
CHAPTER 1 INTRODUCTION LOCAL PROGRAMS MANUAL

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1.1 PURPOSE

The purpose of the **Local Programs Manual (LPM), Procedure No. 525-010-300** is:

- To establish consistent and uniform practices for subrecipients of State and Federal transportation grants. Grant funds are provided through the Florida Department of Transportation (Department) to Local Agencies or “LAs” for transportation project planning, development, and delivery; including, design, right-of-way acquisition, and construction.
- To assure that LAs meet or exceed all applicable State and Federal standards and requirements and understand their roles and responsibilities when they accept a State or Federal grant award.
- To communicate the roles and responsibilities of Department Offices who assist with developing and implementing policy, standards, and practices for LA project delivery; and also with developing and maintaining the **LPM**.
- To identify the responsibilities of the Department for policy development, oversight and monitoring of grant programs, and quality assurance reviews.

1.2 AUTHORITY

Section 20.23(4)(a) and 334.048(3), Florida Statutes (F.S)

1.3 REFERENCE

Chapters 163, 186, 255, 287, 337, and 339 F.S.
Title 2, Code of Federal Regulations
Title 23, Code of Federal Regulations
Title 49, Code of Federal Regulations

1.4 SCOPE

The **LPM** establishes both:

- oversight and monitoring procedures for use by Department staff when managing project phases performed by LAs, and
- minimum project delivery requirements LAs must adhere to for compliance with State and Federal transportation grant programs administered by the Department.

The **LPM** is a technical manual that supplements existing Department policies, procedures and manuals and provides specific Department oversight and monitoring roles and responsibilities when transportation projects are performed by LAs.

1.5 BACKGROUND

The Department is empowered by legislative authority to contract with LAs to plan, develop, design, acquire right of way, and construct transportation facilities. The Department is the primary recipient of State and Federal funds. The Department awards the funds in the form of grants to subrecipient LAs for transportation project delivery. The grant programs reimburse LAs for the services provided to the public.

Florida laws contain specific appropriations to LAs for transportation funding programs with State funds and the Department is designated as the responsible State agency for awarding and monitoring of the appropriation created grant programs. A list of grant programs is found on the Local Programs Office webpage:

<https://www.fdot.gov/programmanagement/LP>.

Public Law 102-240 (Intermodal Surface Transportation Efficiency Act of 1991) expanded the Federal-Aid Highway Program (FAHP) to increase the number of funding categories available to LAs as subrecipients of Federal-aid funds. Subsequent Federal laws further solidified and often expanded funding and categories available to LAs. This increase of funds and categories creates a partnership between the Federal Highway Administration (FHWA), Florida Division Office and the Department to provide oversight and monitor LAs participating in FAHP project delivery. When the Department contracts with any LA for reimbursement using FAHP funds administered by the FHWA, the Department must ensure LAs comply with all applicable Federal (and State) laws, statutes, rules, and regulations.

The Department assigns responsibility for administration and oversight of the collective programs under the Local Programs Office umbrella to a State Local Programs (LP) Administrator in the Central Office. In each District, a District LP Administrator administers and oversees the programs. The District LP Administrator is designated by the District Secretary. Each District must provide project management and oversight support to the District LP Administrator through the Offices of Planning, Environmental Management, Design, Procurement, Program Management, Right of Way, and Construction.

1.6 DEFINITIONS

Local Agency – a unit of government or any officially designated public agency or authority of such a unit of government that has the responsibility for planning, construction, operation or maintenance of, or jurisdiction over a transportation facility. For the purposes of administering this procedure common subrecipient LAs are municipalities, counties, transportation authorities, community development districts, water management districts, other state agencies, etc.

State Local Programs Administrator – The Central Office staff member responsible for establishing policy, developing procedures and guidance, providing project and program oversight, developing and delivering training, and conducting quality assurance reviews in coordination with the Districts, other Department Offices, and other State and Federal agencies as appropriate for all programs placed under Local Programs, Office of Program Management’s purview. Specific responsibilities are included throughout the **LPM**.

District Local Programs Administrator – The District staff member designated by the District Secretary responsible for coordinating between the District offices and sections and with the LAs to develop and deliver projects under the District Local Programs sections. The District LP Administrator works closely with planning, project development, environmental, design, right of way acquisition, and construction staff in the District to obtain all approvals, assurances, and certifications required for those respective areas. Specific responsibilities are included throughout the **LPM**.

1.7 DISTRIBUTION

The **LPM** and associated **Program Management Bulletins** and other related Department **Forms** and **Procedures** are public documents as defined in **Chapter 119 F.S.** and must be made available to the public. The principal avenue of availability to all customers, including the public, is the Department’s webpage: <https://www.fdot.gov/>. All customers are advised of the opportunity to review, download, and/or print the **LPM** as a whole or by chapter for free at the Local Programs web address provided here: <https://www.fdot.gov/programmanagement/lap/lap-toc.shtm>.

LPM users can register to receive notification of updates and **Bulletins** online through the Department’s Contact Management Database at: <https://www.fdot.gov/designsupport/contactdatabase.shtm>.

Access to Paper Copies for External Customers: External customer requests for paper copies, after being advised of the free availability on the Local Programs website, is forwarded to the Central Office or District Public Records Request designee. A reproduction fee of 15 cents per page copied on paper one-sided or 20 cents per page copied on paper two-sided is specified in **Section 119.07, F.S.** Any monies received is submitted to the Comptroller in accordance with the latest version of the **Receipt Processing, FDOT Procedure No. 350-080-300**.

1.8 LOCAL PROGRAMS MANUAL REVIEW

The **LPM** is a dynamic document that requires periodic review. In the Central Office, each Department Office assigns a technical expert who communicates changes to the State

LP Administrator and participates in periodic reviews to assess the need for content changes. FHWA, Florida Division Office also reviews and approves the **LPM**, per the **FDOT/FHWA Stewardship and Oversight Agreement**. FHWA's review is specific to Federal-Aid program and project delivery and does not apply to content that provides direction for state funded grant programs.

Comments or suggestions on the **LPM** may be submitted to the State LP Administrator using any of the following contact information:

Email: CO-localprograms@dot.state.fl.us
Phone: (850) 414-4383
Address: 605 Suwanee St., M.S. 75, Tallahassee, FL 32399

The Department's Forms and Procedures webpage also allows for comments to be submitted directly online here: <https://pdl.fdot.gov/ContactUs>.

As comments and suggestions are received, they are assigned for action by the State LP Administrator to appropriate technical experts for review. Additional details on the steps required to complete the review process is provided in **Section 1.9.1**.

1.9 LOCAL PROGRAMS MANUAL REVISIONS AND ADDITIONS

The State LP Administrator reviews and addresses comments received from other Department Offices, District Offices, LA partners and stakeholders on an on-going basis and in accordance with **Standard Operating System Procedure No. 025-020-002**. Substantive revisions that result in policy change are coordinated with the Executive Team for concurrence.

When a new item or substantial change cannot be adequately addressed within the **LPM's** current chapter/section(s), a new chapter or section is written. The chapter or section is written by the affected Department technical experts and coordinated by the State LP Administrator with other appropriate functional areas.

1.9.1 REVIEW STEPS

All chapters of the **LPM** go through a minimum of three rounds of review prior to publication of revisions. Due to both the external and internal partnering that occurs in the delivery of Local Programs projects, **LPM** general reviews are published via an externally accessible SharePoint™ site that any stakeholder may request access to. A summary of the review steps are as follows:

- 1) State LP Administrator initiates a review when a chapter is due, when a law or rule changes, or when a request is made from a customer.
- 2) State LP Administrator edits the chapter with comments or changes using a redline or change tracking tool in the publishing software. The LP Office sends the chapter edits for technical review to FDOT Subject Matter Experts and the FHWA Local Programs Engineer for review of changes, additional edits, and comments. Generally, technical reviewers complete their reviews in 14 days. Additional time may be provided for major changes.
- 3) State LP Administrator addresses comments with the technical reviewers and makes additional edits as needed.
- 4) State LP Administrator initiates the “general review”, which is open to all external and internal stakeholders, including LA staff that may be affected by the revisions. This review is usually 14 days, but more time may be granted by the State LP Administrator for major changes. All reviews are posted to the externally accessible [Program Management Partner SharePoint](#) and access to the SharePoint page may be requested at CO-LocalPrograms@dot.state.fl.us or the other contact methods provided in **Section 1.8**.
- 5) State LP Administrator ends the comment period by removing the review documents from the [Program Management Partner SharePoint](#). All comments and suggested edits are reviewed and logged in an excel spreadsheet. Any ambiguities are discussed directly with the commenter. Edits are made as appropriate in consultation with the Department technical expert(s).
- 6) Comment logs and revision histories are maintained by the State LP Administrator and are available upon request.
- 7) The final chapter version is posted to the [Local Programs Manual webpage](#) and an email announcement letting interested parties know the document is available is sent via Contact Mailer. FDOT’s Forms and Procedures team is notified when postings occur.
- 8) **Chapter 1** of the **LPM** is the Manual Adoption Procedure and follows the review process identified in **Standard Operating System Procedure No. 025-020-002**.

All revisions and updates are coordinated with the Forms and Procedures Office prior to publishing to ensure conformance with and incorporation into the Department's Standard Operating System.

1.9.2 BULLETINS

Upon concurrence by the Chief Engineer, **Program Management Bulletins** may be issued by the Office of Program Management. This action is used only when immediate implementation is needed. Examples of when the action is used include: mandatory legislative changes, FHWA directives, Judicial Court rulings, Department Policy changes or other timely issues.

A **Bulletin** has temporary authority and will be incorporated into the **LPM** following the revision process outlined in this chapter. **Bulletins** have a memorandum format and are sequentially numbered preceded by the last two digits of the year issued, i.e., 20-01; 21-01; 22-01, etc.

Bulletins are distributed in accordance with the revision steps provided in this chapter. The District LP Administrator will also distribute the **Bulletins** to the applicable LAs to ensure stakeholders with active projects receive the critical information.

1.10 TRAINING

Training in the use of the **LPM** is not required. Web based and in-person courses are available for many of the subjects and functional areas contained in the **LPM**. Training requirements for the Local Agency Program (LAP) are found in **Chapter 7**. Contact the State or District LP Administrator should more information about training be needed.

1.11 FORMS

Forms will be listed on a chapter-by-chapter basis, with accessibility identified if not available from the Department's Forms Library.

CHAPTER 2 – LOCAL PROGRAMS OVERVIEW

2.1 LOCAL PROGRAMS OVERVIEW

The LP units in Central Office and the Districts are in the Office of Program Management, within the Department’s division of Engineering and Operations. LP staff manage various State and Federal financial assistance programs that are assigned to LP by the Department’s executive team. Financial assistance programs are created by Florida law or the Federal Infrastructure Investment and Jobs Act (IIJA), also known as Bipartisan Infrastructure Law, but the list of programs managed by LP units may change when State or Federal programs are created or sunset.

The Office of Policy Planning publishes [Partnering with FDOT: A Resource Guide for Local Governments](#). The guide provides information on partnering with the Department, an overview of the transportation planning and programming, insight on how the Department can assist with advancing and completing local project priorities, and descriptions of FDOT funding programs and eligible project types. LAs interested in applying for financial assistance from the Department are encouraged to review this guide. It also includes timelines for development of the annual Work Program and submission to the Governor.

All financial assistance programs listed in this chapter are reimbursement programs. Recipients and subrecipients of State and Federal financial assistance must have available funds to pay for all project costs when the grant disbursement agreement is executed with the Department. See **Chapter 5** for additional information on financial management of the grants.

The Florida Grant Application Process (“GAP”) system is the authorized platform for the submission and receipt of applications for the various financial assistance programs; and is also used for project management. Required project documents, which include design plans, reports and invoices, performance monitoring, and compliance documentation are stored and maintained in GAP. See **Chapter 4** for additional information.

2.1.1 STATE PROGRAMS OVERVIEW

State financial assistance programs are authorized by F.S. or the Laws of Florida. The programs provide state financial assistance for local infrastructure improvement projects. The following programs are generally assigned to LP units:

- County Incentive Grant Program (CIGP)
- Local Transportation Projects (LTP), awarded by General Appropriations Act, Specific Appropriation or Proviso
- Economic Development Transportation Fund (EDTF)
- Florida Job Growth Grant Fund (FJGG)
- Small County Outreach Program (SCOP)
- Small County Outreach Program for Municipalities within Rural Areas of Opportunity and Communities (SCOP-M)
- Small County Road Assistance Program (SCRAP)
- Transportation Regional Incentive Program (TRIP)

Other financial assistance programs are managed by the Office of Planning or Modal Development for project prioritization and award, but projects may be passed to the LP units in the Districts for project management. These projects include:

- Shared Use Nonmotorized Trail Network (SUN)

2.1.2 FEDERAL-AID HIGHWAY PROGRAMS OVERVIEW

Per the *Stewardship and Oversight Agreement (FDOT Topic No. 700-000-005)*, in enacting **23 United States Code (USC) 106(c)** Congress recognized the need to give states more authority to carry out project responsibilities traditionally handled by the FHWA. Under this assignment of responsibilities, the Department may allow LAs to carry out the Department's assumed responsibilities on locally administered projects. The Department is responsible for LA compliance with all applicable State and Federal laws and requirements.

Various programs provide Federal financial assistance for local infrastructure improvement projects and are collectively known as the FAHP. The FAHP is authorized by the current transportation funding bill passed by Congress and the funds are transmitted to the Department by the FHWA. The IIJA also provides funding through competitive grant programs. Some of the awards may be administered through the LAP. Most awards pass directly to the LA, in which case, the FHWA administers the project.

The following FAHP financial assistance programs are administered by Central Office with project management generally assigned to the LP units in the Districts:

- FHWA Emergency Relief Program (ER)
- Local Agency Program (LAP)
- Non-Traditional Federal-Aid awards (may also be managed by other offices at the

District level if appropriate)

Other financial assistance programs are managed by the Offices of Traffic Operations, Planning, and Safety for project prioritization and award, but the projects may be passed to the LP units in the Districts for project management. These projects are funded under some of the following FAHP programs (subject to change):

- Bridge Investment Program (local roads)
- Federal Lands Access Program (FLAP)
- Ferry Boat and Ferry Terminal Facilities Program
- Highway Safety Improvement Program (HSIP)
- National Electric Vehicle Infrastructure Program (NEVI)
- Recreational Trails Program (RTP)*
- Safe Routes to School (SRTS) program
- Transportation Alternatives (TA) program

**In compliance with 260.016 F.S. and the 62S-2, Florida Administrative Code (F.A.C.), administration of the Recreational Trails Program (RTP) is by the Department of Environmental Protection (DEP), Division of State Lands. For more information contact the DEP Land and Recreation Grants staff at 850-245-2501 or visit: <https://floridadep.gov/Grants>.*

This section details each State program listed in **Section 2.1.1** and provides references to authorities, rules, and requirements that drive the Department's administration of each program.

2.2 COUNTY INCENTIVE GRANT PROGRAM

CIGP was created by [s. 339.2817, F.S.](#), to provide state financial assistance to counties for the improvement of transportation facilities located on the State Highway System (SHS), or that relieve congestion on the SHS. The program is funded with 80% of the local option fuel tax revenues which are deposited into the State Transportation Trust Fund pursuant to *section 5, Chapter 2000-257, Laws of Florida*. CIGP funds are allocated to the Districts by the statutory formula based on equal parts population and motor fuel tax collections.

2.2.1 PROJECT ELIGIBILITY

- 1) The project must be consistent to the maximum extent practicable with the Florida Transportation Plan, metropolitan planning organization plans, and local government comprehensive plans.
 - a. Counties may seek funding for projects that are not currently included in the above-referenced plan(s); however, if the projects are selected for funding, the applicable plan(s) must be amended within six months to include the approved CIGP project. Supporting documentation must be provided to the Department.
- 2) Projects that include resurfacing and paving of local dirt roads are eligible if the LA demonstrates how paving the dirt road relieves congestion on the SHS.
- 3) Transit projects that meet the statutory requirements are eligible.
- 4) Municipalities may apply to the county in which the municipality is located for consideration by the county for funding of any project phase that meets the statutory requirements. The county must evaluate all municipal applications in accordance with **s. 339.2817(3), F.S.**
 - a. If the municipality's proposed project is rejected by the county for funding, or if the county's proposed project adversely affects a municipality within the county, the municipality may request mediation to resolve any concerns of the municipality and the county.
 - b. The municipality and county are required to enter into a tri-party grant disbursement agreement with the Department for the disbursement of the

authorized funds (**Chapter 5**).

- 5) A 50% local match of funds is required. The LA may satisfy its funding obligation with local funds, in-kind services necessary for the successful completion of the project, right of way contributions necessary for the project or a combination of any of the afore-mentioned options. Detailed information on matching funds and how to program the projects is found in the ***FDOT Work Program Instructions, Part III- Chapter 7***.
 - a. Rural counties qualifying under the Rural Economic Development Initiative (REDI) program may apply for a waiver or reduction of the required 50% match.
 - b. The value of donated land is determined by the current market value, as supported by documentation.
 - c. For in-kind services, a detailed report must be provided to the District that substantiates the actual project related costs incurred by the LA as recorded in the LA's cost accounting system. The Department may conduct random audits of supporting documentation.

2.2.1 PROJECT EVALUATION CRITERIA

The Department must consider, but is not limited to, the following criteria for evaluation of projects:

- A. The extent to which the project will encourage, enhance, or create economic benefits.
- B. The likelihood that assistance would enable the project to proceed at an earlier date than the project could otherwise proceed.
- C. The extent to which assistance would foster innovative public-private partnerships and attract private debt or equity investment.
- D. The extent to which the project uses new technologies, including ITS, which enhance the efficiency of the project.
- E. The extent to which the project helps to maintain or protect the environment.
- F. The extent to which the project includes transportation benefits for improving intermodalism and safety.

2.2.2 PROJECT APPLICATIONS

Districts solicit for project applications and prioritize the projects based on the project evaluation criteria. Projects must be included in the Adopted Work Program annually.

2.3 LOCAL TRANSPORTATION PROJECTS / EARMARKS / PROVISO FUNDS

The Florida Legislature uses specific appropriations, proviso, and items on General Appropriations Act (GAA) Conference Committee spreadsheets to direct the Department to fund projects that are not included in the 5-year work program or advance an existing project to another fiscal year. The earmarked projects and the funding recipient are specifically named in the GAA.

In 2017 the Legislature adopted Joint Rule 2 which created the procedure it currently uses when adding earmarks to the GAA. The procedure requires the Florida Senate and the Florida House to consider and adopt each Appropriations Project and Local Funding Initiatives request as individual pieces of legislation with an assigned bill number. After adoption, the Senate and House bills can be considered for incorporation into the GAA by reference. The GAA, which authorizes spending of public money for specific uses, is effective for one state fiscal year only.

“Local Transportation Projects (088862)” is a GAA Appropriation Category created within Department’s budget that is used to earmark projects that are not linked to a state financial assistance program or activity authorized by F.S. Projects may also be earmarked in categories that support Department programs or activities authorized by F.S.

The Department plans and implements the five-year capital plan of transportation investments as approved by the Governor and the Legislature via the GAA. Following each Legislative Session, policies and specific appropriations are incorporated along with projects to maintain and operate the existing system, local and State priorities, capacity improvements, and multi-modal project investments. The final plan, the Adopted Work Program, is funded by the amount remaining after the earmarked funding awards, which reduces the amount available for the maintenance and operation of Florida’s Transportation System. As the number and size of member projects increases, projects in the plan must be deferred or deleted to achieve financial stability.

2.3.1 PROJECT REQUIREMENTS

- 1) The project specific requirements/restrictions are those provided by the Legislature as delineated in the GAA and any documents incorporated by reference. A review of the specific appropriation, proviso, or items on GAA Conference Committee spreadsheets; and the referenced Senate and House bills is required to understand the Legislature’s intent regarding the use of the earmarked funding

and draft the required written agreement.

- 2) A contract for the disbursement of the earmarked funding must be executed before the authority provided by the GAA expires at close of business on June 30th of the fiscal year.
- 3) Local contribution is required when the earmark is placed in the appropriation category for a program with a statutory contribution requirement, and the contribution requirement was not supplanted by the GAA or other applicable law. Local Transportation Projects do not have a statutory contribution requirement and a local contribution cannot be required without a clear legislative authorization. The required authorization must be clearly noted in the GAA or documents it incorporates by reference. Examples of when to impose and when not to impose local contributions are provided in **Part III, Chapter 8** of the **Work Program Instructions**.
- 4) **Section 339.135(5)(a), F.S.**, requires the inclusion of all Department projects in the adopted work program. This requirement includes projects identified in the GAA by specific appropriation, proviso, or item on GAA Conference Committee spreadsheets. **Section 339.135(5)(a), F.S.** further notes that transportation projects identified by specific appropriation in the GAA shall be deducted from the funds annually distributed to the respective district(s). In accordance with this requirement, the earmarked projects must be programmed from the funds distributed to the district each year. Additional funding cannot be provided.
- 5) **Section 216.179 F.S.** prohibits implementation, in any manner, of any project or program authorized by a specific appropriation vetoed by the Governor. This prohibition includes the expenditure of federal, state, or local funds on any aspect of the vetoed project or program during the year of the vetoed appropriation.

2.3.2 PROJECT APPLICATIONS

Project applications are submitted directly to the Legislature.

The Florida House of Representatives:

<https://www.myfloridahouse.gov/Sections/Appropriations/projects.aspx>.

The Florida Senate: <https://www.flsenate.gov/Session/Appropriations/2022>.

2.4 ECONOMIC DEVELOPMENT TRANSPORTATION FUND

See the [Work Program Instructions, Part III, Chapter 9](#). This program is managed jointly between the Department and Enterprise Florida, Inc. (EFI). Funding was last appropriated in FY 2018 and is appropriated by the Legislature under **s. 339.2821 F.S.**

2.5 FLORIDA JOB GROWTH GRANT FUND

This program is managed jointly between the Department of Economic Opportunity (DEO) and EFI. Proposals for public infrastructure and workforce training within the state are reviewed by the partner agencies and chosen by the Governor to meet the demand for workforce or infrastructure needs in the community they are awarded to. Selected projects that are linked to existing Department programs or activities may be assigned for project management. Current agreements are managed by the LP unit in Central Office. Additional information is provided here: <https://floridajobs.org/jobgrowth>.

2.6 SMALL COUNTY OUTREACH PROGRAM

SCOP was created pursuant to [s. 339.2818, F.S.](#), to provide small counties with state financial assistance for the improvement of eligible county roads (eligible activities are listed in **Section 2.6.1**). The program is funded through a combination of local option fuel tax revenues, documentary stamp taxes, and motor vehicle fees. SCOP funds are allocated to the districts by formula based on the number of eligible counties located in the district.

By statute, “small county” means any county that has a population of 200,000 or less as determined by the most recent official estimate as defined in **s. 186.901, F.S. Table 1** lists the counties that current meet the statutory definition of small county.

Table 1: Eligible Counties

District 1	District 2	District 3	District 4	District 5	District 6	District 7
Charlotte	Baker	Bay	Indian River	Flagler	Monroe	Citrus
DeSoto	Bradford	Calhoun	Martin	Sumter		Hernando
Glades	Columbia	Franklin				
Hardee	Dixie	Gadsden				
Hendry	Gilchrist	Gulf				

Highlands	Hamilton	Holmes				
Okeechobee	Lafayette	Jackson				
	Levy	Jefferson				
	Madison	Liberty				
	Nassau	Santa Rosa				
	Putnam	Wakulla				
	Suwannee	Walton				
	Taylor	Washington				
	Union					

2.6.1 PROJECT ELIGIBILITY

- 1) The project must be on the county road system.
- 2) Projects are limited by statute to the following activities:
 - a. repairing or rehabilitating county bridges
 - b. paving unpaved roads
 - c. addressing road-related drainage improvements
 - d. resurfacing or reconstructing county roads
 - e. constructing capacity improvements
 - f. constructing safety improvements
- 3) The Department may consider whether the county has attempted to keep the county roads in satisfactory condition, which may be evidenced through an established pavement management plan.
- 4) The physical condition of the roadway as measured by the Department.
- 5) A 25% local match of funds is required. Detailed information on matching funds and how to program the projects is found in the ***FDOT Work Program Instructions, Part III- Chapter 31***. Rural counties qualifying under the REDI program may apply for a waiver or reduction of the required 25% match.

2.6.2 PROJECT EVALUATION CRITERIA

The Department must consider, but is not limited to, the following criteria for evaluation of projects:

- A. Whether a road is used as an evacuation route.
- B. Whether a road has high levels of agricultural traffic.
- C. Whether a road is considered a major arterial route.
- D. Whether a road is considered a feeder road.
- E. Information as evidenced to the Department through an established pavement management plan.
- F. Other criteria related to the impact of a project on the public road system or on the state or local economy as determined by the Department.

2.6.3 PROJECT APPLICATIONS

The “rural programs” projects including SCOP, are solicited annually between December and March. Districts solicit for project applications and prioritize the projects based on the project evaluation criteria. Selected projects must be included in the Adopted Work Program annually. Applications are collected in **GAP**.

2.7 SMALL COUNTY OUTREACH PROGRAM FOR RURAL AREAS OF OPPORTUNITY (RAO)

This program is commonly referred to as “SCOP-M” or SCOP for Municipalities within the Department.

A municipality within a RAO or a community designated under **s. 288.0656(7)(a), F.S.**, is eligible to compete for financial assistance from an annual appropriation of at least \$9 million pursuant to [s. 339.2818\(7\), F.S.](#) Funding awards are for eligible municipality or community road improvement projects (eligible activities are listed in **Section 2.7.1**). Capacity improvements are not eligible for consideration. SCOP-M funds are managed by the Office of Program Management, LP unit. The Department funds up to 100% of the project costs; no match is required.

