Subpart B "*Force Account Construction*" and Chapter 23 of the LAP Manual.
- The JPA must include assurances the local agency will complete the project in accordance with 23 CFR 940 "*Intelligent Transportation System Architecture and Standards*". Reference FDOT Procedure 750-040-003 for fulfillment of 23 CFR 940.
- Department staff must issue a Local Agency Program Final Inspection and Acceptance of a Federal-Aid Project (Form# 525-010-42) at project closeout to certify the equipment was both purchased and installed per the terms of the JPA.
- A retainage of five percent (5%) of the equipment purchase price will be held by the Department until the project Final Inspection and Acceptance has been issued to the local agency.
- The federal authorization request must include in the comments in FHWA's FMIS federal authorization system that the installation will be accomplished by local agency forces in accordance with the approved Cost Effectiveness Finding.

The following types of ITS activities must be delivered using a LAP Agreement:

- ITS operations scopes that include procurement of engineering services (consultants), signal timing or retiming, and/or system upgrades.
- Installation of ITS equipment that will improve or facilitate traffic flow, where the installation costs are funded with federal funds.

Also note that the mixing of multiple work types (General Engineering Consultant type contracts) is not allowed under one agreement. For example, an ITS Operations JPA that includes operations support, engineering services, and planning services would not be eligible for federal reimbursement under 23 CFR 172.

As always, please feel free to contact us with any questions or concerns.



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