RAOs are defined by the DEO as rural communities, or a region composed of rural communities, that have been adversely affected by extraordinary economic events or natural disasters. The Governor by executive order designates up to three RAOs, which establishes them as a priority assignment for REDI agencies. More information on RAOs

is found on the DEO webpage here: <https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity>. Eligible RAOs are listed on the next page in **Tables 2** and **3**.

Table 2: South Central RAO by County- Districts 1 and 4 areas

DeSoto County	Glades County	Hardee County	Hendry County	Highlands County
Arcadia	Moore Haven	Bowling Green	Clewiston	Avon Park
		Wauchula	LaBelle	Lake Placid
		Zolfo Springs		Sebring
Okeechobee County	Collier County Communities	Palm Beach County Communities		
Okeechobee	Immokalee	Belle Glade		
		Pahokee		
		South Bay		

Table 3: North Central RAO by County- Districts 2 & 3 areas

Baker County	Bradford County	Columbia County	Dixie County	Gilchrist County
Glen St. Mary	Brooker	Fort White	Cross City	Bell
Macclenny	Hampton	Lake City	Horseshoe Beach	Fanning Springs (part)
	Lawtey			Trenton
	Starke			
Hamilton County	Jefferson County	Lafayette County	Levy County	Madison County
Jasper	Monticello	Mayo	Bronson	Greenville
Jennings			Cedar Key	Lee
White Springs			Chiefland	Madison
			Fanning Springs (part)	
			Inglis	
			Otter Creek	
			Williston	
			Yankeetown	

Putnam County	Suwannee County	Taylor County	Union County
Crescent City	Branford	Perry	Lake Butler
Interlachen	Live Oak		Raiford
Palatka			Worthington Springs
Pomona Park			
Welaka			

Table 4: Northwest RAO by County- District 3 areas

Calhoun County	Franklin County	Gadsden County	Gulf County	Holmes County
Altha	Apalachicola	Chattahoochee	Port St. Joe	Bonifay
Blountstown	Carrabelle	Greensboro	Wewahitchka	Esto
		Gretna		Noma
		Havana		Ponce de Leon
		Midway		Westville
		Quincy		
Jackson County	Liberty County	Wakulla County	Washington County	Walton County Communities
Alford	Bristol	St. Marks	Caryville	Defuniak Springs
Bascom		Sopchoppy	Chipley	Freeport
Campbellton			Ebro	Paxton
Cottondale			Vernon	
Graceville			Wausau	
Grand Ridge				
Greenwood				
Jacob City				
Malone				
Marianna				
Sneads				

2.7.1 PROJECT ELIGIBILITY

- 1) The road must be within the RAO municipality or community.
- 2) The road must be publicly owned and maintained.

- 3) The physical condition of the roadway as measured by the Department.
- 4) Projects are limited by statute to the following activities:
 - a. repairing or rehabilitating bridges
 - b. paving unpaved roads
 - c. addressing road-related drainage improvements
 - d. resurfacing or reconstructing roads
 - e. constructing safety improvements
- 5) As applicable, projects adhere to the long-range transportation plan of the local metropolitan planning organization and/or local comprehensive plan.
- 6) No local match of funds is required. All RAOs qualify for REDI waivers.

2.7.2 PROJECT EVALUATION CRITERIA

The Department must consider, but is not limited to, the following criteria for evaluation of projects:

- G. Whether a road is used as an evacuation route.
- H. Whether a road has high levels of agricultural traffic.
- I. Whether a road is considered a major arterial route.
- J. Whether a road is considered a feeder road.
- K. Information as evidenced to the Department through an established pavement management plan.
- L. Other criteria related to the impact of a project on the public road system or on the state or local economy as determined by the Department.

2.7.3 PROJECT APPLICATIONS

The “rural programs” projects including SCOP-M, are solicited annually between December and March. Office of Program Management solicits, reviews, and prioritizes project applications in collaboration with the Districts based on the project evaluation criteria. Selected projects must be included in the Adopted Work Program annually. Applications are collected in **GAP**.

A County may deliver a SCOP-M project on behalf of the RAO, but the RAO must submit the application to the Department, and both parties must sign the application. Counties may submit applications on behalf of unincorporated RAOs where the County owns and/or maintains the eligible roadways.

2.8 SMALL COUNTY ROAD ASSISTANCE PROGRAM

SCRAP was created pursuant to [s. 339.2816, F.S.](#), to provide small counties with state financial assistance for improvements to eligible county roads (eligible activities are listed in **Section 2.8.1**). The program is funded from the State Transportation Trust Fund. SCRAP funds are allocated to the districts by formula based on the number of eligible counties located in the district.

By statute, small county means any county that had a population of 75,000 or less as reported by the 1990 U.S. Census. **Table 5** lists the eligible counties.

Table 5: Eligible Counties by District

District 1	District 2	District 3	District 5
DeSoto	Baker	Calhoun	Flagler
Glades	Bradford	Franklin	Sumter
Hardee	Columbia	Gadsden	
Hendry	Dixie	Gulf	
Highlands	Gilchrist	Holmes	
Okeechobee	Hamilton	Jackson	
	Lafayette	Jefferson	
	Levy	Liberty	
	Madison	Wakulla	
	Nassau	Walton	
	Putnam	Washington	
	Suwannee		
	Taylor		
	Union		

2.8.1 PROJECT ELIGIBILITY

- 1) The road must be included in the county road system as of **June 10, 1995**.
- 2) The county must enact the maximum rate of the local option fuel tax authorized by

s. 336.025(1), F.S.

- 3) Projects are limited by statute to resurfacing or reconstructing county roads.
 - a. Capacity improvements are not allowed, unless the Department determines a safety issue exists. Widening existing lanes to current Florida Greenbook standards as part of a resurfacing or reconstruction project is allowed.
- 4) The Department may consider whether the county has attempted to keep the county roads in satisfactory condition, which may be evidenced through an established pavement management plan.
- 5) The physical condition of the roadway as measured by the Department.
- 6) No local match of funds is required.

2.8.2 PROJECT EVALUATION CRITERIA

The Department must consider, but is not limited to, the following criteria for evaluation of projects:

- A. Whether a road is used as an evacuation route.
- B. Whether a road has high levels of agricultural traffic.
- C. Whether a road is considered a major arterial route.
- D. Whether a road is considered a feeder road.
- E. Information as evidenced to the Department through an established pavement management plan.
- F. Other criteria related to the impact of a project on the public road system or on the state or local economy as determined by the Department.

2.8.3 PROJECT APPLICATIONS

The “rural programs” projects including SCRAP, are solicited annually between December and March. Districts solicit for project applications and prioritize the projects based on the project evaluation criteria. Selected projects must be included in the Adopted Work Program annually. Applications are collected in **GAP**.

2.9 TRANSPORTATION REGIONAL INCENTIVE PROGRAM

TRIP was created pursuant to [s. 339.2819, F.S.](#), to provide funds to improve regionally significant transportation facilities in regional transportation areas created pursuant to [s.](#)

[339.155\(4\), F.S.](#) The program is funded from two revenue sources, the Documentary Stamp Tax and the Motor Vehicle Registration transactions. It is important to note that the first \$60 million generated from the Documentary Stamp Tax is allocated to the Florida Rail Enterprise. TRIP funds are allocated to the districts via statutory formula based on a factor derived from equal parts of population and motor fuel collections for eligible counties in regional transportation areas.

2.9.1 PROJECT ELIGIBILITY

- 1) Projects must be located in the boundaries of a regional transportation area and be included on the prioritized list of regionally significant transportation projects for that area per **s. 339.155(4), F.S.**
- 2) Projects must serve national, statewide, or regional needs and function as part of an integrated regional transportation system.
- 3) Must be identified in the capital improvements element of a comprehensive plan in compliance with Chapter 163, Part II, F.S., after July 1, 2005; and be in compliance with local government comprehensive plan policies relative to corridor management.
- 4) Must be consistent with the Strategic Intermodal System Plan (SIS) developed under **s. 339.64, F.S.**
- 5) Must be adopted in the Department's Work Program.
- 6) A 50% or greater local, regional, or private matching funds is required. Rural counties qualifying under the REDI program may apply for a waiver or reduction of the required match. Only that geographic portion of the project falling within the qualified rural area is eligible for the waiver. Detailed information on matching funds and how to program the projects is found in the ***FDOT Work Program Instructions, Part III- Chapter 39.***

2.9.2 PROJECT EVALUATION CRITERIA

The Department must give priority to projects that:

- A. Provide connectivity to the SIS.
- B. Support economic development and the movement of goods in RAOs.
- C. Are subject to a local ordinance that establishes corridor management techniques, including access management strategies, right of way acquisition and protection

measures, appropriate land use strategies, zoning, and setback requirements for adjacent land uses.

- D. Improve connectivity between military installations and the Strategic Highway Network or the Strategic Rail Corridor Network.
- E. The extent to which local matching funds are available to be committed to the project.

2.9.3 PROJECT APPLICATIONS

TRIP projects are solicited annually during the Department's Work Program development cycle. Districts solicit for project applications and prioritize the projects based on the project evaluation criteria. Selected projects must be included in the Adopted Work Program annually. Applications are collected in **GAP**.

This section details Federal programs listed in **Section 2.1.2** that are administered by the Office of Program Management, LP unit and provides references to authorities, rules, and requirements that drive the Department's administration of each program.

2.10 FEDERAL-AID PROGRAM DETERMINATIONS

LAP is the primary delivery mechanism for subrecipients of FAHP funding administered by LAs per the ***FHWA/FDOT Stewardship and Oversight Agreement***. The Department has established FAHP oversight policies and procedures via the LAP that ensure compliance with the required Federal provisions and related Federal requirements throughout the duration of the project. Any LA delivering FAHP construction projects or construction-related phases of work that include activities specifically identified in the definition of "construction" in **23 USC 101(a)(4)** requires the LA to be LAP certified with the Department (**Chapter 7**) and enter into a **LAP Agreement (Form No. 525-010-40)** with the Department.

When applicable, the Department determines which FA program or method of delivery best matches the scope and funding of the FA project. Exceptions to the LAP project delivery mechanism occur under very limited circumstances, including:

- Emergency repair work that is approved by FHWA and the Department utilizes the ***Local Government Emergency Repair Agreement (Form No. 350-000-15)***.
- Non-traditional Federal-aid awards utilize the ***Federal Highway Funds Subrecipient Grant Agreement (Form No. 525-010-70)***.

2.11 LOCAL AGENCY PROGRAM (LAP)

Per the **[FHWA/FDOT Stewardship & Oversight Agreement](#), Section V:**

The Department may permit well-qualified and suitably equipped local public agencies (LPAs) to carry out the State DOT's assumed responsibilities on locally administered projects. The State DOT is responsible and accountable for LPA compliance with all applicable Federal laws and requirements.

LAP is a project delivery process where local towns, cities and counties develop, design, and construct transportation facilities with FAHP funds. FDOT is the steward of the federal funds and is responsible for oversight of funded projects on behalf of the FHWA. LAP agencies prioritize and fund local projects (through their respective MPO or governing board) and are then eligible for reimbursement for the services provided to the traveling

public through compliance with applicable Federal statutes, rules, and regulations.

LAP is administered in each transportation District by a District L[A]P Administrator or Coordinator who provides project level support and oversight for the LAs. Functional area support for the program is provided through the District Offices of Planning, Environmental Management, Design, Right-of-Way, Policy Planning, Design, Construction, Contracts Administration, Financial Services, and Program Management. The Central Office Statewide L[A]P Administrator in turn provides statewide program oversight and policy implementation and guidance through adaptation of program standards based on State and Federal requirements, rules, laws, and statutes.

Eligibility to participate in LAP is determined via a certification process to determine staff resources and capabilities in transportation projects as well as assess familiarity with federally funded programs. Further discussion of FDOT oversight of Locally Administered Projects is discussed in Section XI.B.

The LAP project delivery process is defined within this Manual.

2.11.1 PROJECT ELIGIBILITY

Project eligibility varies by FAHP. Specific program information may be found on FHWA's website: <https://highways.dot.gov/>. Projects are prioritized, funded, and programmed per the Department's Work Program Instructions and other policies and procedures administered by the Office of Policy Planning.

The Department by policy "soft matches" all Federal funds that are eligible for soft matching with toll credits and would otherwise require matching funds from a non-Federal source. When eligible, the Department will match FA awards with a soft match. When not eligible, the LA must provide a match as specified in the award, program, or funding guidelines, or at the current share of 18.07%. Detailed information on matching funds and how to program the projects is found in the ***FDOT Work Program Instructions, Part III-Chapter 12 and Part IV.***

2.11.2 PROJECT EVALUATION CRITERIA

The Department and Metropolitan Planning Organizations (MPOS) follow evaluation criteria as specified in FHWA guidelines, rules, and laws. The Office of Policy Planning publishes the [Partnering with FDOT: A Resource Guide for Local Governments](#).

2.11.3 PROJECT APPLICATIONS

Project applications may be submitted to the Department, MPO, regional transportation authority or other governmental agency participating in the selection and award process for each FAHP grant. For Department administered application cycles, GAP is the authorized platform for the submission and receipt of applications for LP grant funding.

2.12 FHWA EMERGENCY RELIEF PROGRAM

In ***Title 23, USC, Section 125***, Congress authorized a special program from the ***Highway Trust Fund*** for the repair or reconstruction of FA highways and roads. These roads must have suffered serious damage as a result of (1) natural disasters or (2) catastrophic failures from an external cause. This program is commonly referred to as the FHWA Emergency Relief (ER) Program. It supplements the commitment of resources by States, their political subdivisions, or other Federal agencies to help in the repair of facilities damaged by eligible events. The ER program funds two types of emergency projects—emergency repairs and permanent repairs. Emergency repairs do not require the LA to meet the full LAP requirements, but Federal requirements apply. Permanent repair projects are required to conform to LAP. See ***Chapter 13*** for full program details and descriptions. Information on how to program the projects is found in the ***FDOT Work Program Instructions, Part III- Chapter 10: Emergencies/Disasters***.

Emergency repairs to restore essential traffic accomplished within the first 270 days of landfall are eligible for 100 percent federal funding. ER permanent repair projects require a hard match of funds from the LA. The current total Federal share for Florida is 81.93%. Detailed information on matching funds is found in ***Chapter 13.4***.

2.13 NON-TRADITIONAL FEDERAL-AID AWARDS

Non-traditional FA awards are passed through the Department and delivered by LAs via the ***Federal Highway Funds Subrecipient Grant Agreement (Form No. 525-010-70)***, which ensures that purchase orders and contracts acquired for project delivery conforms to Federal laws, rules and executive orders including ***2 CFR 200***.

The Department by policy “soft matches” all Federal funds that are eligible for soft matching with toll credits and would otherwise require matching funds from a non-Federal source. When eligible, the Department will match non-traditional FA awards with a soft match. When not eligible, the LA must provide a match as specified in the award, program, or funding guidelines, or at the current share of 18.07%. Detailed information

on matching funds and how to program the projects is found in the ***FDOT Work Program Instructions, Part III- Chapter 12 and Part IV.***

Locally administered non-traditional FA awards are generally assigned to District LP or Transit offices but are not to be administered via the ***LAP Agreement*** nor a ***Public Transportation Grant Agreement (FDOT Form No. 725-000-03)***. See ***Chapter 5*** for additional information on funding agreements.

2.13.1 PROJECT ELIGIBILITY

The work associated with these projects does not meet the definition of construction in ***23 USC 101(a)(4)***. LA project awards that do not lead to or meet the definition of construction are limited. Examples of non-traditional Federal projects currently administered by the Department are:

- Planning studies not incorporated into the MPO/TPO Unified Planning Work Program (UPWP).
- Planning related work delivered by universities such as:
 - statewide data collection and analysis
 - education curriculum development and delivery related to transportation and safety (bike safe/walk safe programs).
- Work delivered by a public utility or railroad associated with a LAP project.
- Ferry boat operations; leasing of equipment or services.
- [Intelligent Transportation Systems \(ITS\) operations activities.](#)
- The cost of equipment purchased with Federal-Aid funds, including ITS and traffic control devices, when limited to the replacement of existing components or a new model/version of the existing component and installation is provided by LA forces.

Planning, ITS operations activities, and equipment purchases are the most commonly occurring LA delivered activities that allows a Department grant manager to move forward with the ***Federal Highway Funds Subrecipient Grant Agreement.***

Equipment purchases require further analysis by the grant manager who must make the determination if the LAP delivery method is required when equipment is purchased with FA funds and installed by a LA. Considerations include:

- Procurement method used for the equipment purchased with FA funds.
- Forces that perform the installation of equipment purchased with FA funds.
- Funding source (federal, state, local) used to pay for the labor/forces related to installation of the equipment purchased with FA funds.

Six (6) scenarios for determining which contract and program requirements apply- **LAP Agreement** or the **Federal Highway Funds Agreement**- are identified in **Table 6: Federal-Aid Equipment Purchases Delivery Method Determination Matrix** on the next page.

2.13.2 PROJECT EVALUATION CRITERIA

FHWA evaluates its traditional and discretionary programs based on published guidelines or Notice of Funding Opportunity (NOFO) found on their webpages: <https://www.fhwa.dot.gov/specialfunding/index.cfm#fa> and <https://www.grants.gov>.

2.13.3 PROJECT APPLICATIONS

Project applications for special or discretionary FA programs are generally submitted directly to FHWA by the LA. Other FA projects that are designated as non-traditional by definition are prioritized and adopted in the Department's Work Program per the **FDOT Work Program Instructions Part IV**.

Table 6: Federal-Aid Equipment Purchases and Eligible Project Delivery Methods

Transaction	Forces (Labor) to Install Equipment		Funding Source to Pay for Forces (Labor) to Install Equipment		LAP Certification Required (Yes/No)	Agreement Type	Federal Requirements
	Local Agency Forces Install	Contractor Hired to Install	Federal-Aid Funds	Local Agency Funds			
FDOT GIVES EQUIPMENT TO LOCAL	X			X	No	Federal Highway Funds	Cost-effectiveness Finding required for LA force account installation work Build America, Buy America (BABA), NEPA, Uniform Act apply FDOT Form No. 525-010-42 (Final Inspection and Acceptance of Federal-Aid project) submitted by LA FDOT provides Final Project Acceptance by signing FDOT Form No. 525-010-42
FDOT GIVES EQUIPMENT TO LOCAL		X		X	Yes	LAP	All LAP requirements apply.
FDOT REIMBURSES LOCAL FOR EQUIPMENT (in-kind replacement, no new design)	X			X	No	Federal Highway Funds	Cost-effectiveness Finding required for LA force account installation work BABA, NEPA, Uniform Act apply FDOT Form No. 525-010-42 (Final Inspection and Acceptance of Federal-Aid project) submitted by LA FDOT approves work by signing FDOT Form No. 525-010-42

Table 6: Federal-Aid Equipment Purchases and Eligible Project Delivery Methods

Transaction	Forces (Labor) to Install Equipment		Funding Source to Pay for Forces (Labor) to Install Equipment		LAP Certification Required (Yes/No)	Agreement Type	Federal Requirements
	Local Agency Forces Install	Contractor Hired to Install	Federal-Aid Funds	Local Agency Funds			
							FDOT holds 5% retainage until Final Inspection Form is approved by FDOT.
FDOT REIMBURSES LOCAL FOR EQUIPMENT (upgrade of existing components/new design)	X		X		Yes	LAP	Cost-effectiveness Finding required for LA force account installation work. All LAP requirements apply, triggered by upgrade of existing components and/or new design required.
FDOT REIMBURSES LOCAL FOR EQUIPMENT AND INSTALLATION	X		X		Yes	LAP	Cost-effectiveness Finding required for LA force account installation work. All LAP requirements apply.
FDOT REIMBURSES LOCAL FOR EQUIPMENT AND INSTALLATION		X	X		Yes	LAP	All LAP requirements apply.

Notes to **Table 6**: All equipment purchased with Federal-Aid Highway Program funding. The type of FA 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 LA, 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>.

2.14 RESOURCES

[Partnering with FDOT: A Resource Guide for Local Governments](#)

[FDOT Work Program Instructions](#)

[FHWA/FDOT Stewardship & Oversight Agreement](#)

FHWA webpage: <https://highways.dot.gov/>

FHWA Special Funding webpage:
<https://www.fhwa.dot.gov/specialfunding/index.cfm#fa>

[Defining and Managing Emergency Relief Repair Activities Eligible for 100% Federal Funding - ER - Federal-aid Programs - Federal-aid Programs and Special Funding - Federal Highway Administration \(dot.gov\)](#)

FHWA ITS Operations Memo issued September 25, 2019:
<https://ops.fhwa.dot.gov/plan4ops/resources/memorandum/itsprocurementmemo092519.htm>

FDOT Office of Policy Planning: <https://www.fdot.gov/planning/policy>

FDOT Local Programs: <https://www.fdot.gov/programmanagement/LP>

US Government webpage: <https://www.grants.gov>

CHAPTER 4 GRANT APPLICATION PROCESS

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4.1 OVERVIEW

[Grant Application Process](#) or “**GAP**” is the Department’s web-based database application for soliciting and receiving applications for grant funded projects and project management of the grants after award. Multiple offices in the Department use **GAP** to manage LA delivered projects that are funded through the various grant programs administered by the Department. Other offices, outside of Local Programs (**Chapter 2**), that manage their grant programs in **GAP** include:

- Design
 - Highway Beautification
- Planning
 - Shared-Use Nonmotorized Trail (SUN)
 - Transportation Alternatives (TA)
 - Metropolitan or Transportation Planning Organizations (MPOs/TPOs)
- Safety
 - Safe Routes to School (SRTS)

New grant programs may be added to **GAP** as they are created by Federal or State laws.

This **Chapter** is intended to provide additional details on Department processes, policies or business rules that are not included in the **GAP Help Guide**. When logged into the GAP database, in the upper right-hand corner a link titled “Help” takes the user to a **GAP Help Guide**, this guide covers the functionality of the system- (i.e.) how to load a document, how to view a project, etc. A copy of the guide is also posted on the [Local Programs](#) homepage.

The Department grant managers and the LAs shall use **GAP** and applicable information systems as required by the Central Office program managers and by the Department’s grant agreements, manuals, policies and procedures. The Department reserves the right to request LAs upload additional information, above the minimum identified in the **LPM**, to **GAP** as applicable.

For Local Programs projects, documentation requirements are identified in each chapter of the **LPM** for the LA project managers, and associated review and/or approval or concurrence requirements are identified for Department project managers.

4.2 USER ACCESS

Requesting access to **GAP** requires the user to determine which type of access they

would need based on their role in the system. Department staff and in-house consultants working on behalf of the Department request access permission through the Department’s **Automated Access Request Form (AARF)**. LA staff and consultants working on behalf of a LA request access through the **GAP** “Request User Access” portal located on the homepage.

Users who change employers or positions do not need a new account created. When a current user changes employers, but still requires access to **GAP** in their new employment, they may submit an AARF change request when a Department role is needed or LA users submit the Request User Access form with the updated contact information.

4.2.1 User Roles that Require an AARF

AARF access is required for the following Department user roles:

- **GAP** System Administrator – manages all system data, grants access to others, resets passwords, and has administrative rights to modify system settings.
- **GAP** Statewide Access – manages all statewide project data, including add and delete capabilities for project information.
- **GAP** District Access – manages all project data within the District, including some add and delete capabilities for project information.
- **GAP** District/In-house Consultant – same access as a District staff person, but is restricted access to confidential documents stored in **GAP**.
- **GAP** Audit Access – Read only access to statewide data for the purpose of auditing, includes FHWA users. Does not include add or delete capabilities for project information.

The AARF must include the [Acceptable Use Agreement form](#) and the user’s certificate of completion showing the [FDOT Security CBT](#) is complete. The AARF is approved by the user’s manager and cost center manager per the Department’s computer security requirements and procedures.

Once the user is added to **GAP**, they may also request to be added to group roles in **GAP**. Group options for Department users in **GAP** include:

- Milestone Monitor – users assigned this role receive all system emails from **GAP** for the District or State access level they are assigned. District users receive all emails for projects and/or applications in their District. Statewide users receive all emails for projects and/applications in the State. This role cannot be assigned by grant program.

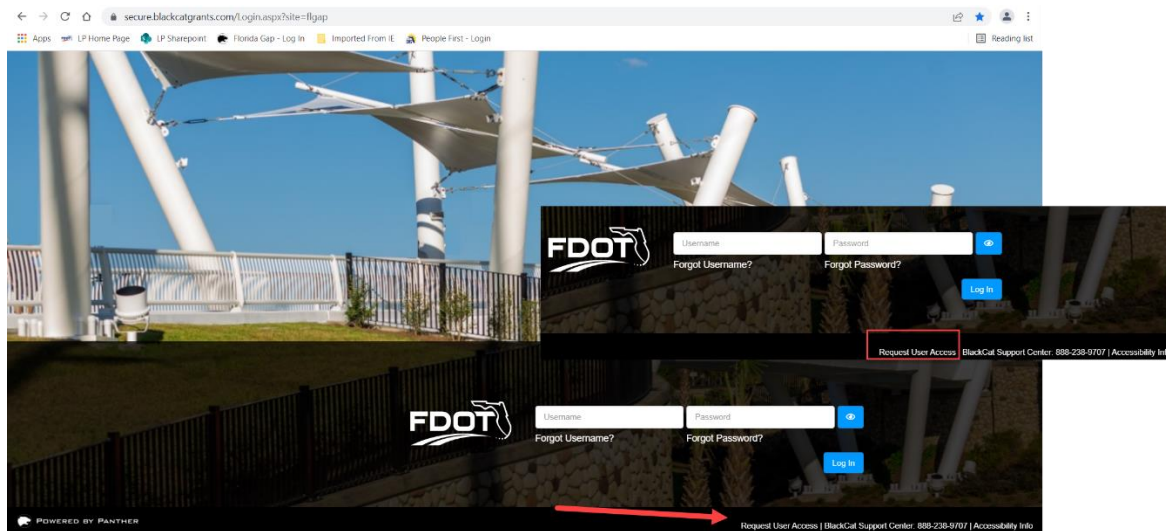
- Invoice Compliance Monitor – users assigned this role receive system emails from GAP related specifically to agreement invoicing for the District or State access level they are assigned. District users receive all emails for project invoices in their District. If local agency or Department users would like to receive project specific invoice emails, please see Section 4.2.4. This role cannot be assigned by grant program.
- Lead Reviewer – users assigned this role perform completeness reviews of new applications received. When the Lead Reviewer marks the application complete, **GAP** moves the application to the designated “application reviewer”. If the application is incomplete, the Lead Reviewer triggers a notification to the LA of the actions, if any, required to complete the application.
- Application Reviewer – users assigned this role are responsible for the review and scoring of applications as required by the program.
- Program Manager – user designated to perform the final review and mark applications as funded or unfunded in **GAP**.

Additional information on reviewer roles is located in the *Help Guide, Section 4*.

4.2.2 Local Agency Staff User Roles

LA staff (and their consultants working directly for a LA) request access through the portal on the **GAP** homepage at www.flgap.com as shown in *Figure 1*.

Figure 1: GAP Homepage, Request User Access



LA staff roles allow the users to perform functions, including but not limited to:

- edit organizational information.
- add or edit new contacts or user information (does not include granting system access to others).
- add, edit, or delete project applications.
- add or delete project managers for each agreement.
- add, edit, or delete project documents.
- add, edit, or delete confidential documents.
- add, edit, or delete project invoices.
- add or edit local agency contract tab information.

It is the responsibility of the LA primary point of contact or project manager to review and verify consultant access requests to their organizational or project information in **GAP**.

4.2.3 Local Agency Consultant User Roles

LA staff and consultants working with LAs have different roles in **GAP**. LA consultant roles allow the user to perform a more limited range of functions based on associations with specific projects or at the organizational level.

Organizational level access is required for consultants working on or submitting project applications for new funding awards. LA consultants assigned access at the organization level have access to:

- view and download new application materials needed to apply for projects.
- view, add, edit, or delete project applications created by the consultant user.

Consultants cannot view project applications stored in **GAP** that are created by other users, which mitigates the potential for conflicts of interest.

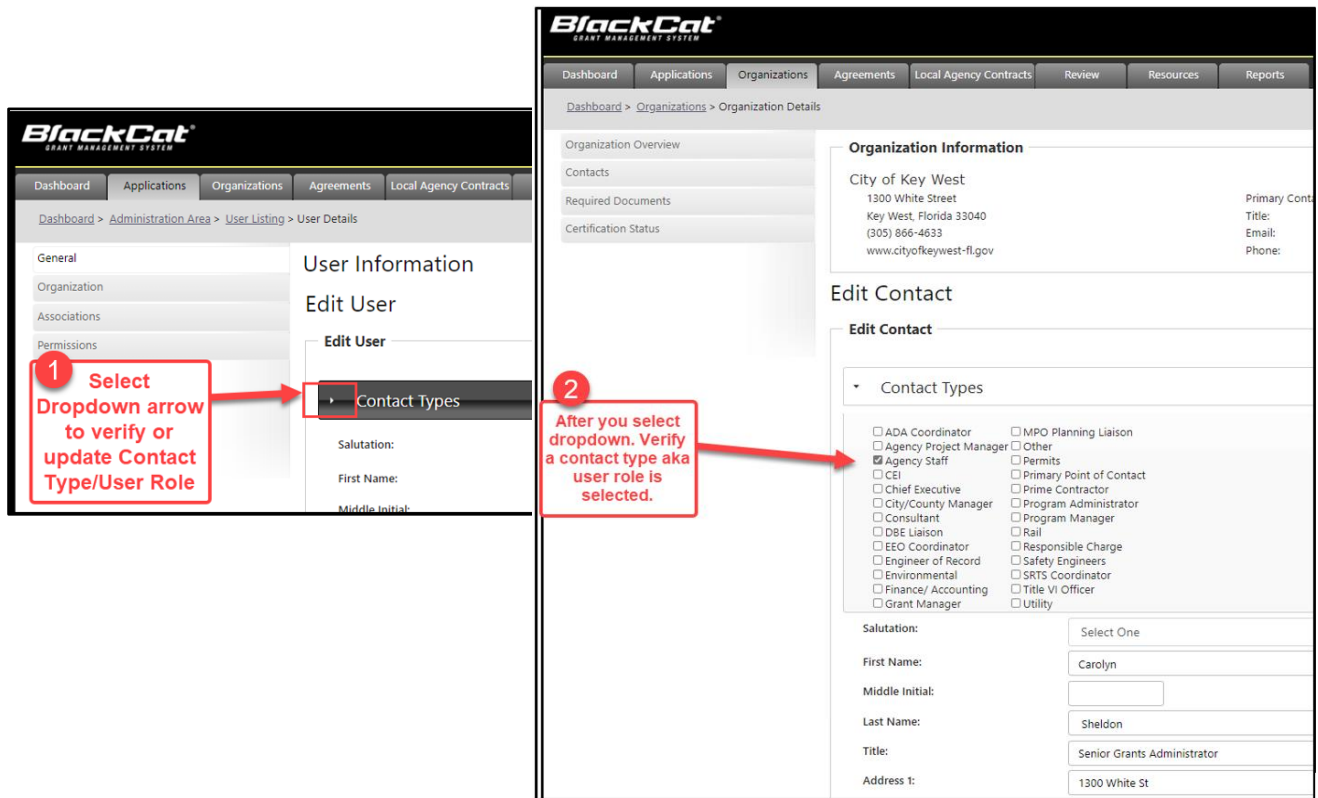
Project specific access is limited by project phase and is required for consultants managing or delivering phases of work for individual projects. LA consultants assigned access at the project specific level have access to the same project data that a LA staff user has for the project phase(s) they are assigned, with the exception of documents that are marked confidential. Document appears with a lock symbol next to the name displayed in **GAP**. The LA is responsible for mitigating for conflicts of interest when granting access to consultants for multiple phases of work.

LA consultants requiring access at the project specific level must be assigned as a “Key Contact” by a Department or LA staff user on the Agreements tab. See the [Assigning Consultants to Projects](#) guide on the Local Programs homepage or the **GAP Help Guide**,

Section 6 for instructions.

4.2.4 Contact Types

Appropriate contact types need to be selected, if known, when creating a new contact or user in **GAP**. LA staff users can update their own contact types and update their other LA contacts under the *Organizations tab, Contacts subtab*. The Contact Types menu is expanded by clicking on the arrow next to the title. Primary point of contact, consultant, responsible charge and invoice compliance monitor contact types are used to associate users in other areas of **GAP**. To give the user access to only invoices for a particular project, the additional step of adding the user as the "invoice compliance monitor" must be done on the *agreement→details→key contacts* page.



4.2.5 Password Resets

Password resets may be requested on the **GAP** homepage by clicking either "Forgot

Username” or “Forgot Password” features located below the login boxes. Password reset emails are sent to the email address of record in the system tied to the user profile. If a user changes employers, they will not be able to use this function to reset their password. When this occurs, a request to change their user information, which includes an updated email address, must be provided as specified in **Section 4.2**.

4.2.6 Troubleshooting User Access

In some cases, LAs and consultant firms have firewalls that block the **GAP** user access emails from their inbox. If you have requested access or a password rest and do not receive an email within one (1) business day, your internal network security settings may be the reason. A [User Access Guide](#) document posted to the Local Programs homepage has tips for how to work with your network support team to enable access to **GAP** and/or receive system generated emails.

4.3 ADDING NEW PROJECTS TO GAP

Adding a new project in **GAP** requires the Department grant manager to associate the project to the LA in PSEE using the LA’s Vendor identification (ID) number, and also entering the same Vendor ID in **GAP** on the Organizations tab. Vendor IDs are also required on the grant agreement and is used to direct payments to the authorized mailing address designated when the LA Vendor ID was issued by the Florida DFS. LAs usually have multiple Vendor IDs and it is the responsibility of the LA to provide the correct number to the Department grant manager.

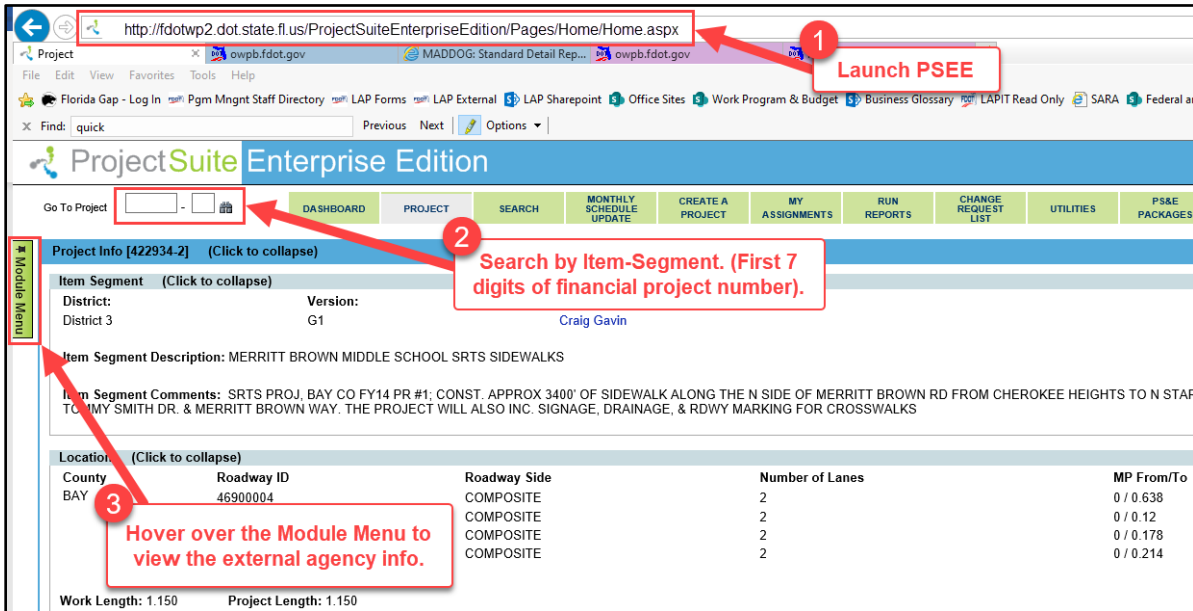
4.3.1 Adding Vendor Identification to PSEE

Department project managers are assigned edit capabilities in PSEE for every project. If project managers encounter issues updating PSEE they contact the District PSEE coordinator. LA staff cannot perform this function, as this is an internal only module in PSEE.

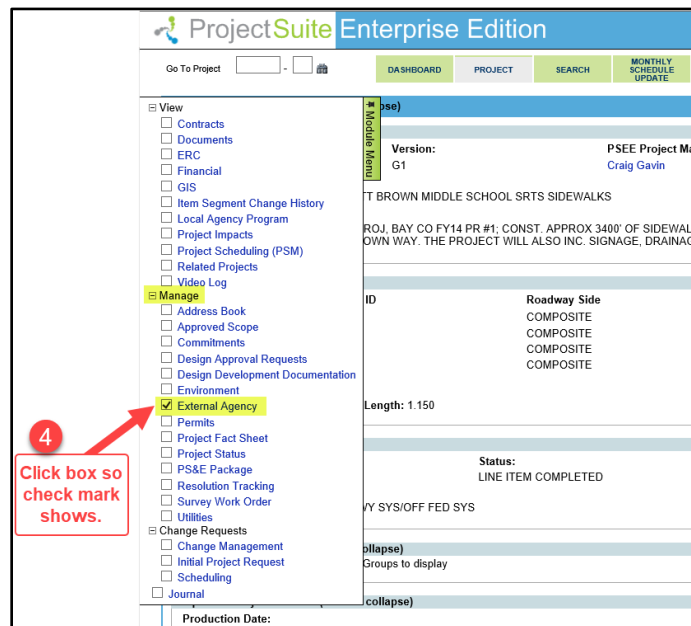
The steps for adding Vendor ID information in PSEE are as follows:

1. Launch PSEE at:
<http://fdotwp2.dot.state.fl.us/ProjectSuiteEnterpriseEdition/Pages/Home/Home.aspx>
2. Click in the “Go To Project” boxes and search by item number and segment number and click the binoculars icon to initiate search.

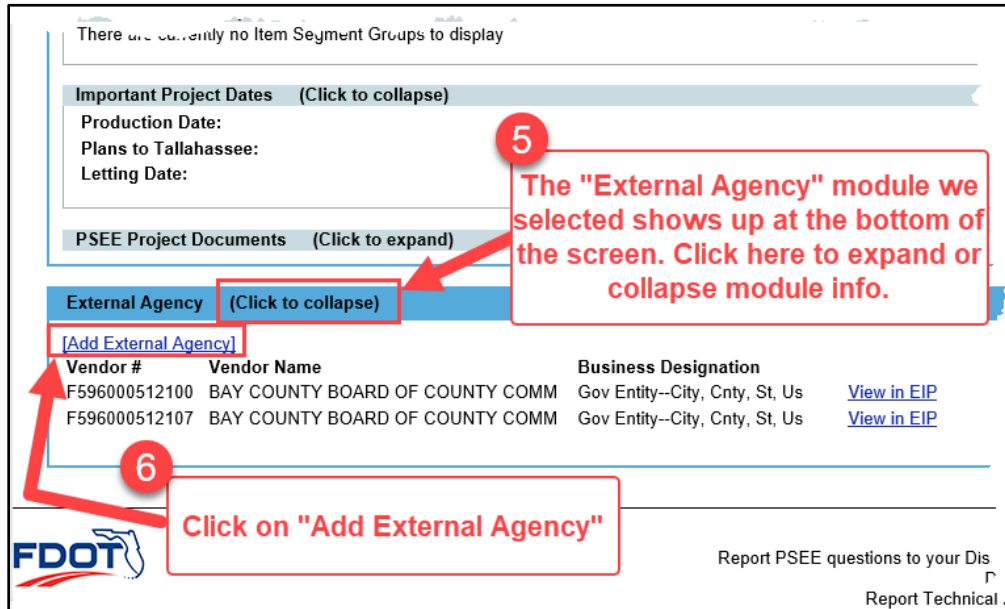
3. Hover over the module menu on the far left side to view the available modules.



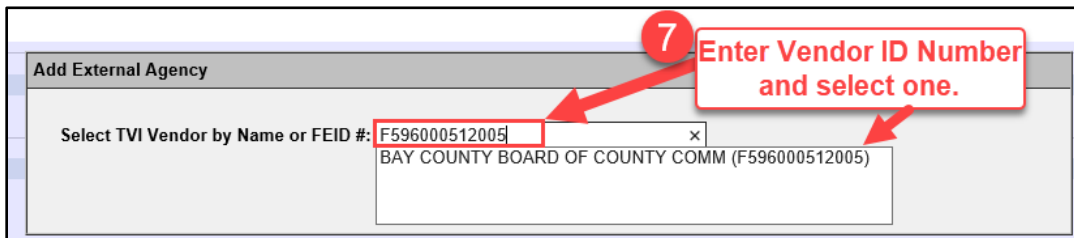
4. Locate the "external agency" module and click the box next to the module name, which will populate the module information to the screen. New modules appear at the bottom of the page, generally.



- Click on the dark blue bar with the module name to expand or collapse the module details.



- Click on "Add External Agency" and a pop-up box will appear.
- Enter the Vendor ID and it will appear in the menu as shown here. The box has a type ahead feature and will narrow the list as you enter more characters. Note that most LA Vendor IDs first 10 digits are the same and the last 4-5 characters will vary. Be sure and select the correct Vendor ID for the project.



- Click Save and you are done! Repeat if more than one LA is managing a project, this is rare, but may occur.

Select TVI Vendor by Name or FEID #: BAY COUNTY BOARD OF COUNTY COMM

BAY COUNTY BOARD OF COUNTY COMM [F596000512005]

Vendor Type	Address Location Name	Location Address	Address Purpose
State Vendor	BAY COUNTY BOARD OF COUNTY COMM	P O BOX 2269 PANAMA CITY, FL 32402	Purchasing Address
State Vendor	BAY COUNTY BOARD OF COUNTY COMM	P O BOX 2269 PANAMA CITY, FL 32402	Remittance Address

Click Save → Save Cancel

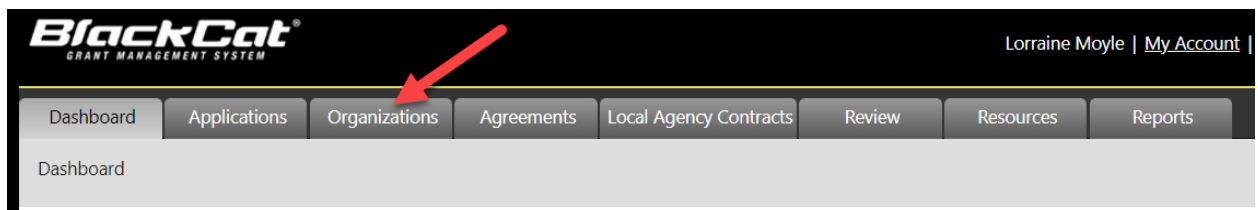
9. If you receive this pop-up box when you hit Save you will need to request edit capabilities for your project in PSEE through your District PSEE Coordinator.



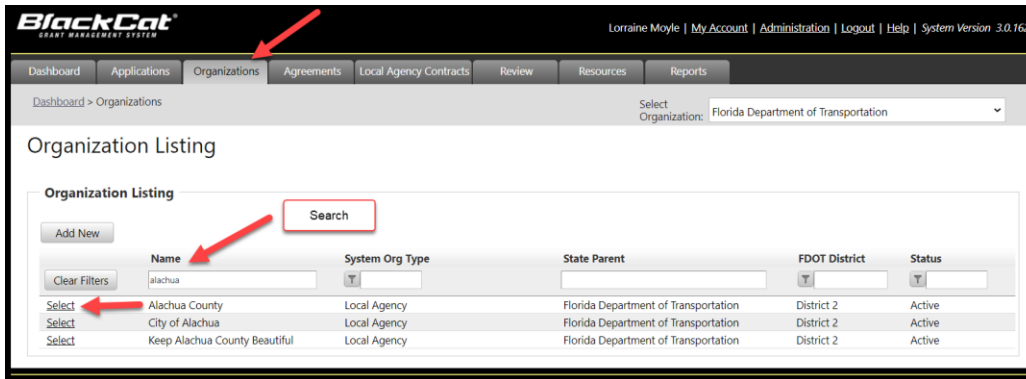
4.3.2 Adding Vendor Identification to GAP

LA staff users or Department users may update Vendor ID information in **GAP**. The steps to adding Vendor ID information in **GAP** are as follows:

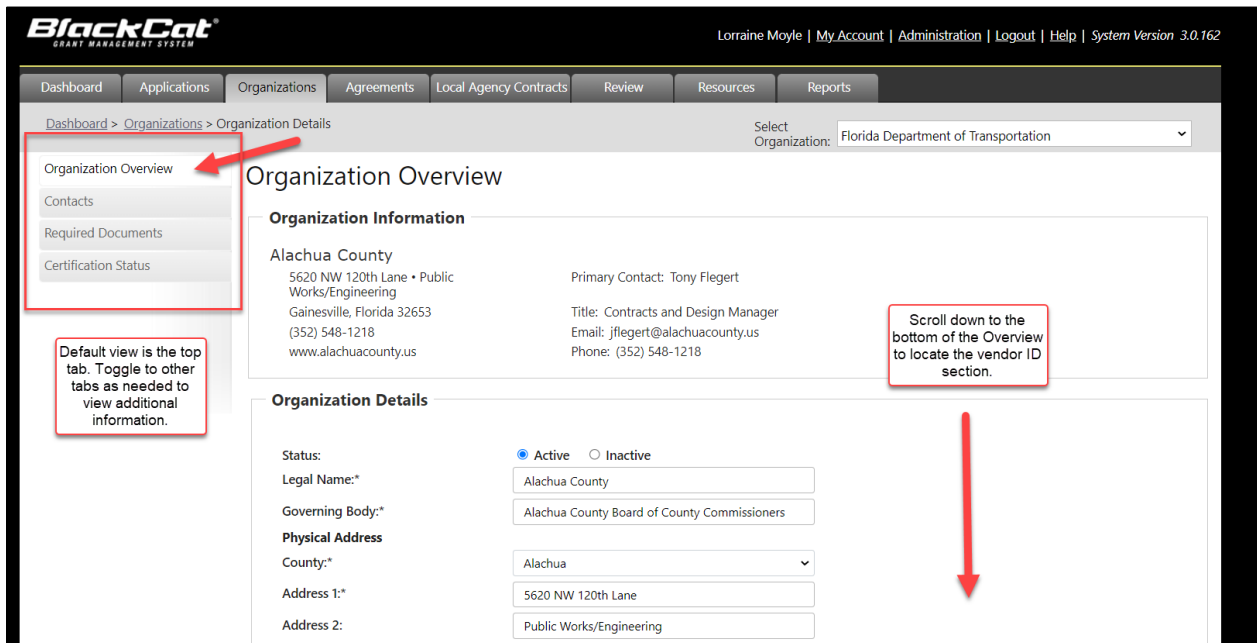
1. Launch **GAP** at: www.flgap.com
2. Login to **GAP** with your user credentials. See **Section 4.2** for instructions on how to obtain user credentials or reset a password.
3. Click on the "Organizations" tab in the top menu bar.



- District or statewide users can use the search function to find the name of the LA needing an edit. Department and LA staff click "Select" in the Organization Listing to open the LA or organization profile.

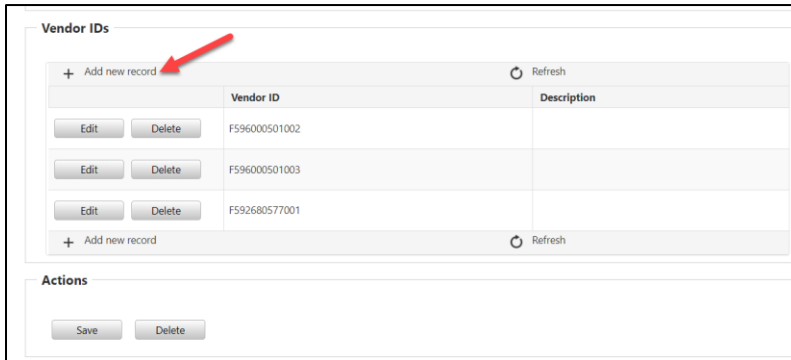


- Clicking "Select" opens a new view - "Organization Overview". Use the left hand menu tabs to toggle as needed. The Vendor ID function is near the bottom of the Organization Overview page. Scroll down to locate Vendor ID display box.

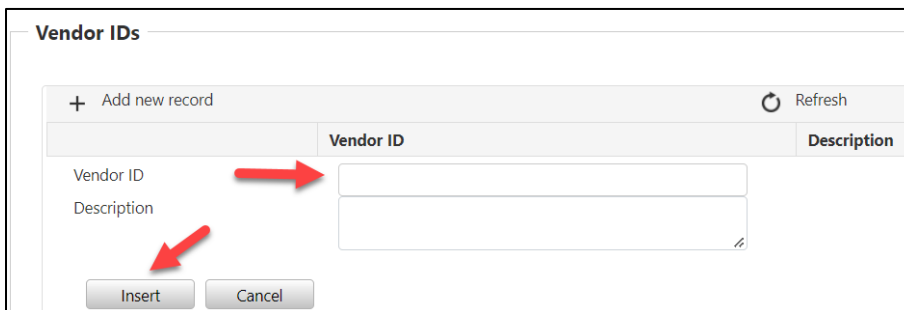


- Review the Vendor IDs populated to **GAP** for the matching ID entered into PSEE. If a matching record exists in both **GAP** and PSEE, the project will appear in **GAP** in 1-2 business days.

7. If a matching record does not exist in **GAP**, the user adds the Vendor ID to the organization's profile. Click on the words "add new record" to open the add new record function.



8. Type in the Vendor ID. Adding a description is optional. Once the Vendor ID is typed in the box, click on "Insert" to populate the information to the organization's Vendor ID records. This saves the new Vendor ID to the organization overview.



9. The project will appear in **GAP** in 1-2 business days.

4.3.3 Adding Vendors for Local Agency Contracts with Contractors and Consultants

LAs award contracts to contractors and consultants and are required to enter the contract details information in GAP. Vendors must be registered with the Department of Management Services, My Florida Marketplace portal to appear in GAP (and EOC). When the LA creates a contract screen in GAP and cannot find the vendor name or FEID in the search field, the local takes the following steps (additional information and screenshots of the fields are located in the **GAP Help Guide**):

1. LAs search for FEID or Vendor name yields no matching results.
 - a. The complete 10-digit FEID must be entered in the search box to yield a result.
 - b. A minimum of 5 characters must be entered to search by vendor name.
2. LAs direct their vendors to register for free in [My Florida Marketplace](#). Registrations may also expire and need to be re-activated.
3. LA notifies CO-Localprograms@dot.state.fl.us when the new vendor has registered with My Florida Marketplace.
4. Local Programs unit submits a service desk ticket to refresh the data feed from My Florida Marketplace and the vendor will appear.
5. Local Programs unit emails a confirmation back to the LA that the data feed is up to date.
6. LA logs into GAP, navigates to the contract tab, and performs the search function to locate and add the vendor information.

4.4 ADDING NEW PROGRAMS TO GAP

Adding a new program in **GAP** requires the Department to provide the system developer with the programming logic identified in the **Work Program Instructions** and/or in the OOC [Grant Disbursement Agreements Procedure No. 350-030-060-a](#). Current programs in **GAP** are identified in **Table 1**.

Table 1: Grant Programs in GAP

CSFA (only available in FLAIR)	Grant Programs	Budget Category	Program Number	Special Instructions	Work Program Instructions
20.205	Local Agency Program (LAP)			Phase X8 and Contract Class (CC) 5	Part III – Ch 17
20.205	Metropolitan Planning Organizations (MPO)	088854		Category and Phase X4	Part III – Ch 22
20.205	Non-Traditional Federal Grants		SUBR	Phase X4 and CC 4	Part IV – Ch 4

CSFA (only available in FLAIR)	Grant Programs	Budget Category	Program Number	Special Instructions	Work Program Instructions
55.003	Florida Highway Beautification Grant Program - Keep Florida Beautiful	088850	42	Use Category and Program Number	Part III – Ch 16
55.008	County Incentive Grant Program (CIGP)	088572	87	Use Category and Program Number	Part III – Ch 7
55.009	Small County Outreach Program (SCOP)	085576	93	Use Category and Program Number	Part III – Ch 31
55.016	Small County Road Assistance Program (SCRAP)	085575	94	Use Category and Program Number	Part III – Ch 32
55.039	Local Transportation Projects	088862	LP	Use Category and Program Number	Part III – Ch 8
55.039	Local Transportation Projects FY 18, FY 19, FY 20	088862	LP	EM 18, EM19, EM20	Part III – Ch 8
55.026	Transportation Regional Incentive Program (TRIP)			Phase X4 and TR%	Part III – Ch 39
55.038	Florida Shared-Use Nonmotorized (SUN) Trail Network Program			Phase X4 and TLWR	Part III – Ch 38
	Florida Job Growth Grant Fund		FJ		Part 3 – Ch 9
	Economic Development Transportation Fund (EDTF)		SED		Part III – Ch 9

To request additional grant programs be added to **GAP** the Central Office program manager must contact the Local Programs unit in the Office of Program Management, who will work with the **GAP** contract manager and the system developers to complete the request.

4.5 CONFIDENTIAL DATA

Confidential consultant and contractor cost data is stored in GAP as part of a project’s contract file. Project documents that contain confidential cost data must be loaded in GAP to the secure storage locations under the Agreements\Tracking tabs. Secure document locations are marked in GAP by a “lock” symbol:

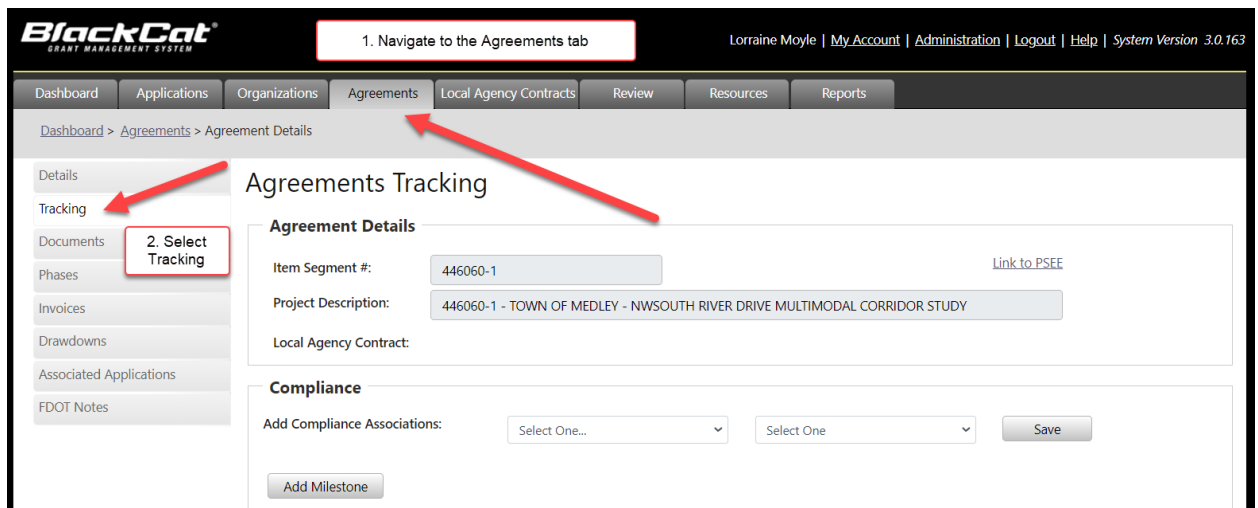


Loading files to these designated locations in GAP also ensures when the files are shared with the Department’s EDMS system, the files are also marked confidential in EDMS and are not accessible to unauthorized users.

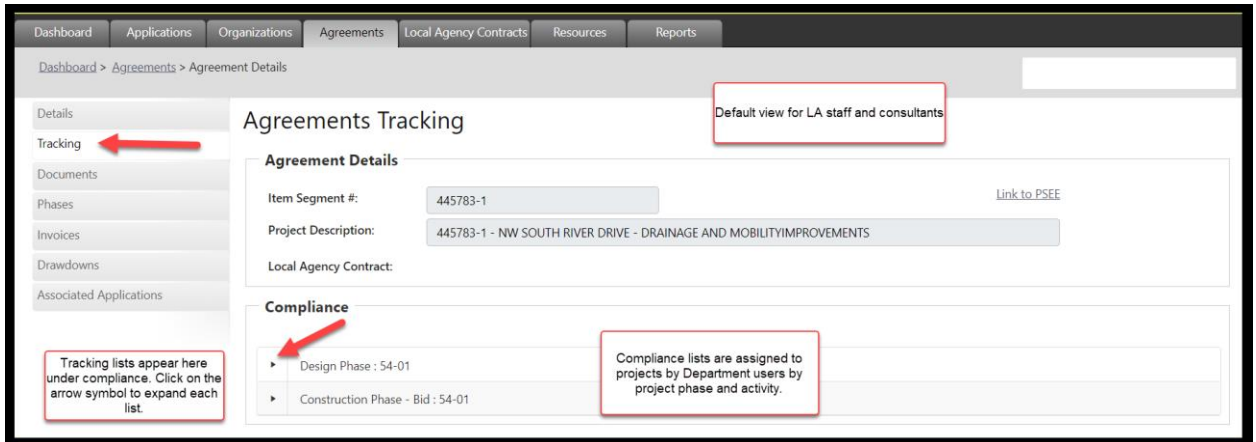
Files containing confidential information will be deleted from GAP immediately and it is the LAs responsibility to load the file in the correct location. Department staff will not download, save, and reload project files that were loaded by LA staff originally.

Visual guides are provided here for navigating to the secure storage location in GAP:

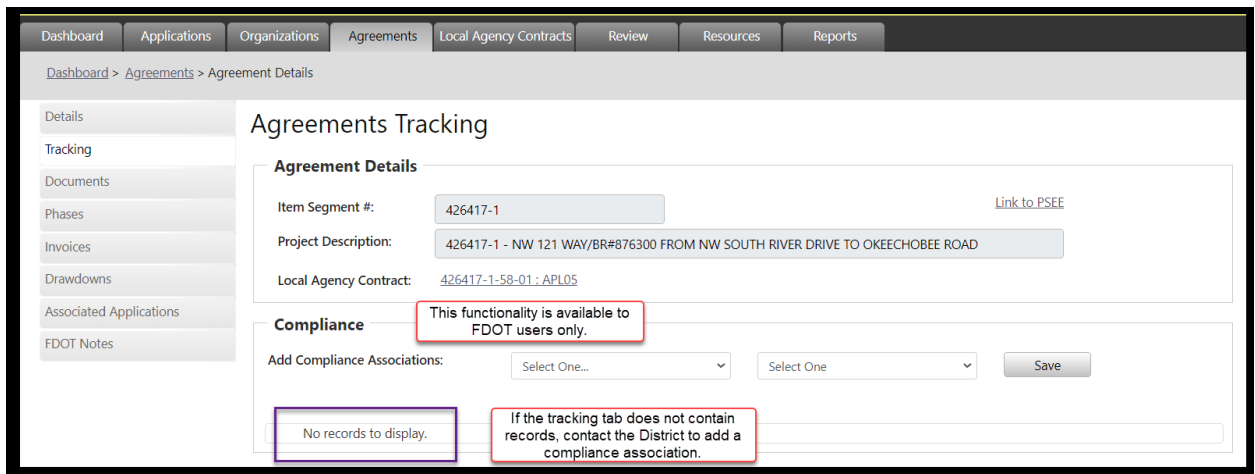
1. Navigate to the Agreements tab by clicking on the word Agreements in the menu of tabs across the top of the screen.
2. Next select Tracking in the left-hand menu by clicking on the tab.



- LA staff and consultants view Agreement Details and Compliance modules on the screen. The user expands and closes the tracking lists by clicking on the right-facing arrow symbol. If the Tracking tab does not have compliance list(s) populated, skip to step 4 for further instructions.



- LA staff must contact their District project manager to populate the Tracking list of documents. Department users have access to the Compliance Association module, which functions to load preset lists of project documents or “project trackers” to the tab. A project phase may have more than one activity. Repeat the add process to populate each tracking list needed. Detailed instructions for how to add a list is provided in the **GAP Help Guide**.



- Expand a tracking list and scroll up and down the page to view the list. Each item or "milestone" denotes a Department monitoring requirement in the LP Manual. Secure milestones are marked with a lock symbol. All users with access may upload documents to each milestone with a cloud symbol. Consultant users cannot download documents with the lock symbol.

Agreement Details

Item Segment #: 446060-1 [Link to PSEE](#)

Project Description: 446060-1 - TOWN OF MEDLEY - NWSOUTH RIVER DRIVE MULTIMODAL CORRIDOR STUDY

Local Agency Contract: 446060-1-18-01 - 2020-2016

Compliance

Professional Services Procurement - 18-01

Milestone Edit/Delete	Milestone	DOT Review/App	Upload/Download/	Latest Activity	Date/Time	LAPIT Date
	FDOT: Notice to Proceed					
	Organization: Public Advertisement		☁		3/26/2020	
	FDOT: Concurrence to Advertise				3/17/2020	
	Organization: Final Request for Qualifications/Request for Proposal Package as Advertised		☁			
	Organization: Addenda to the RFQ/RFP		☁			
	FDOT: Concurrence with Addenda to Advertisement					
	Organization: Vendor Eligibility Verification reinsurance		☁			
	Organization: Negotiations Documentation		☁			
	Organization: LA Notice of Intent to Award		☁			
	Organization: Draft Professional Services Contract		☁			
	FDOT: Concurrence with Professional Services Contract Award					
	Organization: Professional Services Consultant Contract		☁		3/16/2021	
	Organization: LAP Professional Services Checklist executed		☁			
	Organization: Consultant Notice to Proceed- Professional Services		☁		3/29/2021	
	Organization: Consultant Contract Amendments		☁			
	FDOT: Concurrence with Professional Services Contract Amendment(s)					
	Organization: Task Work Order (Continuing Contracts only)		☁			
	FDOT: Concurrence with Professional Services Task Order Award					
	Organization: Consultant Performance Evaluation		☁			

Annotations:

- Agency users cannot add or delete milestones. Department users may add and delete milestones as needed.
- Files are uploaded to each milestone with a cloud symbol.
- Secure file locations for documents containing confidential data are marked with the lock symbol. Consultant users can upload documents to the secure milestones, but cannot download the documents.

- Department users may edit, delete and add milestones as needed. Each milestone allows one document to be loaded. If there are multiple documents, they can be merged and loaded under one milestone or a new milestone may be added for the additional versions. New milestones added must be marked "confidential" when appropriate.

The image shows a screenshot of a web application interface. On the right is the 'Add New Milestone' form, and on the left is a table of existing milestones. Red boxes and arrows highlight specific features and actions.

Add New Milestone Form:

- Milestone Name:
- Section:
- Phase-Sequence:
- DOT Review?:
- Confidential?: (highlighted with a red box and a callout: "Select the box to mark the new milestone as confidential.")
- Can Upload Document?:
- Save Milestone:

Compliance Section:

- Add Compliance Associations:
- (highlighted with a red arrow and callout: "Click to add new milestones to an existing tracker.")

Milestones Table:

Milestone Edit/Delete	Milestone	DOT Review/Api	Upload/Download	Latest Activity	Date/Time	LAPIT Date
<input type="checkbox"/> <input type="checkbox"/>	FDOT: Notice to Proceed					
<input type="checkbox"/> <input type="checkbox"/>	Organization: Public Advertisement					3/26/2020
<input type="checkbox"/> <input type="checkbox"/>	FDOT: Concurrence to Advertise					3/17/2020
<input type="checkbox"/> <input type="checkbox"/>	Organization: Final Request for Qualifications/Request for Proposal Package as Advertised			Uploaded By: Emmanuel Perez	3/21/2022 2:31:36 PM	
<input type="checkbox"/> <input type="checkbox"/>	Organization: Addenda to the RFQ/RFP					

4.6 RESOURCES

[Acceptable Use Agreement form](#)

[Assigning Consultants to Projects](#)
[User Access Guide](#)

[FDOT Security CBT](#)

[Grant Application Process](#)

[My Florida Marketplace](#)

PSEE (only accessible to Department users):
<http://fdotwp2.dot.state.fl.us/ProjectSuiteEnterpriseEdition/Pages/Home/Home.aspx>

[Procedure No. 350-030-060-a Grant Disbursement Agreements](#)

[Work Program Instructions](#)

Reference Part IV, Chapter 1: Overview of Major Programs (Federal-aid) and individual program chapters listed in the table of contents.

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5.1 OVERVIEW OF FINANCIAL MANAGEMENT

Financial management of State and Federal projects in practice follows similar guidelines and standards. LAs must have the capacity to receive and manage Federal and State financial assistance, along with the capability to determine which quantifiable costs are allowable, reasonable, and allocable under the terms and conditions of the agreement(s) for the disbursement of Federal and State financial assistance. [Section 215.971, F.S.](#) establishes requirements for agreements funded with Federal or State financial assistance. The grant agreement and LA financial management of the projects are connected; therefore, financial management information is organized in two chapters.

- **Chapter 5, Grant Agreements (Part I)**
- **Chapter 6, Invoicing, Payment and Audit Standards for Project Costs (Part II)**

5.1.1 Basis of State Requirements

Section 215.971, F.S. establishes requirements for agreements funded with state (or Federal) financial assistance. In addition, [Chapter 69I-5, Florida Administrative Code \(F.A.C.\), Rules of the Department of Financial Services – Schedule of Expenditures of State Financial Assistance](#), [Department Procedure No. 350-030-060-a Grant Disbursement Agreements](#), and the [Florida Department of Financial Services \(DFS\) Reference Guide for State Expenditures](#). There are numerous other resources that inform or affect financial management of state funds. The Department's Statewide Financial Assistance Office ensures the Department's compliance with Florida DFS requirements.

5.1.2 Basis of Federal Requirements

Federal financial management and cost principles are regulated primarily under [2 CFR 200](#) with additional requirements for Federal-aid projects captured under **Title 23 Highways** and **Title 48 Federal Acquisition Regulations (FAR)** of the CFR. Financial management under **2 CFR 200** includes requirements for both monitoring subrecipients' financial management of Federal subawards and how to determine eligible costs for Federal-aid participation. Federal cost principles are detailed in **2 CFR 200, Subpart E** and the **FAR** found in [48 CFR 1.31](#).

5.1.3 Department Grant Managers

Department grant managers manage the grant agreements, or contracts, between the Department and the subrecipient LAs. Contract management includes adherence to the unique Federal and state grant program requirements administered in the LP Offices

statewide. The Department's grant managers prepare agreements, review and approve invoices, assess subrecipient financial risk to the program(s), and perform award monitoring from project kick off through close out of the agreement at project end. LP grant managers' contact information is found on the LP website here: <https://www.fdot.gov/programmanagement/lp/lap/lapcontacts.shtm> .

Non-traditional Federal-aid awards with FHWA funds may be managed outside LP and in an office of the Department that is determined to match the scope of the project. For example, a FHWA grant for railroad crossing improvements may be managed by the District Rail Office. The grant agreement will identify the Department grant manager and provide their contact information. For assistance identifying Department contacts on non-traditional Federal awards, you may also contact the State LP Administrator in Central Office.

Other state and Federal subrecipient grant and funding programs and projects are managed in various offices:

- Design:
 - Highway Beautification
- Planning:
 - Shared-Use Nonmotorized Trail Network (S.U.N.Trail)
 - Transportation Alternatives (TA)
 - Metropolitan or Transportation Planning Organizations (MPO/TPOs)
- Modal Development:
 - Rail
 - Seaports
 - Aviation
 - Transit
- Safety:
 - Highway Safety Improvement Program (HSIP)
 - Safe Routes to School (SRTS)
 - National Highway Traffic Safety Administration (NHTSA)
- Traffic Operations:
 - Grants to purchase or provide traffic control equipment (i.e. signal heads, pedestrian signals, etc.), may include funds for installation by the maintaining agency.

5.2 OVERVIEW OF GRANT AGREEMENTS

Grant agreements and the governing procedures (as applicable) for most Department programs are posted to the Department's Procedural Document Library found here: <https://pdl.fdot.gov/>.

A grant agreement is a contractual agreement between the grant recipient or subrecipient LA and the Department, which provides the scope, funding and terms and conditions of the award. An agreement is prepared for each locally delivered project funded in the Adopted Five-Year Work Program (AWP). Federally funded projects must also be approved in MPOs' Transportation Improvement Program (TIP) and the Department's State Transportation Improvement Program (STIP) approved by the FHWA per [23 CFR 450.220\(a\)\(b\)](#). A project that is added in the current State fiscal year (FY) must be adopted in the AWP prior to executing the grant agreement and, as applicable the TIP/STIP prior to requesting Federal Authorization required to execute a Federal-aid grant agreement. Federal-aid projects added to the AWP in the first quarter of the state fiscal year, July 1st to September 30th, must be added to the 2nd year of the currently approved STIP during this three-month period. This is because the new STIP reflecting the AWP adopted July 1st will not be approved by FHWA until October 1st annually. This must be considered during the project scheduling process.

Department grant agreements are standardized documents reviewed and approved by the Office of General Counsel, Office of the Comptroller, and the related grant program manager. Standard provisions of the grant agreements and the corresponding exhibits cannot be modified without approvals from the Office of General Counsel, the Office of the Comptroller, and the Central Office grant program manager. Each grant agreement includes financial and audit provisions that set forth the how, when, why, and what the Department will reimburse on a LA administered project. In addition, the Department grant manager must follow monitoring procedures as set forth by **2 CFR 200.331** before preparing the grant agreement for execution between the Department and the LA.

5.3 RISK ASSESSMENT AND MONITORING PLANS

[Chief Financial Officer Memo No. 6 \(2011-2012\) Contract Monitoring and Documenting Contractor Performance](#) and **2 CFR 200.331(b)** require each Federal and State grant program to have a process for assessing risk and developing an appropriate monitoring plan. The risk assessment and monitoring plan are the responsibility of the grant manager and must be documented in the contract files.

Risk assessments may include, but are not limited to:

- Size and complexity of the award
- Subrecipients experience and expertise
- Subrecipients past performance
- Subrecipient staff turnover
- Timely invoicing and consistent progress
- Single Audit results as detailed in the subrecipients' annual financial statements.

Monitoring plans must be developed *prior* to the execution of the grant agreements and take into consideration the results of the risk assessments. Monitoring plans include review and approval of invoices and performance targets. Corrective action plans are developed as needed throughout the project life cycle for those subrecipients not meeting the program or project delivery requirements.

A sample risk assessment for state grant programs is available to grant managers in ***Department Procedure No. 350-030-060 Financial Assistance Requirements for Grant Disbursement Agreements***. Generally, State programs are treated as high risk and monitored the same across districts. If Districts want to implement a scaled risk assessment program, the risk template provided in ***FDOT Procedure 350-030-060*** is available for use. Scaled risk assessment programs may be effective to address project delivery issues such as late invoicing or delays due to LA performance. ***FDOT Procedure 350-030-060*** provides guidance on implementing corrective actions and use of the risk template.

5.3.1 Federal-Aid Project Requirements

The Department is required to assess risk of grant award subrecipients in compliance with [2 CFR 200](#) and the ***FDOT-FHWA Stewardship and Oversight Agreement***. Both, LAP and nontraditional Federal-aid awards require a risk assessment and monitoring plan at the project level. Central Office, LP works with each District grant manager to complete a programmatic risk assessment of the LA. The LA is evaluated to determine an overall risk level – high, elevated, moderate, or low. The grant manager uses the LA's risk level as the basis to develop the project level monitoring plan(s) as required by ***2 CFR 200.331***.

The risk assessment includes, but is not limited to, the following areas:

- Review of the LA's Single Audit reporting package for the most recent audit year and/or for the most recent audit year in which the LA was a subrecipient of the Department.

- Review of the LA's invoicing history on past projects.
- Identification of the LA responsible charge. The Department may consider past performance of the designated responsible charge, as applicable to **Chapter 7.4**.
- Review of past performance evaluations for LAP projects.
- Review of LA compliance with mandatory training as required by **Chapter 7.5.4**.
- Review of the LA's Title VI and other nondiscrimination program services as detailed on the LAP [Sub-Recipient Compliance Assessment \(SCAT\) Tool](#).

Risk may be reassessed at any time it is deemed necessary by the Department or corrective actions become necessary for the LA to demonstrate maintenance of satisfactory accounting controls and project delivery processes.

Using the determined programmatic risk level, the District grant manager develops a monitoring plan for each Federal sub-award where the LA's risk is not "Low". Additional monitoring requirements identified in the plan will be implemented and followed through by the grant manager during the project. "**Minimum Monitoring Plan Requirements for Federal-aid Projects**" **LPM chapter sections** with corresponding tables are included at the end of each applicable **LPM** chapter that establish minimum monitoring requirements for the activities associated with the chapter's content. Additional guidance and risk assessment templates for both LAP and nontraditional Federal-aid awards are available on the LP website.

5.4 COST ANALYSIS

[Section 216.3475, F.S.](#) requires agencies to maintain records to support a cost analysis for grant agreements and the grant manager must certify a cost analysis has occurred prior to award. Detailed estimates of total projects costs are required to be evaluated prior to awarding Federal or State financial assistance. In addition, **CFR, Title 23 Highways** includes specific conditions for estimating and developing detailed costs in support of Federal-aid awards.

In addition, the AWP must reflect all funding sources- local, Federal, and State funds as applicable. The total project phase costs, as supported by the cost analysis, must be programmed regardless of the amount of Department funds awarded for the project phase(s).

The statutorily required certification statement is incorporated into the Department's grant agreements' financial assistance exhibits (**Exhibit B**) and supporting documentation of the estimated costs must be maintained in the project files for review upon request.

5.5 FINANCIAL PROVISIONS FOR GRANT AGREEMENTS

The grant agreements identified in **Section 5.6** are required by the Florida DFS, **s. 215.971 F.S.** and [FDOT Topic No. 350-020-301 Financial Provisions for Department Funded Agreements](#), to include the following financial provisions:

- A provision specifying the scope of work that clearly establishes the tasks that the subrecipient is required to perform.
- A provision dividing the scope of work into quantifiable units of deliverables that must be received and accepted in writing by the LA before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed the criteria for evaluating the successful completion of each deliverable.
- A provision specifying the financial consequences that apply if the subrecipient fails to perform the minimum level of service required by the agreement.
- A provision specifying that a subrecipient of Federal or State financial assistance may expend funds only for allowable costs resulting for obligations incurred during the specified agreement period.
- A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the State agency.
- A provision specifying that any funds paid in excess of the amount to which the subrecipient is entitled under the terms and conditions of the agreement must be refunded to the State agency.
- Single Audit requirements for Federal and State subrecipients.

Grant agreements identify the Catalogs of State Financial Assistance (CSFA) and Federal Domestic Assistance (CFDA), and corresponding programmatic requirements the project(s) is subject to for Single Audit. CFDA is transitioning to Assistance Listing Number (ALN) with the launch of *Florida Palm*, the new Florida DFS financial management enterprise system.

In addition to the required provisions, the Department also specifies within the grant agreements the periodic and final invoicing requirements for the projects. Specific invoicing requirements and payment procedures are discussed in **Chapter 5, Part II**. By executing the grant agreement(s), the LA is agreeing to the grant program requirement(s) to maintain financial activity through timely submission of invoices.

5.6 GRANT AGREEMENTS BY FUNDING PROGRAM

The grant agreements are standardized as much as possible. Each of the Department's

grant agreements identify:

- Subrecipient(s)
- State financial project number (FPN)
- if applicable the Federal-aid Identification Number (FAIN)
- Department agreement number (i.e. G0000)
- type of funds
- LA vendor identification number
- if applicable Federal Unique Entity Identifier (UEI) numbers *
- total funding amount of the project from all sources- local, Federal, and State
- beginning and end dates of the agreement
- the maintaining agency responsible for all improvements upon final acceptance of the project.
- CSFA or CFDA (aka ALN) Number

Effective April 4, 2022, the Federal government is transitioning from using the Date Universal Numbering System or “DUNS” number to the UEI assigned by SAM.gov for all Federal awards. This number is required by **2 CFR 200.332 for reporting Federal awards per the [Federal Funding Accountability and Transparency Act](#).*

In addition, the agreements contain all Federal and State required contract language regarding payment, records retention and audits, non-discrimination, Single Audit, etc. The District grant manager will select the appropriate grant agreement for the LA project.

A grant agreement may be executed for multiple project phases spanning multiple fiscal years, but a separate encumbrance and/or Federal authorization request (as applicable) is required to initiate each phase of the project. The LA will receive a separate Notice to Proceed (NTP) for each action. Work performed prior to the full execution of a grant agreement and the issuance of a required Department NTP is not eligible for reimbursement under the grant agreement.

Subrecipients should also note that Federal-aid grant agreements cannot be fully executed until Federal funding authorization is provided by the FHWA. The FHWA must approve the initial Federal authorization and the Department must issue a NTP before work begins or costs are incurred on a Federal-aid project, with the following exceptions:

- Emergency repairs performed immediately after a declared disaster to keep roads and bridges open to essential traffic. See **Chapter 13** for further details on FHWA’s Emergency Relief (ER) Program.

- Professional services procurement may be initiated prior to Federal authorization, but authorization must be received prior to the contract execution between the LA and the consultant. See **Chapter 14** for further details on professional services procurement.

Districts must associate local funds (LF) on Federal-aid projects per the **FDOT Work Program Instructions (WPI)** and [Federal Aid Technical Bulletin 16-03 Revised 11-10-2021.docx \(sharepoint.com\)](#). The Department is required to report the total project cost of the project to FHWA. If the LA provided additional local funds to the project for contract price adjustment, District Federal-Aid Coordinators must update the associated funds in the Department's Federal Authorization Management System (FAMS) and send the project to FHWA for reporting total project cost.

Grant agreements executed with a non-profit entity require additional language per **Governor's Executive Order 20-44**. District grant managers must contact the Statewide Financial Assistance Coordinator when preparing grant agreements for non-profit entity projects.

5.6.1 State Funded Programs Grant Agreements

1. The [State Funded Grant Agreement \(SFGA\), Form No. 525-010-60](#) is required for use when a LA receives State financial assistance under the State grant programs identified in **Chapter 2**. New programs may be created by the Florida Legislature in any given year; therefore, the list may be expanded with the addition of new State funded grant programs. The SFGA must also be used when a [S.U.N.Trail Network](#) project includes funding from one or more of the State grant programs listed in **Chapter 2**.
2. The [SFGA – County Incentive Grant Program \(CIGP\) Municipality Letting, FDOT Form No. 525-010-60c](#) is for use when a municipality receives a CIGP award. The boilerplate is a tri-party agreement that requires execution by the municipality, the County where the municipality is located, and the Department as required by [s. 339.2817\(5\) F.S.](#)
3. The [Supplemental SFGA, FDOT Form No. 525-010-60b](#) is required to amend a SFGA or amend a [SUNTrail Agreement](#).

Use of the **SFGA, Form No. 525-010-60** is required for the disbursement of General Appropriations Act line-item projects (a.k.a. earmarks) that are placed in an appropriation category such as Local Transportation Projects (088862), unless the Office of General Counsel recommends a customized grant agreement. Customized agreements are

appropriate when the scope of work does not conform to the typical delivery of roadway projects. All custom grant agreements must be reviewed and approved by the Office of the Comptroller and the Central Office, LP unit prior to execution with the LA. Line-item projects are not linked to a specific State financial assistance program or activity authorized by F.S.

5.6.2 Federal-Aid Funded Programs Grant Agreements

1. The [LAP Agreement, Form No. 525-010-40](#) is required for use when a LA is awarded Federal-aid funds from the FHWA for work or activities specifically identified in the definition of “construction” in **23 USC 101(a)(4)**. When projects combine State and FHWA financial assistance, the projects must be delivered via LAP and conform to both Federal and State rules, laws, and regulations.
2. The Department’s boilerplate for non-traditional or uncategorized Federal awards, [Federal Highway Funds Subrecipient Grant Agreement \(525-010-70\)](#) is recommended for use when the funding is under CFDA/ALN No. 20.205, but the award falls under one of the exceptions identified in **Chapter 2** and the project does not need to adhere to LAP requirements for delivery. LAP Certification is not required of the LA under this method of delivery.
3. The [Local Agency ER Agreement, FDOT Form, No. 350-000-15](#) is for use when a LA receives an award to complete emergency repairs to their transportation network that occurred as a result of a declared emergency (governor or presidential). The FHWA ER Program is detailed in **Chapter 13**.

The District grant manager is responsible for requesting a FAIN from the District Federal-Aid Coordinator for each new Federal-aid project. This is done **before** drafting the Federal-aid grant agreement. The District Federal-Aid Coordinator must assign a FAIN to the related financial project(s) phase(s) in the AWP before the initial Federal Authorization is requested. If needed, additional related phase(s) may be added later during the life of the project by modifying the Federal authorization per the **FDOT WPI**. Refer to the **Federal Aid** portion of the **WPI** for complete instructions on the specific steps and time frames necessary to obtain initial Federal authorizations for all types of transportation projects. Additional information may also be found in [FDOT Procedure No. 350-050-005 Federal Project Authorizations](#).

FAIN should not be assigned any earlier than one calendar year before the Department fiscal year in which the project will be authorized.

5.6.3 Grant Agreement Content and Exhibits

During this preparatory stage, the grant manager will request an updated project scope, schedule, and estimate to incorporate into the grant agreement as required by both Federal and State laws and rules (**s. 215.971 F.S.; 23 CFR 630 Subpart A; Appendix II of 2 CFR 200**).

The District grant manager will draft the appropriate grant agreement incorporating the project related identifiers (e.g. State and Federal project numbers, county number, recipient vendor number), funding type, scope, schedule and estimate as applicable. Each grant agreement lists required and optional exhibits. Agreement exhibits are also standardized across local grant programs as appropriate. Additional customized exhibits approved by the Department’s Offices of General Counsel and Comptroller may be manually entered and described in the master agreement and attached thereto. Exhibits cannot be determined or fully completed without a detailed scope, schedule, and estimate provided by the LA.

Note: Exhibit B represents the total estimated cost of the project. The Department reserves the right to adjust Federal funding at the time of the LA’s contract award to the actual contract award amount. See **Section 5.4.3 for an expanded description of this procedure.*

Table 1 provides the exhibit numbers, titles, definitions, and identifies when and to which grant agreement the exhibit may be attached.

Table 1: Grant Agreements Exhibits				
EXHIBIT NUMBER	EXHIBIT TITLE	DEFINITION	REQUIRED USE	OPTIONAL USE
A	Project Description and Responsibilities	Identifies the project limits, scope, schedule, and any special considerations applicable. Special considerations are inclusive of, but not limited to, alternative funding agreements and participating and non-participating costs, or identifying any project requirements set forth that deviate from the LPM .	LAP, FED, SFGA	
	Detailed Damage Inspection Report (DDIR)	DDIR form approved by FHWA and FDOT that provides the scope and estimated costs of the emergency repair.	ER	
B	Schedule of Financial Assistance	Records the total funds allocated to the project from local, Federal and State sources, the project phases funded, and the State FY in which the funds are available.	LAP, FED, ER, SFGA	

Table 1: Grant Agreements Exhibits				
EXHIBIT NUMBER	EXHIBIT TITLE	DEFINITION	REQUIRED USE	OPTIONAL USE
C	Title VI Assurances	Nondiscrimination language required in all Federal-Aid contracts and subcontracts.	LAP, FED, ER	
	Engineer's Certification of Compliance	Construction certification form required to close out construction phase	SFGA	
D	Recipient Resolution	LA governing board(s) resolution, or other form of official authorization, must authorize its officers to execute the agreement with the Department. Resolutions describe and endorse the project.	LAP, FED, ER, SFGA	
E	Federal Financial Assistance (Single Audit Act)	Provides audit requirements for Federal Awards by clearly identifying the Federal resources awarded to the agency and information to help LAs determine their applicability to the Single Audit and other Federal grants policies. Contact the Office of Comptroller, Statewide Grants Section, for questions and assistance.	LAP, FED, ER	
F	Contract Payment Requirements	Florida DFS, Reference Guide for State Expenditures Cost Reimbursement Contracts required on all grant agreements.	LAP, FED, ER, SFGA	
G	FHWA 1273	Required for all Federal-aid construction projects. The LA is also required to attach to all Federal-Aid construction contracts, subcontracts, etc. Reference <u>FHWA 1273</u> for detailed applicability.	LAP, FED, ER	
H	Alternative Advance Payment Financial Provisions	Applicable when a LA is reimbursed without proof of payment to a contractor or consultant. Payments must be approved by the Department's Comptroller under s. 334.044(29), F.S.		LAP, FED, SFGA
I	Final Inspection and Acceptance of Federal-Aid Project	Applicable to Federal Discretionary grants that include construction services performed by the subrecipient.	FED	
	State Funds Addendum	Applicable to grant agreements funded jointly with Federal and State grant program funds. When applicable to a grant, must also attach Exhibit J.		LAP, ER
J	State Financial Assistance (Florida Single Audit Act)	Provides the audit requirements for all State grant awards and is required for all State grant agreements. *Only for use on Federal grant agreements when Exhibit I is also used.	SFGA	*LAP, FED, ER

Table 1: Grant Agreements Exhibits				
EXHIBIT NUMBER	EXHIBIT TITLE	DEFINITION	REQUIRED USE	OPTIONAL USE
K	Advance Project Reimbursement	Applicable when project delivery is advanced in the AWP from the actual year funding is programmed and available. The LA may not be eligible for reimbursement until the State fiscal year in which the funding for the project is programmed. Advance project reimbursement must be approved by the Assistant Secretary of Finance and Administration.		LAP, SFGA
L	Landscape Maintenance	Applicable to non-SHS projects with landscaping in the scope. This is not required for sod adjacent to roadways, sidewalks, or trails.	LAP	FED, SFGA
M	Roadway Lighting Maintenance	Applicable to projects with lighting system installation in the scope.	LAP	FED, SFGA
N	Traffic Signal Maintenance	Applicable to projects with traffic signal and/or traffic signal components installation in the scope.	LAP	FED, SFGA
O	Terms & Conditions of Construction in Department Right of Way	Applicable to projects constructed in Department rights of way.	LAP, FED, ER, SFGA	

5.7 GRANT AGREEMENT PREPARATION AND EXECUTION

The Department grant manager prepares the draft agreement for routing and execution by both the LA and the Department. Prior to executing the grant agreement with the LA, the criteria listed below must be met for all projects that are partially or fully funded with grant funds.

- A. The project phase(s) must be included in Department's Five-Year AWP.
- B. State budget authority must be available for the Comptroller's Office to encumber the project funds prior to contract execution.
- C. LP grants are administered as reimbursement programs under Federal and State laws and rules. The LA must fully fund the total cost of the projects in their Capital Improvements Plan (CIP) or agency budget in the fiscal year the project appears in the AWP. The LA must consider the project schedule and whether its FY differs from that of the Department. **State FY is July 1 to June 30.** FHWA and most LA FYs are October 1 to September 30.

Additional steps required for Federal-aid projects are:

- D. The project phase(s) must be listed in the Department's Federally mandated STIP (with the exception of planning and emergency repair phases).
- E. If the project phase(s) is in an area represented by an MPO, the project phase(s) must also be included in the MPO's TIP.
- F. Federal authorization must be requested prior to executing the agreement. When prompted by the grant manager, the District Federal-Aid Coordinator prepares and electronically submits a Federal Authorization Request in FAMS to the Federal Aid Management Office in Tallahassee. The Federal Aid Management Office electronically transmits the request to FHWA for approval. The Federal award (approval) date must be included in the Federal grant agreements.

The District grant manager drafts the grant agreement in DocuSign™ and routes per District process for review, comment and execution by both internal staff and external LA staff. **Figure 1** shows the order of execution or signature for each grant agreement.

Figure 1: Grant Agreement Execution Routing Order



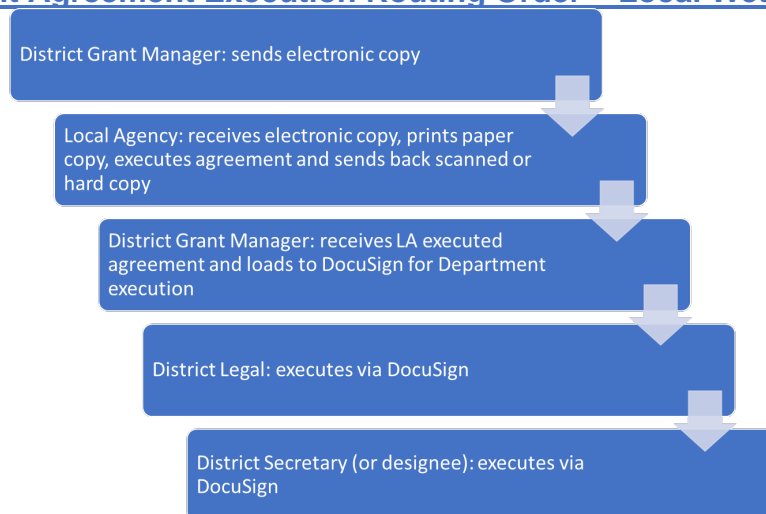
Use of the DocuSign™ technology furthers the Department's paperless initiative. Agreements can be accessed from any mobile device or tablet platform, home or office computer once routed for review and electronic signature in DocuSign™. In addition, the system does not require LA staff receiving an agreement from the Department to subscribe or pay for use. DocuSign™ is accessed from the following link: www.docuSign.net. For more information on how to use DocuSign™, the Department's Procurement Office has provided [an overview](#). A how-to video can be found on the Procurement Office's [website](#).

The DocuSign™ system allows the LA to respond to the District grant manager with comments if changes are required. The grant agreement must be executed by a LA official who is authorized to enter into contracts on behalf of the LA. Common officials are members of the governing body (e.g. commission, council, the mayor, County/City

Manager, County/City Administrator). The routing may be set up so that the agreement is received by a designated point of contact in the LA and then that person may forward or assign the agreement for “review” or “review and approval” to any LA staff (i.e., Legal, Administrative, Project Management) prior to final execution. The LA is also able to assign staff for informational purposes who do not need to review or approve the document but may need a copy.

LAs that require wet ink signatures for contract executions will receive an electronic copy of the grant agreement from the grant manager. The LA may print and execute the agreement in wet ink per their process and route back to the Department grant manager for final execution by the Department. The grant manager will scan the partially executed agreement and load to DocuSign for execution by all Department signatories per the process outlined in **Figure 2**.

Figure 2: Grant Agreement Execution Routing Order – Local Wet Ink Signatures



The Department will not provide hard or paper copies of agreements routed through DocuSign™. Agreements signed in the system are considered “original signature” and the LA may print paper copies of the electronic version as needed.

5.7.1 Local Agency Responsibilities

The LA shall review the content of the draft grant agreement carefully. The key elements of the agreement when incorrect that may delay payments, processing of supplemental agreements, or trigger a loss of funds are:

- Vendor Identification Number- required for reimbursement by the State.

- UEI number issued by the Federal government on SAM.gov.
- Expiration or end date of the agreement for consistency with the anticipated project delivery schedule.
- Project scope must include all eligible major activities for reimbursement. Major activities not identified in the original scope will **not** be eligible for reimbursement under the agreement.
- Previously identified non-participating items or special funding agreements must be identified in Exhibit A.
- Project limits and description.
- Local, Federal and State funding amounts reflect the total project cost for each phase of work.

5.7.2 Department Responsibilities

After receipt of the partially executed grant agreement from the LA and per the schedule identified in the agreement, the Department grant manager shall:

- For Federally funded agreements, send the Federal authorization of funds request to the District Federal-Aid Coordinator with all required supporting material for FHWA review and approval. The District Federal-Aid Coordinator will provide the Federal Authorization approval to the District grant manager.
- Request a funds approval from the Comptroller and enter contract information through FDOT's Contract Funds Management (CFM) system. Upon approval, the Comptroller's Office processes the encumbrance(s) in Florida Accounting Information Resource (FLAIR) and provides a FLAIR Funds Approval Letter to be included with the agreement for final signature. *Note: Contract information entered through the CFM system is transmitted to the DFS' [Florida Accountability Contract Tracking System \(FACTS\)](#). This information is required for all FLAIR encumbrances and the associated funds approvals.*
- Forward the grant agreement to the District Legal Office with the authorization and encumbrance approvals for final review and approval in DocuSign™.
- Forward the grant agreement to the District Secretary, District Transportation Development Director or their designee for final signature in DocuSign™.
- Execute the NTP if applicable.
- Upload the pdf of the grant agreement and NTP to the [FACTS](#) and to [Grant Application Process \(GAP\)](#). Retain copies in electronic files as needed. All documents loaded to GAP are automatically retained in the Department's **Electronic Document Management System** for retention in the project records.
- Forward an electronic copy of the agreement, resolution, and NTP to the District Financial Services Office for status change to be executed or refer them to FACTS.

- Forward an electronic copy of the agreement and the executed NTP to the LA or refer them to GAP.
- Confirm the Vendor ID included in the grant agreement is entered in both the Department's Project Suite Enterprise Edition (PSEE) external agency module and on the LA's organization information tab in GAP.

The Department contract number (always begins with a 'G') is generated by the CFM system, which uses the encumbrance process to tie the project's unique Department FPNs to the payee information associated with the LA's State vendor identification number and the necessary State legislative appropriation. If the project includes multiple phases, the same contract number may be used for all phases of the project. Commitments made by the Department for a project phase programmed in a future State FY are subject to the receipt of the necessary State legislative appropriation(s).

5.8 SUPPLEMENTAL AGREEMENT

A Supplemental Agreement (SA) is the contractual mechanism for making any change to the original grant agreement. When the LA becomes aware a change is required, it immediately contacts the Department grant manager. The Department grant manager prepares a SA form in accordance with the policies and procedures detailed in this section and routes through DocuSign™ for signatures. Department SA form numbers are found in **Section 5.13** of this chapter.

Changes may arise due to a variety of reasons. Examples of valid changes include, but are not limited to:

- Funding amount (+/-)
- Project limits (+/-)
- Scope (+/-)
- Project phases

These conditions may affect the Department's decision to reimburse specific pay items or work activities in the contract. The LA must provide detailed justification for all changes; some examples are change orders or bid tabulations. Requests for SAs must be submitted and approved prior to the expiration of the grant agreement. The Department does not require a resolution to be executed for SAs, but LA policy may vary.

5.8.1 Supplemental Agreements Without Funding Changes

SAs that do not require an increase or decrease in the project funding follow the same steps identified in **Section 5.8** minus the encumbrance of funds. For Federal-aid agreements, a request to modify the Federal authorization is required if the type of work identified in the original authorization changes.

The LA must submit detailed justifications for scope changes, including project limits to the Department grant manager. Not all scope changes are eligible for reimbursement, even if there are sufficient funds on the grant agreement to pay for those changes. Examples of participating and non-participating changes are identified in the [FDOT Construction Project Administration Manual \(CPAM\) Section 7.3.11](#) and [23 CFR 635.120](#).

5.8.2 Supplemental Agreements With Funding Changes

Changes to the project funding must be made in accordance with the **LPM** and the **WPI**. LA contract awards that exceed the original funding amount may be eligible for additional funds from the Department if available. An additional Federal Authorization Request to modify the initial Federal Authorization for Federal-aid projects to reflect funding changes for all sources (local, Federal and State) is required. The LA must explain and justify all changes and funds increases or decreases.

When a LA contract is awarded to a contractor or consultant for less than the Department funded amount, the Department may reduce the funding amount for reallocation to other prioritized projects awaiting funding. Federal-aid project funding amounts must be reduced along with the total Federal authorization amount as detailed in **Section 5.8.3**.

5.8.3 Federal-Aid Contract Award Adjustment Procedure

*This process is **not** applicable to LA contracts awarded at greater than the grant amount. See the WPI, Part II for instructions on how to amend the Federal authorization when a LA contract is awarded, or amended, to exceed the original Federal authorization amount. Federal authorizations must reflect the total cost of the project from all funding sources (Local, Federal, and State).*

In accordance with appropriations law (**31 USC 1501**) all Federal obligations (authorizations) must be supported by documentary evidence, such as a contract. In addition, **23 CFR 630.106(a)(4)** and the grant agreement "**Requisitions and Payments**" sections provide additional authority for the Department to adjust the agreement amount via SA if the LA contract is awarded for less than the original funding amount.

The SA must be executed within ninety (90) days per **23 CFR 630.106 (a)(3-4)**. The 90-day time clock begins when the Department concurs with the LA's recommendation to award. The first three steps are repeated for each contract award.

1. LA submits bid tabulation for construction contracts and/or negotiated cost exhibit for professional services contracts with a recommendation of award to the Department. See **LPM Part III- Contracting Methods and Practices** respectively

for more information on LA contract award processes and requirements.

2. The Department concurs with award.
3. The Department determines if there is a difference between the authorized funding amount of original Federal-aid grant agreement and the LA's contract award amount.

The difference between the agreement amount and the contract award amount will determine the District's responsibility to adjust the Federal funding authorized under the grant agreement via an SA per **23 CFR 630.106**. Three options are available to the Districts as described below.

Option 1: A SA is **not** required if the difference between the amount of authorized Federal funds under the agreement and the LA contract award amount is less than 10% of the total LA contract award amount **and** less than \$250,000.

Option 1 Example:

Grant Agreement = \$1 million
LA Contract Amount = \$950,000
10% Threshold amount = \$95,000
Difference = \$50,000
SA is not required.

If Option 1 is applicable:

- The authorized funds on the grant agreement in excess of the LA contract award amount may be utilized for changes in work as approved by District staff.
- If an LA authorizes or performs a change of work prior to receiving Department concurrence, the change will not be eligible for reimbursement. The LA will incur the entire cost of the changes per **Chapter 21**.
- Premium costs as defined in the Department's **Construction Project Administration Manual** or **CPAM**, are not eligible for reimbursement. Participating and non-participating costs shall be identified in writing and provided with the grant manager's concurrence for changes in work.
- Any remaining funds will be released once the contract is closed.

Option 2: An SA is required if the difference between the amount of authorized Federal funds under the grant agreement and the LA contract award amount is greater than or equal to \$250,000 (**23 CFR 630.106**).

Option 2 Example: Grant Agreement = \$1 million
LA Contract Amount = \$700,000
Difference = \$300,000
SA is required.

If Option 2 is applicable:

- A SA will be executed to adjust the authorized Federal funds under the agreement to match the LA contract award amount.
- The SA should be executed within 90 days from the date the LA's recommendation to award the contract is concurred with by the District. If the LA cannot receive governing body approval within 90 days, justification and an execution schedule must be submitted to the Department grant manager.
- All change orders added to the LA contract will require review and approval by the Department (per standard construction administration and oversight procedure found in **Chapter 21**).
- If changes are approved, eligible, and Federal funds are available, the Department grant manager will prepare an additional SA for LA execution.
- Modification of the initial FHWA authorization will be required for all funds added to a Federal-aid grant agreement in order to reflect total project cost by associating all State and local funds to the Department's FAMS which in turn updates FHWA's Fiscal Management Information System (FMIS) as required by **23 CFR 630.106** and **23 CFR 630.108**.

Option 3: An SA is required if the difference between the amount of authorized Federal funds under the agreement and the LA contract award amount is greater than 10% of the total LA contract award amount and less than \$250,000.

Option 3 Example: Agreement = \$1 million
LA Contract Amount = \$800,000
10% Threshold amount = \$80,000
Difference = \$200,000
SA is required.

If Option 3 is applicable:

- A SA will be executed to adjust the agreement amount.
- The District may adjust the Federal authorization to match the LA contract award amount or adjust the original authorization to an amount not to exceed the contract award amount plus a maximum of 10% of the LA's contract award amount.
- A variety of factors may influence how the District proceeds with adjusting the

Federal authorization; including, but not limited to- District budget, project scope, and/or funding agreements between the District and the agency.

- The SA should be executed within 90 days from the date the District concurs with the agency's recommendation to award the contract. If the LA cannot receive governing body approval within 90 days, justification and an execution schedule must be submitted to the Department grant manager.
- The authorized funds on the agreement in excess of the LA contract award amount may be utilized for eligible changes in work as approved by the grant manager.
- If a LA authorizes or performs a change of work prior to receiving Department grant manager concurrence, the change will not be eligible for reimbursement. The LA will incur the entire cost of the changes per **Chapter 21**.
- Premium costs as defined in **CPAM** are not eligible for reimbursement. Participating and non-participating costs shall be identified in writing and provided with the grant manager's concurrence for changes in work.
- Any remaining funds will be released once the contract is closed.
- If the LA requests additional funds from the Department due to changes in work, the grant manager will prepare an additional SA for LA execution if the changes are eligible for Federal participation and Federal funds are available at the time of request.
- Modification of the initial FHWA authorization will be required for all funds added to a Federal-aid grant agreement in order to reflect total project cost by associating all State and local funds in FAMS which in turn updates FMIS as required by **23 CFR 630.106** and **23 CFR 630.108**.

5.9 TIME EXTENSIONS

Grant agreements have defined beginning and end dates. The beginning date is the date of final contract execution by the Department and the end date is determined by the project scope and schedule. A LA is only eligible for reimbursement of project costs from the date the NTP is issued by the Department to the date the agreement expires. Any work performed after the expiration of a grant agreement will **not** be eligible for reimbursement.

If the LA cannot complete the project prior to the expiration date of the agreement, the LA must submit a request for time extension prior to the expiration of the agreement. A request for time extension shall include a detailed justification for the delay. Upon receipt of the request for a time extension, the Department grant manager shall review the justification and may request additional information as needed to process the time extension approval.

Time extensions are granted at the discretion of the Department. Some Federal-aid projects require FHWA approval, such as Projects of Division Interest (PODIs), which will be coordinated by the District grant manager. Time extension requests are approved by the Department grant manager and the District Transportation Development Director, and the District Financial Services Office needs to be notified to update the contract end date. When the Federal-aid project end date reported in the FAMS must be extended due to a time extension request, the Federal-Aid Coordinator must update the period of performance end date in FAMS and FHWA must review and approve the modification.

Time extensions may be granted via a formal SA Form or a two-party letter where both the LA and the Department sign and date the letter. If the District utilizes a letter to extend the grant agreement, the letter must reference the original agreement and both/all parties to the original agreement must sign the letter.

5.10 EXPIRATION OF AGREEMENT

Per the grant agreement, the LA will agree to complete its projects on or before a completion date that is agreed upon by the LA and the Department. The expiration of the agreement will be considered the termination of the project. Any work performed after the agreement's expiration date may only be reimbursed through a settlement agreement approved by the Department's Office of General Counsel and Executive Team. Work performed after the Federal Period of Performance end date and/or agreement expiration date(s) will not be eligible for Federal participation after this date.

5.11 TERMINATION OF AGREEMENT

A grant agreement may be terminated prior to the expiration date at the request of the LA or the Department per the grant agreement terms and conditions. Agreement terminations by the Department may occur for various reasons, including, but not limited to:

- Noncompliance as evidenced by an audit.
- Violation of the Federal and/or State laws and rules governing the grant program.
- Project continuation would not produce beneficial results commensurate with the further expenditure of funds.
- Recipient fails to comply with the Public Records provisions of **Ch. 119, F.S.**

Additional termination language is found in each grant agreement. The Department grant manager prepares a notice of termination and transmits to the LA in writing.

5.12 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Section 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the Federal award. Federal award date under Department process is considered the Federal Authorization date. **Table 2** contains the minimum financial and program monitoring requirements as determined by risk that must be incorporated into each monitoring plan. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

TABLE 2: Minimum Monitoring Requirements for Federal-Aid Projects		
MONITORING REQUIREMENT	REQUIREMENT DESCRIPTION AND ACTIVITIES	MINIMUM FREQUENCY BASED ON RISK LEVEL
Single Audit Review	Single Audit: OOC reviews Subrecipient's single audits in areas such as compliance, financial stability, disclosures of related party transactions, etc. for each year the project remains active. Results are reported to each grant program manager.	Annually
Period of Performance End Dates	FAMS requires project end dates input at initial authorization and are updated if a time extension is granted. End date revisions require justification. Process for establishing end dates is provided in the WPI.	End dates are reviewed and revised as needed with each time extension request received.
Time Extensions	Requests in writing to extend contract time to complete projects. GAP sends automated reports warning both locals and FDOT staff of expiring grant agreements.	Each time extension request is approved or denied in writing prior to the expiration of the agreement.
Agreement Modifications	Modifications to scope, schedule, cost or deliverables are requested in writing and include sufficient justification.	Supplemental Agreements are executed for modifications. Denials are issued in writing.
LA Contract Changes	Contract changes agreed upon between the LA and their consultant/contractor are documented, justified, and submitted in writing to the grant manager for approval prior to the LA implementing the contract change.	All contract changes are reviewed and approved prior to implementation by the LA. SAs or time extensions are issued as needed.

5.13 RESOURCES

[Local Programs Contacts](#)

[Section 215.971, F.S.](#)

[Section 216.3475, F.S.](#)

[Section 339.2817\(5\) F.S.](#)

[Section 55.03\(1\) F.S.](#)

[Florida Administrative Code \(F.A.C.\) Chapter 69I-5, Rules of the Department of Financial Services – Schedule of Expenditures of State Financial Assistance](#)

[Federal Funding Accountability and Transparency Act](#)

[Florida DFS Reference Guide for State Expenditures](#)

[2 CFR part 200](#)

[23 CFR Part 645](#)

[CFO No. 6 \(2011-2012\) Contract Monitoring and Documenting Contractor Performance](#)

[Florida Accountability Contract Tracking System \(FACTS\)](#)

[Procedure No. 350-030-060-a Grant Disbursement Agreements](#)

[Procedure No. 350-020-301 Financial Provisions for Department Funded Agreements](#)

[LAP Forms webpage](#)

[Form No. 525-010-40 Local Agency Program \(LAP\) Agreement](#)

[Form No. 525-010-60 State Funded Grant Agreement \(SFGA\)](#)

[Form No. 525-010-60c State Funded Grant Agreement – CIGP Municipality Letting](#)

[Form No. 525-010-60b Supplemental State Funded Grant Agreement](#)

[Form No. 525-010-70 Federal Highway Funds Subrecipient Grant Agreement](#)

[Form No. 350-000-15 Local Agency Emergency Repair \(ER\) Agreement](#)

[Form No. 525-010-53 Local Programs Invoice Template](#)

[Form No. 525-010-54 Local Programs Project Monitoring Report and Instructions](#)

[SUNTrail Agreement](#)

www.docuSign.net

[Contract Summary Form](#)

[Federal Discretionary Grants webpage](#)

CHAPTER 6

FINANCIAL MANAGEMENT: INVOICING, PAYMENT, AND AUDIT STANDARDS FOR PROJECT COSTS

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6.1 OVERVIEW

Financial management of Federal and State projects in practice follows similar guidelines and standards. LAs must have the capacity to receive and manage Federal and State financial assistance, along with the capability to determine which quantifiable costs are allowable, reasonable, and allocable under the terms and conditions of the agreement(s) for the disbursement of State and Federal financial assistance. [Section 215.971, Florida Statutes \(F.S.\)](#) establishes requirements for agreements funded with Federal or State financial assistance. The grant agreement and LA financial management of the projects are connected; therefore, financial management information is organized in two chapters.

- **Chapter 5, Grant Agreements (Part I)**
- **Chapter 6, Invoicing, Payment and Audit Standards for Project Costs (Part II)**

See **Chapter 5.1** for additional overview information including the bases for Federal and State requirements.

6.2 LOCAL AGENCY PROJECT SCHEDULES & FINANCIAL ACTIVITY

LAs must comply with their grant agreement's general requirements related to financial activity, which is dependent on LAs adhering to project delivery schedules and committed Department production schedules. To do this, LAs carryout projects in a sensible, economical, and efficient manner. To help the LA meet these general requirements and help to reduce LA project funds roll forward, each District shall consider the LA's typical project delivery schedule. The District works with the LA to develop the project schedule and ensure that the project milestone and completion dates are realistic and allows the LA to regularly invoice the Department per their grant agreement.

6.3 PAYMENT AND AUDIT STANDARDS

Eligible costs may vary by grant program due to the laws or rules that establish eligibility for the program. Do not assume because an activity and the related costs were eligible for reimbursement under one program or project, those same activities and related costs are eligible on all projects.

In addition, costs are reimbursable as determined by DFS, Florida laws and rules, Federal laws and rules, and the FAR cost principles as applicable. Applicable payment terms and conditions, along with audit requirements are included in each grant agreement entered into with the Department.

Common resources that provide eligibility references and examples:

- ***Exhibit F of the grant agreement “Contract Payment Requirements- Florida DFS, Reference Guide for State Expenditures***
 - ***Cost Reimbursement Contracts***
- ***FDOT Disbursement Operations Handbook***
- ***FAR, 48 CFR 1.31***
- ***FHWA Contract Administration Core Curriculum Manual (CACCM)***
- ***FHWA ER Program Manual***
- ***FDOT CPAM, Section 7.3.11*** has a list of common nonparticipating activities and items.
- ***LPM*** related chapters.

Rules of thumb:

- Funding type of the grant award is the primary method to determine eligible scope and costs. For example, there are more than 50 different fund types under the FAHP and while some align others are unique. TA funds cannot be used for road resurfacing. Bridge replacement or “BRZ” funds cannot be used outside the limits of the bridge.
- Ensure the grant agreement scope captures all intended activities and related costs. Adding scope after the agreement is executed may or may not be allowed. Activities and related costs for “unknowns” should be included if it is reasonable to suspect those elements may be required based on previous projects delivered in the immediate geographical area, such as environmental activities including Cultural Resources Assessment Surveys, archeological monitoring, or endangered species surveys.
- The LA is responsible for complying with Florida DFS guidance and requirements. When assistance is required from the Department, it is best practice for the LA to provide a specific list of costs they intend to invoice the Department for. For example, “fringe benefits” are generally eligible when reimbursing staff salaries for engineering work. There are also types of fringe benefits that are not allowed for reimbursement on State contracts, such as employee cell phone allowances that are not tied to a specific project. An allowability determination by the Department may be needed but cannot occur without the LA providing specifics.

State grant managers are required to review all costs to ensure they are quantifiable, allowable, reasonable, and allocable per **s. 215.971 F.S.** Eligible costs must be for the

benefit of the project being charged, i.e., labor performed directly for that project, supplies used up in the course of a project, materials required to build the project, services required to deliver the project, etc.

The keys to identifying and budgeting for all costs related to the project are:

- Early scoping and project feasibility reviews. Performing site visits at the application stage in project development is helpful in identifying needs vs. wants.
- Consider the project location and if your LA has any special development standards for the area. For example, a downtown master plan may regulate signs, paint, and other aesthetics related to new construction in the area.
- Consider the funding programs available for the type of project you are applying for and any programmatic limitations of that fund source.

Establish nonparticipating costs in writing in the grant agreement when possible; most common is to incorporate this information in **Exhibit A: Project Description and Responsibilities** under “*Special Considerations by the Department*”. If non-participating costs are identified after the grant agreement is executed, the District must communicate in writing the eligibility of the costs. The District may execute a SA to amend the original agreement when needed. The Department has various resources to assist in determining costs that may be ineligible or non-participating.

Generally, items required for safety, because no suitable alternative exists, or that meet established and clearly defined standards and criteria may be participating. While it can be frustrating that there is no “one size fits all” approach, the Department must make the determinations on a project-by-project basis due to the wide-ranging variables that arise in transportation project delivery by a LA. Cost eligibility varies from program to program, but also varies on whether the project is funded with Federal or State financial assistance, or both. The next section will discuss examples by project phase and by fund program to help further understanding on how the determination process works.

6.4 IDENTIFICATION OF ELIGIBLE AND INELIGIBLE COSTS

It would be impossible to provide every example of how and when cost eligibility varies by fund source or project phase and the types of work required to accomplish the phase deliverables. Other chapters of the **LPM** specifically address eligibility by phase of work or topic. For example, **Chapter 19: Right of Way Procedures** discusses what conditions would make participation in acquisition costs ineligible; therefore, those examples will not be repeated here. Establish items, services, and the related costs early in project development. Talk to your District! Notify them immediately or as soon as practical when

your LA suspects a good, service, or deliverable identified may not be required for project delivery.

Common examples of ineligible costs related to Federal and State funding sources and/or performing activities on any phase of work:

- Work outside the scope of the project.
 - Example: The LA constructs sidewalks on a resurfacing project that were not included in the approved design plans.
- Work performed outside of the department approved contract time.
 - Example: The LA starts work before the Department's NTP is issued.
 - Example: The LA allows its contract to expire, and work is not complete. Any work performed to complete the project after the expiration date is not eligible.
- Time extensions that lack justification and/or supporting documentation.
 - Example: A contractor requests thirty (30) weather days. Daily logs document ten (10) eligible weather days, but the additional twenty (20) days requested were not supported by the daily logs. The LA grants all 30 days without the proper justification demonstrating the weather days are warranted based on the daily logs. The Department will continue to participate in 10 days of work past the original contract end date as justified by the daily logs. The LA will incur the construction and CEI costs for the additional 20 days of work that lack supporting documentation. On FAHP projects, the 20 non-participating days past the contract time will be assessed liquidated damages.
- Contingencies. The Department is required to program a project based on actual estimates of project costs. Contingencies may be budgeted by a LA but would not be included in the Department's programmed amount for a project.
- Work performed outside the project limits or outside of the right of way. Ineligible costs include design or other professional services phase costs incurred to include the ineligible work in the Department approved Plans, Specifications, & Estimates (PS&E) package.
 - Example: A contractor is directed to tie into an existing sidewalk during construction. The sidewalk connects to a shopping center, and it is determined the sidewalk is owned by the shopping center and not within the public right of way. This work is not eligible as it occurs outside the public right of way. When Federal assistance is provided, the entire project may become ineligible due to noncompliance with the **Federal Uniform Act**.
- Work deemed to be non-compliant with applicable laws, rules, or standards.
 - Example: A curb ramp is built with a cross slope that does not meet the design plans and is not ADA accessible. The costs related to constructing

the deficient ramp and removing the deficient ramp are not eligible.

- Upgrades. Goods, services, or deliverables that considered upgrades or “premium” costs and would not be required to meet minimum design or construction standards in Florida are generally not going to be eligible for reimbursement with grant funding appropriated by the Legislature or by the FHWA.
 - Example: Department policy on the installation of mast arms allows for standard installation in coastal zones most susceptible to high winds and when intersection geometry eliminates strain pole configurations. Department only reimburses the LA for strain pole configurations outside these conditions and a LA is responsible for excess costs related to upgrading the design and construction with mast arm installation.
 - Example: A project includes replacing existing stormwater piping. Calculations support installation of 18-inch pipe. The LA wants to install larger diameter piping based on future land use and future development. Installation of the larger diameter piping would be a premium cost in this case and the LA would be responsible for excess costs related to purchase and install of the upgraded piping.
- Maintenance related items.
 - Example: LA wants spare parts on hand for future maintenance. Spare parts are not eligible since they will not be installed as a part of the original project.
 - Example: LA requests sidewalk concrete depth of 6-inches when the standard design for the project is 4-inches. LA requests the extra 2-inch depth due to residents parking vehicles on sidewalks in the project limits and the 6-inch depth will last longer/require less maintenance as it will better support the weight of the parked vehicles. This is a code enforcement issue and not a justification for construction that exceeds minimum standards.

Examples of ineligible or nonparticipating pay items, line items, or services encountered on invoices submitted to the Department. For specific projects, the following items are not eligible for Federal or State participation as noted:

- Equipment purchase and repair: requires specific approval by the Department, (i.e., engineering, safety, or office equipment and supplies). Tangible assets are required to be identified in contracts per State law.
- Stockpiled Supplies: purchased and consumed on a number of projects or for the general management or operation of the organizational unit (example would be in maintenance or in administration - signs, small tools, and temporary traffic control devices).
 - State funded projects- stockpile supplies may be reimbursed when original receipts and supporting documentation of the cost per unit is provided (**Ch. 287.057 F.S.**).

- Federal funded projects- stockpile supplies not eligible
- Office Rental- including utilities and telephone service.
- Labor or expenses- for activities not directly related to the project. Labor activities pertaining to the general operation of an agency are not eligible. Indirect costs related to direct project management are addressed in the next section.

6.4.1 Fringe Benefits and Indirect Costs Reimbursement Eligibility

Fringe benefits and indirect costs are often confused. The easiest distinction to make between the two is that fringe benefits are costs directly associated to an employee's compensation and would appear on a pay stub, while indirect costs are incurred agencywide for the LA and cannot be attributed directly to a project.

Fringe benefits are allowances and services provided by the LA to the employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of:

- Leave- annual, sick, holidays, administrative, military, compensatory, or other leave taken
- Employee insurance- life, health, unemployment, disability, and worker's compensation
- Pensions- retirement, optional retirement, and social security

Most fringe benefits are eligible for reimbursement with both Federal and State funds, but nonstandard project related items such as cell phone or uniform allowances will need to be reviewed by the Department for eligibility.

Indirect costs are costs that cannot be allocated or charged directly to a project and most often are incurred through operations of the LA including general expenditures such as personnel management, purchasing, accounting services, etc. These general expenditures are required to provide the staffing, administration, and organizational capacity for direct project delivery. Indirect costs may be allowable for reimbursement, but if an indirect cost rate is approved for use by the Department for reimbursement it must be included in the grant agreement and the LA must have a Federal or State approved indirect cost allocation plan or a de minimis rate supporting the indirect rate paid.

6.4.2 Utility Relocations, Adjustments, And Reimbursement

Reimbursement for utilities relocations and adjustments for both Federal and State

funded projects are dependent on many factors such as:

- Do State laws or local ordinances require payment for relocation?
- Are there agreements that address payment?
- Is the utility in place by permit, lease, easement, or within their own corridor?
- Who is the authority over the highway?
- Who is participating in the costs?
- Whose participation is mandatory?
- Whose participation is voluntary?

The Department's participation in utilities is contingent on the answers to the questions above, an analysis of State laws and rules, and prior approval by Department General Counsel. No utility reimbursements shall be made without an executed utility reimbursement agreement on file and prior approval from Department General Counsel. However, with or without Department participation the LA is responsible for ensuring that the utility work is reasonable, defined, invoiced, and paid in accordance with any applicable Federal or State Law and any accounting requirement of those participating in the costs.

Federal-aid participation in relocation and adjustment costs that comply with **23 CFR 645** may be requested on LAP or other federally funded projects prior to Federal authorization. Participation must comply with this section in full.

6.5 PROGRESS INVOICING PROCEDURES

The Department specifies within the grant agreements the periodic and final invoicing requirements for the projects. By executing the grant agreement(s), the LA is agreeing to the grant program requirement(s) to maintain financial activity through timely submission of invoices.

After the Department has fully executed the grant agreement and any required NTP has been issued, the LA may begin work on the first phase of the project. Progress invoices are required at a minimum quarterly (90 days), unless otherwise specified by the grant agreement. Variations from the quarterly requirement must be identified in the grant agreement and the project monitoring plan. Florida DFS sets forth the requirements to each State agency for invoices and necessary documentation.

6.5.1 Local Agency Responsibilities

Invoice packages submitted to the Department from a LA must include:

- [Form 525-010-53 Local Programs Invoicing Template](#)
- [Form 525-010-54 Local Programs Progress Monitoring Status Report](#)
- LA invoice of all costs for the invoicing period.
- Backup documentation for all costs. Examples include receipts, load tickets, timesheets, proof of payment, daily logs, etc.

When work is performed by LA “forces” or staff, backup documentation must include:

- Timesheets that identify the person, the project number, and the hours charged.
- Pay stubs or pay rolls for each person showing their hourly rate.
 - Fringe benefits are defined in **Section 6.4.1**. If the LA is seeking reimbursement of these costs, they must be identified and defined on the pay stub for each employee.
- Receipts for direct expense items used for the individual project only.
 - Eligible items are discussed in detail in **Section 6.4**.
 - All items purchased must be competitively procured per **s. 287.057 F.S.** Federal-aid project items must be competitively procured to be eligible for reimbursement (**23 CFR 635, Subpart D**).
 - Stockpiled or “warehouse” items must be supported by a receipt. These items are allowed on State funded projects with supporting documentation. These items are generally not allowed on Federal projects without proof of competitive procurement according to the Federal cost principles.
- Mileage and travel costs may be reimbursed if identified in the grant agreement as eligible. Allowances must adhere to the State limits.
 - Travel is generally not eligible when the method of delivery is force account.
 - Mileage would be calculated from the LA’s office location to the project location, not from private residences of the staff. Supporting documentation of the mileage is required in the form of mileage logs, GPS logs, or another method as agreed upon by the LA and the District.

Indirect cost rates are discussed in **Section 6.4.1** and may only be invoiced to the Department under limited conditions.

The LA must ensure the following items are completed to be approved for reimbursement:

- The required forms must be completed in full and signed by the LA’s authorized representative and submitted to the designated FDOT. All forms listed above and the [instructions](#) for completing the progress report are found on the [LAP Forms webpage](#).
- Total costs must reflect both eligible and ineligible or non-participating costs.

Corresponding amounts must be included in the LA invoice and on the ***Local Programs Invoicing Template***.

- Copies of all verified vendor invoices for which reimbursements are being sought that align with the dates, services, goods and/or deliverables included in the agreement. It is the responsibility of the LA to maintain verification or supporting documentation, such as receipts, timesheets, etc. of all invoiced costs in the project files.
- Proof of payment must be provided before the invoice can be approved for reimbursement unless the agreement includes the Alternative Payment Procedure approved by the Department's Comptroller. Proof of payment includes proof the LA paid the prime contractor or consultant and proof that the prime contractor or consultant paid its subs for any work items included in the invoicing period. Proof of payment or receipts for items purchased from a manufacturer must be maintained in the project files and provided upon request.

Invoice packages missing any items listed here or provided with incomplete documentation, including missing signatures or incorrect dates will be rejected by the Department for correction and resubmittal. Payment standards and eligible costs are discussed in **Sections 6.3** and **6.4**.

6.5.2 Department Responsibilities

Invoice payment requirements set forth by the Florida DFS do not start until a properly completed invoice is provided to the Department. The Department is allowed a maximum of twenty (20) days from the date the invoice is received to review/inspect and approve the goods and services billed in the invoice package. The Department has 20 days to deliver a request for payment to DFS. If payment to the LA is not available within 40 days, a separate interest penalty at a rate established in [s. 55.03\(1\) F.S.](#) will be due and payable to the LA. **It is a critical responsibility of every Department project manager to review and reject or approve invoices within the twenty (20) days allowed by the grant agreement.**

Invoice package review and approval or rejection process is as follows. The District will process requests for payment using standard Department procedures including, but not limited to:

1. Review the invoice package to ensure all necessary forms, invoice, and backup documentation is received demonstrating that:
 - All deliverables have been provided by the consultant or contractor and accepted by the LA.
 - All payments for which reimbursement is being sought are allowable,

- reasonable, necessary, and allocable under the terms and conditions of the Agreement.
- Reject in writing invoice packages that do not contain the required information as outlined in **Section 6.2.1**.
2. Confirm the amount of prior disbursements made under the agreement, and that the agreement balance is sufficient to cover the reimbursement request. A *FLAIR Payment History Report* may be needed.
 3. Create the **Summary of Contractual Services Agreement/Purchase Order (Form 350-060-02)** in CFM and route for necessary signature approval(s).
 4. Forward the approved **Summary of Contractual Services Agreement/Purchase Order (Form 350-060-02)** and the required documents listed below to the District Financial Services Office (FSO) for processing and transmission to DFS for payment within 20 days of receipt.

Invoice packages submitted for payment by the FSO to the DFS must include:

- **Form 350-060-02 Summary of Contractual Services Agreement/Purchase Order** ([Instructions](#))
- **Form 525-010-53 Local Programs Invoicing Template**
- **Form 525-010-54 Local Programs Progress Monitoring Status Report**

Backup documentation for each invoice is to be kept in the project file and made available upon request to all interested parties including the FSO, DFS, and when applicable the FHWA or other Federal and State agencies.

6.6 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Section 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the Federal award. Federal award date under Department process is considered the Federal Authorization date. **Table 1** contains the minimum financial monitoring requirements as determined by risk that must be incorporated into each monitoring plan. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

See **Section 5.12** for related financial management monitoring requirements.

TABLE 1: Minimum Monitoring Requirements for Federal-Aid Projects

MONITORING REQUIREMENT	REQUIREMENT DESCRIPTION AND ACTIVITIES	MINIMUM FREQUENCY BASED ON RISK LEVEL
Invoices	Verify that all requested costs identified on the LP Invoicing Template have supporting documentation and have been paid for by the Subrecipient. If issues are detected in the full invoice reviews that are significant a review meeting must be scheduled with the LA. If issues are not adequately resolved, expand invoice review sample to next risk level frequency and place agency on a corrective action plan. Invoicing reviews occurring more often than quarterly will need to be defined in Exhibit A of the grant agreement.	Low- quarterly invoice submittals and biennial full invoice reviews Moderate- quarterly full invoice submittals and reviews Elevated- quarterly full invoice submittals and reviews High- monthly invoice submittals and full invoice reviews
Project Monitoring Status Reports (<i>Form No. 525-010-54</i>)	Project Monitoring Status Report forms must be submitted with each invoice and may be required more frequently by the grant manager. The information provided on the form must be verified by review of deliverables and/or field inspections. Status report submittals occurring more often than quarterly will need to be defined in Exhibit A of the grant agreement.	Low- quarterly status report submittals and biennial verification reviews as part of the invoice review process Moderate- quarterly status report submittals and quarterly verification reviews as part of the invoice review Elevated- monthly status report submittals and quarterly verification reviews as part of the invoice review. High- monthly status report submittals and monthly verification reviews as part of the invoice review

6.7 RESOURCES

See *Section 5.13*.

CHAPTER 7 LOCAL AGENCY PROGRAM CERTIFICATION AND PERFORMANCE MANAGEMENT

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7.1 OVERVIEW

Per the [Stewardship and Oversight Agreement \(FDOT Topic No. 700-000-005\)](#), in enacting **23 USC 106(c)** Congress recognized the need to give states more authority to carry out FAHP project responsibilities traditionally handled by the FHWA. Under this assignment of responsibilities, the Department may permit LAs to carry out the Department's assumed responsibilities on locally administered projects. The Department is responsible for LA compliance with all applicable Federal and State laws and requirements.

*LAs are certified to perform one or more phases of work in a transportation life cycle. LAP certification goes hand in hand with program compliance. The keys to ensuring compliance and reducing risk in the delivery of each phase of work are identified in **Figure 1**.*

Figure 1: Keys to Compliance



A LA is defined as a unit of government with less than statewide jurisdiction or any officially designated public agency or authority of such a unit of government that has the responsibility for planning, construction, operation or maintenance of, or jurisdiction over a transportation facility. **Table 1** on the next page provides examples of LAs that are eligible for LAP certification and lists examples of entities that are not recognized as eligible entities for LAP certification.

Locally administered projects may be funded by the Department and programmed under phases of work that include Federal-aid eligible activities. Maintenance (phase 7) activities are not eligible under the FAHP and related projects would not be delivered via LAP. Most common eligible phases are listed in [Part III, Chapter 17: LAP](#) of the **Work Program Instructions**. Phase identifiers and definitions are in "Appendix D" of the **Work Program Instructions**.

TABLE 1: LAP Certification Eligibility	
ELIGIBLE FOR LAP CERTIFICATION	NOT ELIGIBLE FOR LAP CERTIFICATION
County	Private corporations (e.g. consultant engineering firms, contractors)
City	Individuals or private citizens
Expressway or transportation authority	Non-profit organizations
Special road or bridge district	Subunit, department, or individual staff within a LA
Regional governmental unit	

7.1.1 Why Does the FDOT Certify Local Agencies?

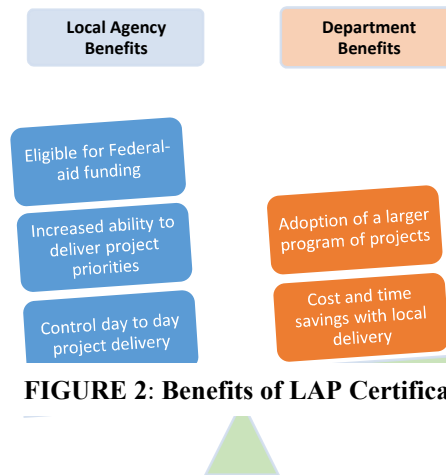
Congress recognizes the importance of a risk-based approach to oversight of the FAHP, establishing requirements in **23 USC 106(g)**. Certification and recertification of LAs participating in LAP documents capability and proficiency in delivering transportation projects under the program. LAP is the preferred project delivery mechanism for Federal-aid projects administered by LAs because the Department has established oversight policies and monitoring procedures in LAP that ensure the required Federal provisions and related Federal requirements are met throughout project delivery.

The Department uses the LAP certification process to determine whether LAs are qualified to administer most FAHP projects. The Department is **not** relieved of oversight and monitoring responsibilities by certifying a LA. The Department serves as the prime recipient of FAHP transportation funds and in accordance with [23 CFR Chapter I](#), and acts as the supervising agency. The Department ensures LAP projects receive adequate supervision and inspection and are developed according to approved plans and specifications. The Department final inspects and accepts all LAP projects. The Department is subject to review, monitoring, and oversight by the FHWA. The LAP certification process is reviewed and approved by the FHWA per the **Stewardship and Oversight Agreement**.

Each District LP Office is responsible for LA certification, recertification and certification removal with the support of Central Office, LP.

7.1.2 What Are the Benefits of Certification?

Figure 2: Benefits of LAP Certification



7.1.3 When Is Certification Not Applicable?

- Federal and State agencies are generally exempt from the certification requirements of this section. Federal and State agencies undergo extensive annual auditing protocols by other Federal and State entities which are available for Department review as needed. However, a District may request a Federal or State agency obtain certification or recertification as needed.
- A LA, such as MPO or Regional Planning Council (RPC), whose expenditure of Federal-aid funds is limited to planning studies and activities that will not lead to construction, per **23 USC 101(a)(4)**, does not need to be LAP certified. The State LP Administrator, in conjunction with the Office of Policy Planning, may consider LAP certification for these entities for any project delivery phase beyond planning on a case-by-case basis.
- In certain cases, emergency repairs may be completed by a LA that is not LAP certified. See **Chapter 13** for additional information and specific requirements of the FHWA ER Program.
- Certification may not be required when a LA is reimbursed by the Department for (or receives from the Department) equipment purchased with Federal-aid funds to be installed on a transportation project. Scopes are limited to operational expenditures intended to replace existing components (new model/version of old component) that do not require additional design for installation. The equipment

shall not be an upgrade or enhancement to the existing system that requires new design services to implement the upgrade or enhancement. The installation of the equipment shall be completed by the LA's in-house forces and the LA is not receiving reimbursement for the installation work. The requirements of Force Account work performed by a LA as detailed in **Chapter 22** apply in all cases. A decision matrix is provided in **Chapter 2** to assist the grant manager in determining whether the LAP delivery method is required.

7.2 CERTIFICATION OPTIONS

Project specific certification is reserved for those agencies:

- With limited to no experience administering Federal-aid projects.
- With new staff who have limited to no experience administering Federal-aid projects.
- Who will not administer a consistent number of LAP projects to build experience and maintain consistent knowledge of the program.
- Who were fully certified in the past, but have unsatisfactory performance evaluations on prior Federal-aid project administration and their certification is changed from full to project-specific.

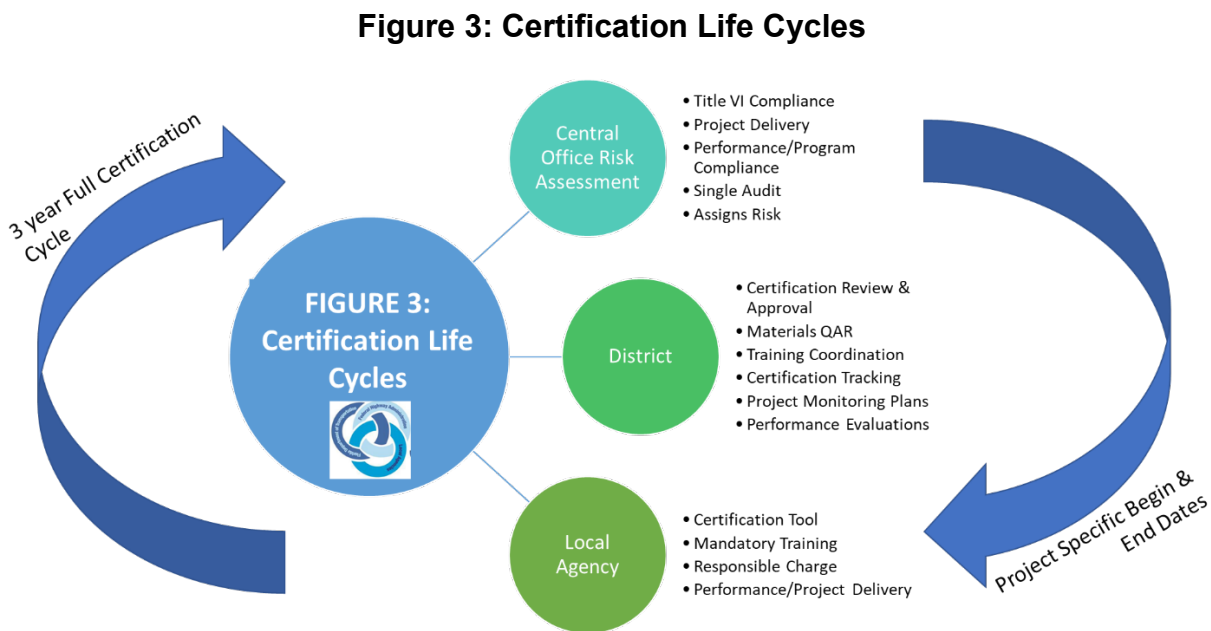
The Districts continue step by step project based oversight of the LAs to mitigate risk. **Project specific certification is limited to off-system roadways**, unless approval is provided by the District Program Management Administrator.

Full certification is reserved for LAs whose staff demonstrate the qualifications, capability and achievement of performance expectations between certification cycles, as evidenced by satisfactory or above performance evaluations. It is expected that over time the Districts would be able to reduce the level of project oversight required to ensure compliance, while not increasing risk within the program. District staff considers how many projects the LA plans to or has the capacity to implement within the three-year certification cycle, based on the Department's AWP, local CIPs, and project priorities pending funding in the three-year period. If the expiration date of the certification occurs during the course of a project, the certification will be considered to remain in effect until the project has been final accepted by the Department. **Table 2** on the next page provides a summary comparison of the two certification types.

TABLE 2: Certification Comparison	
PROJECT-SPECIFIC CERTIFICATION	FULL CERTIFICATION
Infrequent project delivery	Consistent annual or bi-annual project delivery
Project specific mandatory training	Agency-wide mandatory training
Maximum level of project monitoring and oversight by the Department	Risk-based project monitoring and oversight
Requires certification on a project by project basis	Allows for recertification once every 3 years
Requires full certification review for each project	Allows for performance based recertification

7.2.1 Certification Life Cycle

Figure 3: Certification Life Cycle demonstrates how the components of the LAP certification process occur concurrently across State and local partners.



Full Certification of LAs occurs as needed and is completed as a cooperative effort between Central Office, the District Offices, and the LAs. Full certification expires three years from the initial certification date. Certification is based on a risk assessment of the LA, a certification review by the District, and fulfillment of program requirements by the LA. Recertification is dependent upon the performance management process described in **Section 7.6** and may lessen the level of review a LA must undergo based on past

performance. If a LA does not produce a project in that three-year certification period for any reason, recertification will not be applicable.

Project-specific certifications expire once the project close-out is complete. LAs with project-specific certification status are also subject to performance management as described in **Section 7.6**. District staff will conduct a LA performance evaluation at the close of the project, which will be maintained on file with the District for consideration during future project-specific certifications or if the LA pursues full certification status.

LA staff turnover is a critical risk factor in achieving successful compliance with FAHP and LAP requirements. At any such time that a LA loses key personnel, especially the responsible charge (see **Section 7.3**), the LA's project oversight capability must be reviewed to determine if a change in certification status is warranted or a change to the level of District oversight is required. In the event the LA's certification is rescinded or removed, the LA may pursue LAP certification in the future.

7.2.2 Local Agency Programmatic Risk Assessments

Risk assessments and monitoring plans are required by Federal and State rules, regulations, and requirements. Risk must be assessed prior to each grant award. **Chapter 5** details risk and associated project level monitoring. Central Office, LP provides each District grant manager with a programmatic risk assessment of the LA, which may be used to inform current or future LAP certifications. If the LA's risk assessment indicates current non-compliance with Federal or State laws, rules, and regulations the LA will not be eligible for LAP certification until such time that corrective actions are completed.

Note: Denial of certification does not mean the LA cannot receive a Federal-aid project. The Department may produce the project on behalf of the LA or another LAP certified agency may produce the project on behalf of the LA. Contact your District LP Administrator with questions regarding your LA's certification status.

7.3 CERTIFICATION REQUIREMENTS

The three primary areas of certification available to LAs are identified in **Table 3** on the next page. The minimum qualifications must be met, whether the services will be performed by the LA's own forces or by a consultant or contractor. LAs who are seeking to qualify staff in these certification areas demonstrate their level of knowledge, skill, ability, and project experience on the [LAP Certification Tool](#). A LA may be approved for full certification limited to a specific project phase at the discretion of the District LP Administrator.

TABLE 3: Certification Areas and Requirements	
CERTIFICATION AREA	MINIMUM QUALIFICATIONS
Planning	Responsible staff with knowledge of the Federal and State requirements for transportation planning processes, including transportation planning organizations; experience with transportation planning studies; and transportation projects of a nature similar to those the agency intends to develop. Refer to Chapter 14-75, F.A.C. for minimum professional services qualifications required for LAP Classification A, B, and C projects (refer to Chapter 20 for definitions of project classifications).
Design	Responsible staff with experience in design with various types of infrastructure projects, particularly projects similar in scope to those the LA intends to design with Federal funds. A Florida Licensed Professional must prepare, sign, and seal the final Plans, Specifications, and Estimates according to F.S. and Rules , including but not limited to, Chapter 471, F.S., Chapter 481 Part II, F.S. , and Rules 61G10 and 61G15, F.A.C. . A LA who intends to design a project with its own forces must have a Florida Licensed Professional on staff. Training and knowledge of the Americans with Disabilities Act (ADA) requirements 49 CFR 27, 49 CFR 37 , and per the Departments of Justice and Transportation Joint Technical Assistance Memo on Title II of the Americans with Disabilities Act Requirements . Refer to Chapter 14-75 of the F.A.C. for minimum professional services qualifications required for LAP Classification A, B, and C projects.
Construction/ Construction Administration	<p>Responsible staff with experience in providing construction oversight of transportation projects (preferably federally funded), including but not limited to managing contract time, change orders/contract changes, and construction invoicing. The LA must have an established materials quality assurance process. The LA must have an established process for contract compliance; including but not limited to: Equal Opportunity, Disadvantage Business Enterprise (DBE) tracking, and compliance with minimum wage rate decisions and payroll verification. Refer to Chapter 14-75, F.A.C. for minimum professional services qualifications required for LAP Classification A, B, and C projects.</p> <p>A design-build procedure is required if the LA will administer a design-build project. For LAP Classification D projects, the LA must develop a procedure per s. 287.055(9) F.S. For LAP Classification A, B, and C projects, the LA is required to follow FDOT Procedure 625-020-010 (refer to Chapter 16 for detailed information on design-build).</p>

7.3.1 Environmental and Right of Way Certifications

The Department does not delegate the **NEPA** class of action determination, environmental certification, or right of way certification to LAs. Consequently, NEPA class of action determination, environmental, and right of way phases are specifically excluded from the general certification discussion as these areas are addressed on a project-by-

project basis. The Director of Transportation Development, in consultation with the District Environmental Administrator and/or the District Right of Way Manager will determine the method of delivering these phases and the LA's level of involvement. District staff considers the minimum qualifications provided in **Section 7.9** to determine the LA's involvement.

7.3.2 Materials Testing Procedure Review

For projects off the SHS and NHS, the District Materials Offices will review the LA materials quality assurance programs in conjunction with a LA's LAP Certification. The Materials Office review focuses on the process the LA uses to certify materials on LAP projects and may include a limited review of project data to inform the certification review. A sample **Materials Testing and Acceptance Quality Assurance Review form** is located on the LAP Forms webpage.

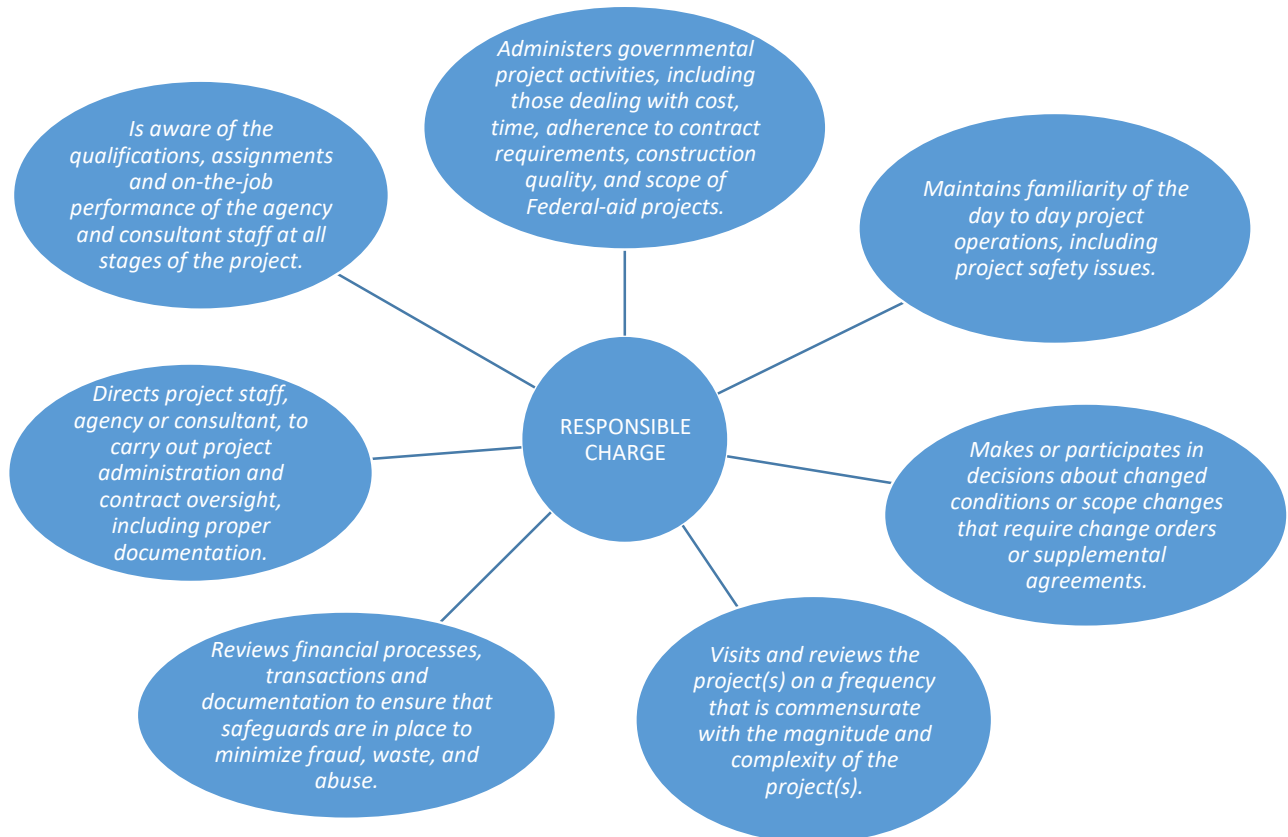
7.4 RESPONSIBLE CHARGE

FHWA issued a [Memorandum](#) on August 4, 2011 to more clearly define "responsible charge" of Federal-aid projects. The FHWA requirement is located in [23 CFR 635.105-Supervising Agency](#), but the Memorandum further defines the requirements of the position and the duties as applicable to LA.

The person delegated as the "responsible charge" **shall be a full time employee of the LA**. A LA's responsible charge does not need to be an engineer, but is expected to perform the duties identified in **Figure 5** on the next page per the **Memorandum**.

There is no restriction on sharing the duties above or delegating project activities as needed. Training requirements specific to the responsible charge will be applicable to each person identified, if duties are shared. The District LP Administrator communicates modifications to the training requirements in **Section 7.5.4** on a case-by-case basis. The Department expects the LA to maintain a responsible charge as the primary point of contact for the LA. The primary point of contact information must be entered into **GAP (Section 7.8)** and the Department must be notified as soon as possible if and when the designated responsible charge changes. The LA's responsible charge is expected to complete LAP training sessions, attend project and coordination meetings, and be responsive to requests for project information from the Department or other government agencies.

Figure 5: Responsible Charge



7.4.1 Consultant Staff Support For Local Agencies

The LA's certification package may identify consultant staff used to augment LA forces; however, this does not relieve the LA of its responsible charge obligations. Services of a consultant in this capacity are not eligible for Federal reimbursement and all consultants executing project tasks on behalf of a LA must adhere to **LPM Chapter 14.3: Conflict of Interest**.

7.5 LOCAL AGENCY PROGRAM CERTIFICATION TOOL

Once the programmatic risk assessment of the LA is completed by Central Office (**Section 7.2**), LA staff completes the [Local Agency Program Certification Tool](#). This tool is a more detailed risk assessment of the LA's LAP participation as it relates to project delivery. The tool identifies categories of responsibility associated with different phases

of transportation projects funded under the FAHP. The tool also identifies training and documentation requirements associated with each category of responsibility.

After the LA uploads the **LAP Certification Tool** to GAP, the District LP Administrator and the necessary Department technical experts will review the application and interview the LA to determine the LA's level of certification. The tool shall be signed by both the District LP Administrator and the responsible charge at the conclusion of the interview. The District will not approve certification if any information is missing from the application, additional details are needed, or the information contained within the tool demonstrates the LA requires corrective actions to mitigate risks to the management of FAHP grant sub-awards.

The tool must be updated when there is a change to the LA's designated responsible charge(s). The District LP staff also reserves the right to request an updated Tool as needed. For example, when the LA experiences multiple staff turnovers mid-certification cycle or when the LA changes a fundamental business practice that may conflict with LAP processes, the District may deem it essential to update the LA's certification file.

7.5.1 Full Certification

All items identified in the **LAP Certification Tool** are required of the LA to achieve (and maintain) full certification status. Additionally, the LA may be required to submit specifications, procurement procedures, or other process documents upon request of the District. All training requirements identified in **Section 7.5.4** shall be met and maintained. LAs with full certification shall resubmit the **LAP Certification Tool** at a minimum once every three years to maintain program eligibility.

7.5.2 Project Specific Certification

A LA seeking project specific certification must submit the Tool, but the LA is not required to provide information in sections of the form that are not applicable to the project. All training requirements identified in **Section 7.5.4** shall be met and maintained, unless the District LP Administrator notifies the LA of changes to mandatory training course requirements based on limited phases of project delivery. LAs with a project specific certification will complete the **LAP Certification Tool** each time they request a new certification.

7.5.3 Certification Approval

Upon completion of the District's assessment and the LA's interview, the District LP Administrator will notify the LA of the certification decision in writing. If the LA is eligible

for certification, the **LAP Certification Tool** includes the certification type and any special conditions or exceptions identified in *Section T* of the **Tool (Figure 6)**.

Figure 6: LAP Certification Tool

T. CERTIFICATION STATUS

Effective [Click here to enter text.](#) qualifies for the following Certification/Recertification: Choose an item:

- Full Certification
- Full Certification with Exceptions
- Project Specific Certification
- Project Specific Certification with Exceptions
- Certification Denied at this time

The following exceptions are applicable to this Certification/Recertification:
(Check all that apply)

AGENCY MAY NOT PERFORM IN-HOUSE DESIGN ON LAP CLASSIFICATION A, B, OR C PROJECTS

Certification effectively delegates project delivery to a LA and may be restricted based on LA qualifications. If certification is denied, the District will discuss the reasons for denial and the steps the LA may pursue to reapply. A notice of LAP certification letter shall be signed by the District Secretary.

GAP must be updated by the District LP staff to reflect the current certification status of each LA.

7.5.4 Training Requirements

Knowledge of current Federal and State requirements is critical to successfully administering and completing a LAP project. Training courses are offered by the Florida Local Technical Assistance Program (LTAP), FHWA and the Department. It is the responsibility of the attendee to track their training and keep certificates. Certificates may be loaded to GAP.

Training must be completed by each LA designated employee (or employees) prior to initial certification and/or within twelve (12) months of the LAP certification effective date unless a course is not offered within that 12-month period. Failure to complete all required training courses as indicated will effectively terminate your LA's LAP certification and may affect future program participation and reimbursement of project funds. Mandatory course attendance requirements are identified in **Table 4** on the next page.

Face-to-face training courses will be offered in each district annually, biennially, or triennially as indicated in the **Table 4** "completion timeframes", or an equivalent training course will be offered. Consult the [Florida LTAP Training Calendar](#) for course listings,

dates offered, and additional course information. The LA may satisfy attendance at the face-to-face courses with a minimum of one employee, unless otherwise instructed by the District LP Administrator.

[Recorded webinars](#) or web or Computer Based Training (CBT) courses may be applicable to multiple employees depending on the program area. Electronically available courses listed in **Table 4** are free and available 24 hours a day; therefore, the LA must meet the completion requirements for these courses in full to maintain certification status.

The Department reserves the right to update, add, or delete training courses required for certification as needed. The District LP Administrator may require additional attendees from a LA at their discretion. Courses that must be taken prior to certification are denoted as such in **Table 4**. All other courses in **Table 4** must be taken within 12 months of the initial certification date, or as soon as offered after the certification date, and will then be repeated by the LA staff on a one to three-year cycle as denoted.

TABLE 4: Local Agency Program Minimum Training Requirements			
COURSE NAME / DESCRIPTION	COURSE IDENTIFICATION NO.	REQUIRED MINIMUM ATTENDEES	COMPLETION TIMEFRAME
FDOT LAP Certification	CBT	Each employee identified on the Certification Tool	One time prior to Certification approval and as new staff enter program
FDOT LAP Workshop	BT-05-0151 (8 hours)	RC and all delegates in each program area- <i>LA may satisfy this course with a minimum of one attendee from the list provided.</i>	Once every three years- recording is available
FDOT LAP Professional Services Checklist Training	BT-05-0152 (8 hours)	RC, project managers, and procurement staff who develop RFPs, scopes and negotiate contracts- <i>LA may satisfy this course with a minimum of one attendee from the list provided.</i>	Once every two years- recording is available
LAP Title VI Subrecipient Compliance Tools (SCAT) <i>*May be offered with BT-05-0062 as an 8hr course</i>	BT-05-0153 (4 hours)	RC, Title VI Coordinator, ADA Coordinator- <i>LA may satisfy this course with a minimum of one attendee from the list provided.</i>	Once every three years- recording is available

TABLE 4: Local Agency Program Minimum Training Requirements			
COURSE NAME / DESCRIPTION	COURSE IDENTIFICATION NO.	REQUIRED MINIMUM ATTENDEES	COMPLETION TIMEFRAME
FDOT LAP Construction Checklist, Specifications and Greenbook Training	BT-05-0197 (8 hours)	RC, project managers, engineering and procurement staff who develop construction bid packages - <i>LA may satisfy this course with a minimum of one attendee from the list provided.</i>	Once every two years- recording is available
ADA for Design and Construction- General <i>*May be offered with BT-05-0153 as an 8hr course</i>	BT-05-0062 (3 hours)	RC, ADA Coordinator, Project Managers- <i>LA may satisfy this course with a minimum of one attendee from the list provided.</i>	Once every three years- recording is available (may fulfill with alternate ADA Training courses for transportation facilities as offered by FHWA)
LAP Professional Services CBT	CBT	RC, project managers, procurement staff	One time prior to Certification approval and as new staff enter program. <i>Not required if staff attends course BT-05-0152.</i>
Resident Compliance Specialist CBT	CBT	Resident Compliance Specialists and Contract Compliance Oversight staff. Recommended for construction project managers	One time prior to Certification approval and as new staff enter program. <i>Not required if staff attends District Contract Compliance Training.</i>
Equal Opportunity Compliance CBT	CBT	Resident Compliance Specialists and Contract Compliance Oversight staff	One time prior to Certification approval and as new staff enter program
ERC Application User Guide	CBT	Design project managers	One time prior to Certification approval and as new staff enter program
*WBT = Web Based Training BT = Face to Face Training CBT = Computer Based Training			

Additional recommended or substitute training courses are provided in **Section 7.9** of this **Chapter**.

7.6 PERFORMANCE MANAGEMENT

Performance management reinforces the risk-based oversight and monitoring for each LA participating in LAP. Performance management is used to assess risk, track performance, and measure performance. When the Department certifies a LA, and enters into a [LAP Agreement \(FDOT Form No. 525-010-40\)](#), a commitment is made to deliver the LAP project in compliance with Federal and State program requirements. The Department monitors the progress made by the LA towards this commitment to project delivery. Consequently, LAs are evaluated on activities related to professional services procurement, design, construction, and construction administration including but not limited to:

- Technical skills and abilities of LA project management staff
- Communication and cooperation with the Department's project management team(s)
- Invoicing frequency and accuracy
- Compliance with the **LPM** and other Federal and State requirements, laws rules, and regulations

The District LP Administrator and District Program Management Administrator in consultation with the LA will agree to which project delivery processes may be further delegated due to above satisfactory performance and decreased risk to the Federal funds. Department monitoring of the LA's delegated functions will continue via the project monitoring plan and quality assurance reviews. Delegated functions are subject to Department discretion and the LA maintaining satisfactory performance. LA responsibility for delegated functions may be revoked by the Department as warranted.

7.6.1 Local Agency Performance Evaluations

As described in **Section 7.2**, LAP certification may in part be based on the LA's performance evaluations conducted by the Department's LP Administrator at the close of each project phase administered by the LA. The Department assesses what aspects of the LA's efforts are compliant, where compliance is less than satisfactory, and whether the LAP certification type needs to change or be removed based on risk to the Department or the program. The evaluations inform project risk assessments and LA monitoring plans, the LA's programmatic risk assessment, and the certification review process.

Performance evaluations are completed using the [LAP Performance Evaluation Form No. 525-010-50](#). The District LP Administrator completes the evaluation based on input from the Department's project managers. Once the District LP Administrator completes the evaluation, the evaluation is reviewed and signed by the LA's responsible charge and the

District LP Administrator. The Department provides the evaluation to the LA as soon as practicable and no more than 30 days after final acceptance and/or the processing of the final project close out package by the Department (see **LAP Agreement, Section 13**). The Department or the LA may request a meeting to discuss the results. The performance evaluation cannot be completed in full until a final invoice for the project has been accepted and processed by the Department.

Each performance evaluation will result in one of three ratings:

- **Unsatisfactory Performance (1)** means the LA failed to develop the project in accordance with applicable Federal and State regulations, criteria, standards, and procedures, required excessive Department involvement/oversight, or required corrective actions by the Department to complete the project.
- **Satisfactory Performance (2)** means the LA developed the project in accordance with applicable Federal and State regulations, criteria, standards, and procedures, with minimal Department involvement/oversight.
- **Above Satisfactory Performance (3)** means the LA developed the project in accordance with applicable Federal and State regulations, criteria, standards and procedures, and the Department did not have to exceed the minimum oversight and monitoring requirements identified for the project.

The Districts provide technical assistance to LAs with unsatisfactory performance evaluations to improve their performance to a satisfactory level. If the District LP Administrator, provides the necessary technical assistance, but the LA continues to earn unsatisfactory results, the District shall amend the LA's certification type as applicable or initiate certification removal (**Section 7.7**). It is recommended the LA review and discuss the scores with its LAP project management team to identify ways to improve performance on future projects.

7.6.2 Quality Assurance Reviews of LAP Projects

Performance management is also conducted by the Department through the program level quality assurance review (QAR) process for LAP projects. Project delivery processes are established within the **LPM** and other formal guidance issued by the Department. Compliance with program requirements by a LA may be reviewed at any time by the Department (or other government agency). Findings resulting from a LA QAR informs the certification review process, project performance evaluations, and the development of corrective action plans for non-compliance.

7.7 CERTIFICATION REMOVAL

A LA's certification may be removed for failure to comply with Federal and State regulations, the requirements of the **LPM**, the **LAP Agreement**, and/or not meeting the minimum training requirements identified in **Section 7.5.4**. Certification removal may also occur if the LA receives an unsatisfactory performance evaluation, which includes, but is not limited to: failure to deliver projects and failure to meet the commitments of the LAP.

The District LP Administrator and District Program Management Administrator will recommend certification removal to the District Secretary. The recommendation will include performance reports and documentation of any factors relevant to the decision. A LA will be notified in writing of the certification removal and the reason(s) for removal. A LA may appeal the certification removal through the District Secretary.

Violation of Federal or State requirements may cause certification to be terminated mid-project(s) and may affect the LA's reimbursement eligibility. If a LA's certification is terminated mid-project, per the terms of the **LAP Agreement**, the LA shall not be reimbursed for non-compliant work and may be required to pay back the Department for any projects found to be non-compliant.

7.9 OPTIONAL TRAINING AND CERTIFICATION INFORMATION

Table 6: Certification Requirements for Environmental and Right of Way Activities provides supplementary information required when a LA decides to pursue delivery of environmental or right of way activities under LAP (reference **Ch. 14-75, F.A.C.** for additional details.)

TABLE 6: Certification Requirements for Environmental and Right of Way Activities	
ACTIVITY	MINIMUM QUALIFICATIONS
Environmental	<p>Requires a professional engineer, a natural scientist, and a social scientist. The professional engineer must be registered with the Florida State Board of Professional Engineers, must have managed, and completed at least one Project Development and Environment (PD&E) study or similar study, including roadway design and environmental engineering. This experience must include conducting environmental studies for transportation projects involving highway projects and public involvement issues.</p> <p>The natural scientist must have a four-year college degree and experience in a natural science such as ecology, biology, environmental science, or wildlife management and have completed at least one PD&E study or similar study in a natural science area such as defined above.</p>

TABLE 6: Certification Requirements for Environmental and Right of Way Activities	
ACTIVITY	MINIMUM QUALIFICATIONS
	<p>The social scientist must have a four-year college degree and experience in a social science such as psychology, sociology, statistics, political science, geography, urban planning demographics, archeology, or economics and have completed at least one PD&E study or similar study in a social science area such as defined above.</p> <p>A member of the LA oversight and/or project staff must complete the Department PD&E process training.</p>
Right of Way	<p>Acquisition, Negotiation, Closing, and Order of Taking Qualification Requirements: Consultants employed by a LA are required to be registered with the Florida Real Estate Commission and, at a minimum, have one real estate broker and one real estate salesperson licensed by the State of Florida, Department of Business and Professional Regulation. These employees each must have at least three years of demonstrated experience in transportation acquisition projects. Although employees of a LA are statutorily exempt from the registration requirement with the Florida Real Estate Commission, similar qualifications should be considered when evaluating the expertise and capabilities of the LA's Right of Way program.</p> <p>Relocation Assistance Qualification Requirements: Consultants performing this type of work requires a minimum of one full time employee with a minimum of three years of demonstrated current experience in administering and providing relocation assistance for transportation projects under the provisions of the <i>Uniform Relocation Assistance and Real Property Acquisition Policies Act and 49 C.F.R., Part 24</i>. LA employees performing similar right of way activities should possess comparable qualifications.</p>

The training courses provided in **Table 7** are not mandatory but may be recommended or required for LA certification by the District LP Administrator. Additionally, any LA staff that has an interest may complete the training courses listed below.

TABLE 7: Local Agency Program Recommended Training Requirements			
COURSE NAME / DESCRIPTION	COURSE IDENTIFICATION NO.	RECOMMENDED ATTENDEES	RECOMMENDED COMPLETION TIMEFRAMES
Consultant Performance Evaluations	CBT	RC and consultant evaluators	N/A
NHI ADA Pedestrian Facility Design	NHI-142045 (1.5 days)	Design project managers	Alternate course to LAP ADA Training- as offered by FHWA
FHWA ER Program Overview	WBT	RC, project managers, procurement staff	Recommended if ER reimbursement is

TABLE 7: Local Agency Program Recommended Training Requirements			
COURSE NAME / DESCRIPTION	COURSE IDENTIFICATION NO.	RECOMMENDED ATTENDEES	RECOMMENDED COMPLETION TIMEFRAMES
			required- recording is available
FHWA Pedestrian Road Safety Audit Workshop	BT	RC, project managers, design staff	Recommended as a substitute for ADA Pedestrian Facility Design course
Professional Services Negotiation Handbook	CBT	Negotiations committee members for consultant contracts	One time prior to certification and as new staff enter program
ITS Systems Engineering CBT	CBT	LA staff managing ITS/ATMS projects.	Prior to beginning the ITS/ATMS project.
*WBT = Web Based Training BT = Face to Face Training CBT = Computer Based Training			

7.10 RESOURCES

[Topic No. 700-000-05 FHWA-FDOT Stewardship and Oversight Agreement](#)

[23 CFR Chapter I](#)

[2 CFR 200](#)

[23 CFR 635.105- Supervising Agency](#)

[Auditor General's Financial Audit Reports Index for Florida Counties](#)

[Auditor General's Financial Audit Reports Index for Florida Municipalities](#)

[Local Agency Program Certification Tool](#)

[525-010-50 LAP Performance Evaluation](#)

[Sub-recipient Compliance Assessment Tool \(SCAT\)](#)

[525-010-40 LAP Agreement](#)

[Chapter 14-75, F.A.C.](#)

The Florida Local Technical Assistance Program (LTAP) Center provides training and technical assistance to LAs. Previously recorded webinars including professional development opportunities may be found on the following webpage:
<https://floridaltap.org/training-and-events/ltap-recorded-webinars/>

CHAPTER 8 TITLE VI AND NONDISCRIMINATION PROGRAM REQUIREMENTS

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8.1 OVERVIEW

The Department is the primary recipient of FAHP funds it then distributes to subrecipients to fund local project priorities. To receive FAHP funds, the LA, and their contractors and consultants, must comply with Federal and State nondiscrimination authorities, including the Florida Statutes; US Department of Justice (USDOJ), US Department of Transportation (USDOT) and FHWA regulations, orders and notices; and the policies and procedures implemented by the Department as outlined in this chapter. LAs must submit the [SCAT](#) once every three years or at the request of the Department or the FHWA (see **Chapter 7.2.2**).

8.2 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND RELATED STATUTES

23 CFR Part 200 requires that the Department conduct periodic reviews of cities, counties, planning agencies and other recipients of FAHP funds to ensure they are complying with **Title VI of the Civil Rights Act of 1964 (Title VI)** and other nondiscrimination authorities. The Department requires its LAs participating in LAP to both comply and demonstrate compliance with Federal and State nondiscrimination authorities.

8.2.1 Scope of Title VI and Other Nondiscrimination Authorities

[Title VI of the Civil Rights Act of 1964 \(Title VI\)](#) states that no person should be excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance. Other authorities such as the **Federal Highway Act of 1973**, **Age Discrimination Act of 1975**, **Americans with Disabilities Act of 1990** and the **Florida Civil Rights Act of 1992** forbid discrimination against anyone on the basis of sex, age, disability, religion, or familial (or marital) status.

The **Civil Rights Restoration Act of 1987 (CRRRA)** provided clarification of the original intent of Congress for Title VI and restored broad institution-wide scope and coverage to all programs and activities of Federal-aid recipients and subrecipients, whether such programs and activities are Federally funded or not. Regardless of the entity or the program receiving Federal-aid funds, all must take steps to prevent discrimination and ensure nondiscrimination in all programs, services, and activities. Thus, all programs, services and activities of LAs participating in LAP must comply with nondiscrimination requirements.

8.3 ASSURANCES

The Department will ensure that the LA executes and provides an assurance in the form of the [Title VI/Nondiscrimination Assurance](#) per [49 CFR 21](#) and [23 CFR 200.9\(a\)\(1\)](#). The Title VI/Nondiscrimination Assurance must be executed once every three years or when the agency head changes.

8.3.1 Scope of Assurances

Essentially, assurances serve two purposes. First, they provide written commitment from the LA that no person shall on the grounds of race, color, national origin, sex, age, disability, religion or family status be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service or activity conducted by the LA or its contractor(s) and consultant(s), regardless of whether those programs and activities are Federally funded or not. Second, assurances serve as a contract agreement for which remedy may be sought for breach.

8.3.2 Contract Insertions

The *Title VI/Nondiscrimination Agreement* contains required contract assertions labeled [Appendices A and E](#). It is important for the LA to ensure that the clauses are included in all LAP contracts and agreements. Appendices A and E are incorporated into the [LAP Terms for Federal-Aid Professional Services Contracts \(FDOT Form No. 375-040-84\)](#) and by reference in [Form FHWA-1273, "Required Contract Provisions Federal-Aid Construction Contracts"](#) revised July 5, 2022.

8.4 IMPLEMENTATION PROCEDURES (23 CFR PART 200)

Compliant implementation of Title VI of the Civil Rights Act and other Federal and State nondiscrimination authorities in LAP is a cooperative effort by the Department and its LAs.

8.4.1 Local Agency Responsibilities

- Formulate and adopt a Title VI/Nondiscrimination Plan (Plan) that is publicly posted. The Plan includes a policy statement, which expresses commitment to the nondiscrimination provisions of Title VI and other nondiscrimination authorities. The Plan and policy statement shall be circulated throughout the LA's organization and to the general public. For convenience, the Title VI policy statement can also include disability, rather than establishing ADA as a separate policy. For more information and sample documents visit the LAP Title VI webpage and see the

[Nondiscrimination Handbook for Local Agencies](#) and the [Sample Title VI/Nondiscrimination Policy and Plan for Sub-Recipients in the Local Agency Program \(LAP\)](#). The Plan must cover the protected classes identified in **Section 8.2.1** of this Chapter and any additional protected classes adopted by the LA at the local level.

- Have a complaint process to respond to complaints about discrimination based on race, color, national origin, sex, age, religion, and family status. For convenience, the complaint process may include disability, rather than establishing a separate disability complaint process (disability and ADA requirements are explained in **Chapter 9**). The complaint process(es) may be incorporated into the LAs Title VI Plan.
- Provide a copy of all written complaints (excluding those that are related to employment) alleging race, color or national origin discrimination to the Department or FHWA for review and processing.
- Designate a Title VI/Nondiscrimination Coordinator and publish their name and contact information. Identify this person in your Title VI Plan. This person must have 'easy' access to the LA's chief executive officer due to their role in recording and investigating complaints received by the LA. **Section 8.5** describes the complaint process in further detail.
- Complete and submit the **SCAT** every three (3) years upon the expiration of the Title VI Assurance submitted to the Department or upon request by the Department or FHWA.
- Ensure access to programs, services, and activities to those who are Limited English Proficient (LEP) in compliance with [Executive Order 13166 and related memoranda and directives](#).
- Ensure that LAP projects or activities do not disproportionately and adversely impact minority or low income populations in compliance with [Executive Order 12898](#) and [FHWA Order 6640.23A](#).
- Take action to correct any deficiencies found by the Department or FHWA within a reasonable time period, not to exceed ninety (90) calendar days. The chief executive officer of the LA shall be held responsible for implementing nondiscrimination requirements.

8.4.2 Department Responsibilities

- Review LA SCAT documents to verify that LAs have current signed nondiscrimination assurances, a sufficient nondiscrimination plan, policy statement, and complaint procedure.
- Provide technical and program assistance to those LAs that are unable to demonstrate substantial compliance through the SCAT process.

- Review contract and other documents as required to determine compliance with nondiscrimination requirements.
- Cooperate and assist in FHWA investigations of Title VI or other discrimination complaints filed against LAs, to include docketing complaints, forwarding complaints to the appropriate authority, and conducting site inspections or remediation verification as requested or required.

8.5 DISCRIMINATION COMPLAINTS

Any person, or any specific class of persons who believes that they have been subjected to discrimination or retaliation prohibited by Title VI and other nondiscrimination authorities may file a complaint. The LA processes the complaint per their posted procedures and also notifies the [FDOT State Title VI Coordinator](#) of any complaints involving LAP projects. The Department and FHWA are designated nondiscrimination clearinghouses and will either assume jurisdiction for the complaint or forward it to the appropriate Federal or State authority for further processing.

Complaints specifically related to Title VI of the Civil Rights Act (1964) and filed on the basis of race, color or national origin may only be investigated, and findings issued by FHWA. For complaints related to protected classes not specific to Title VI, if at any time a discrimination complaint involving pedestrian or transportation facilities cannot be satisfactorily resolved by the LA, it should forward the entire complaint and investigative file to the FDOT State Title VI Coordinator.

8.5.1 Notification to the Florida Department of Transportation

The LA will notify the FDOT State Title VI Coordinator within five (5) calendar days of receiving a complaint involving pedestrian or transportation facilities. If possible, the following information should be included in the notification of complaint.

- Name and contact information of the Complainant, if available.
- Name(s) and contact information of the official(s) alleged to have discriminated.
- Basis of complaint (race, color, national origin, sex, age, disability, religion, family status).
- Date of alleged discriminatory act(s).
- Date of complaint received by the LA Title VI/Nondiscrimination Coordinator.
- A description of the complaint.
- Other agencies (local, State, or Federal) where the complaint has been filed, if applicable.
- An explanation of the actions the LA has taken or is proposing to take to resolve

the complaint.

8.5.2 Limitation on Local Agency Complaint Processing

Because laws may impose time limits on a Complainant's right to file discrimination complaints in Federal or State courts, at no time should the LA's processing of pedestrian or transportation facility complaints extend beyond ninety (90) calendar days without advising the FDOT State Title VI Coordinator.

Further, while LA's are encouraged to investigate and resolve all complaints, those filed in writing and alleging race, color or national origin discrimination may only be investigated and findings issued by FHWA.

8.5.3 Employment Discrimination Complainants Excluded

Employment Discrimination Complaints under *Title VII of the Civil Rights Act of 1964*, as amended or other equal employment laws are specifically excluded from **Section 8.5** and should not be provided to the Department unless specifically requested, or if the primary objective of the financial assistance received is to provide employment ([42 U.S.C. 2000d-3](#)). Contact the FDOT State Title VI Coordinator for additional information.

8.5.4 Interagency Cooperation

Where discrimination complaints are received by or assigned to the Department or FHWA, the LA must fully cooperate with the ensuing investigation. This includes, but is not limited to, adhering to deadlines for production of information; making project or program information available for inspection; cooperating with onsite visits and witness interviews; and engaging in conciliation or resolution conferences, where recommended.

8.5.5 Complaint Recordkeeping

The LA Title VI/Nondiscrimination Coordinator must maintain a log of all discrimination complaints received, even if unwritten or anonymous. The log includes:

- Names of Complainants, if available.
- Name of LA official or department against which the complaint is filed.
- Basis of complaint (race, color, national origin, sex, age, disability, religion, or family status).
- Dates of alleged discrimination, when the complaint was received by the LA, and

when the Department was notified, if applicable.

- A brief explanation of resolution or referral action, along with the date the matter was resolved or referred.

8.6 SUBRECIPIENT COMPLIANCE ASSESSMENT TOOL

The Department has developed the SCAT as a means of determining subrecipient nondiscrimination compliance; helping subrecipients understand their nondiscrimination responsibilities; and assisting the Department in planning future training and technical assistance. SCAT Tools must be completed as a condition of LAP Certification and each triennial Recertification as explained in **Chapter 7**. The SCAT information may be used as the basis of random or risk-based reviews by either the Department or FHWA. Additional resources to aid the LA in completing the SCAT are available on the LAP Title VI and Nondiscrimination webpage and the required training class is recorded and posted to the Florida LTAP webpage here: <https://floridaltap.org/localprograms/>.

The SCAT has eleven (11) questions. The first three (3) questions must be answered in full and all supporting documentation completed before the Department will enter into a LAP Agreement with the LA.

- **Question One (1)** requires the LA to provide a copy of the executed Title VI/Nondiscrimination Assurance to the Department as defined in **Section 8.3**.
- **Question Two (2)** requires the LA to provide a web address to their organization's Title VI/Nondiscrimination Plan, policy statement, and complaint filing procedures as defined in **Section 8.4**. This is not your agency's employee (Title VII) related procedures. The Title VI Plan must cover the protected classes identified in **Section 8.2.1** of this Chapter and should also include any additional protected classes adopted by the LA (at the local level).
- **Question Three (3)** requires the LA to certify that it constructs or improves curb ramps pursuant to the **DOJ/DOT Technical Assistance Memo**.

The next eight (8) questions are required for compliance, but the Department under some conditions may proceed with entering into a LAP Agreement with the LA while they prepare the required supporting documents to satisfy each requirement.

- **Question Four (4)** requires the LA to confirm it is complying with the ADA in all aspects of planning, designing, and constructing transportation projects:
 - [FDOT Design Manual \(FDM\)](#)
 - [Florida Greenbook](#)

It is important to note that the LA must comply with the Florida Greenbook on local roads. The LA must comply with the FDM when designing FAHP projects on the

SHS and NHS. Both the Florida Greenbook and the FDM meet or exceed the minimum design standards set forth in the [US Department of Justice ADA Standards \(2010\)](#) and the [US Department of Transportation ADA 2006 Standards for Transportation Facilities \(2006\)](#) and/or the [Public Rights of Way Accessibility Guidelines \(PROWAG\)](#).

This question also requires the LA to confirm compliance with the design exception and/or variation process in instances of technical infeasibility.

- **Question Five (5)** requires the LA to acknowledge “yes” or “no” if they have developed and posted an ADA Transition Plan for accessibility of pedestrian facilities within the public rights of way. This is a requirement of all government agencies with fifty or more employees, *without* respect to funding [see **28 CFR 35.105** and **150(d)**]. ADA Transition Plans must be publicly posted and updated periodically. If the LA has not started or has not maintained its ADA Transition Plan the Department offers resources to assist in the development of an ADA Transition Plan. ADA Transitions Plans and available resources are more fully described in **Chapter 9.5.2**.
- **Question Six (6)** requires the LA to enter the name, title, and contact information for its Title VI/Nondiscrimination and ADA Coordinator(s) in the [GAP](#).
- **Question Seven (7)** requires the LA to provide descriptions of Title VI/Nondiscrimination and ADA complaints received during the past three years. This does *not* include employee related complaints covered under Title VII.
- **Question Eight (8)** requires the LA to identify how it advises the public of nondiscrimination policies or other similar information. Electronic or web-based posting alone is insufficient. The LA must also post written information in a publicly accessible location, such as a library, town hall, community center, etc.
- **Question Nine (9)** requires the LA to identify its methods of data collection and review of demographic data when updating processes for public involvement, LEP Plan, and other documents related to Title VI/Nondiscrimination programs. A commonly used resource is the [American Community Survey – Table s1601](#).
- **Question Ten (10)** requires the LA acknowledge “yes” or “no” if the organization has developed a LEP for providing language services to those who do not speak English. In accordance with **Executive Order 13166** written plans must include a four-factor analysis of data acquired from the US Census Bureau (and other sources) of LEP populations in your jurisdiction. The LEP may be incorporated into the LA’s Title VI/Nondiscrimination Plan (as described in Question 2) or may be a standalone document. The **Sample Nondiscrimination Policy and Plan for Local Agencies** includes a description and example of the four-factor analysis.
- **Question Eleven (11)** requires the LA to identify how it provides outreach to and solicits input on programs and activities from communities or groups that represent minority, low income, elderly, and disabled persons. Most LAs perform public

involvement, invoke committees or advisory groups, or place staff in community centers or other embedded locations to reach these communities.

The Department uses a rating system of red, yellow, green assigned to each LA based on their responses to the questions on the SCAT tool. The LA's current rating information is displayed in GAP so both internal and external stakeholders have access to the information.

RED	YELLOW	GREEN
Red rating occurs when the LA responds negatively or does not provide the information requested in questions 1-3.	Yellow rating occurs when the LA responds positively to questions 1-3 but information is missing or not provided for questions 4-11.	Green rating occurs when the LA responds positively to all questions and provided the corresponding information.

In addition to the Handbook and sample plans provided on the LAP Title VI webpage, FHWA and the Department also provide a [Triennial Title VI Program Review Tool for Local Government](#). This document provides targeted questions and helpful tips that the Title VI/Nondiscrimination Coordinator and other LA staff may use to update its Title VI/Nondiscrimination Policy and Plan as needed. Updates to the Plan should be completed when data, demographics or needs in the jurisdiction change to require a change in Nondiscrimination program services. It is recommended the LA review its demographic data in line with its Nondiscrimination program goals, not less than triennially.

8.7 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Chapter 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the federal award. Federal award date under Department process is considered the Federal Authorization date. **Table 1** contains the minimum Title VI monitoring requirements performed by the Department. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

Table 1: Minimum Monitoring Requirements for Federal-Aid Projects

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
SCAT Review	Central Office and FHWA designees review the	Triennially or when

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
	LA's Title VI and Nondiscrimination program. A rating of red, yellow, or green is displayed in GAP. Central Office and District program managers use the rating information to perform risk based oversight and inform the LAP certification process.	triggered by an audit
Title VI Assurance execution	The Title VI Assurance must be executed once every three years or when the chief executive officer changes. The Assurance expiration date is displayed in GAP. District program managers monitor dates in GAP and agency staffing changes and trigger a request for a new assurance when due or as needed.	Triennially or when triggered by staffing change at the LA.
Title VI and Nondiscrimination required contract provisions	Title VI related contract language as specified in this chapter must be incorporated into LA contracts with contractors and consultants. District contract manager reviews LA contracts prior to execution with the consultant or contractor to ensure provisions are incorporated.	All LA contracts executed with consultants and contractors for FA projects are reviewed for compliance. Required contract provisions are identified on the LAP Construction and Professional Services checklists.

8.8 SANCTIONS

In the event the LA fails or refuses to comply with the terms described in this Chapter and the referenced authorities, the Department may take any or all of the following sanctions:

- Cancel, terminate, or suspend the LAP Agreement in whole or in part;
- Refrain from extending any further FAHP assistance to the LA with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the LA;
- Take such other action that may be deemed appropriate under the circumstances, including but not limited to LAP Certification termination, until compliance or remedial action has been accomplished by the subrecipient;
- Refer the case to the USDOT for appropriate legal proceedings.

8.9 AUTHORITIES AND RESOURCES

All resources referenced in this Chapter may also be accessed through the [LAP Website](#).

[Sub-recipient Compliance Assessment Tool \(SCAT\)](#)

[Appendices A and E](#)

[Nondiscrimination Handbook for Local Agencies](#)

Handbook Attachment A, LAP Nondiscrimination [Authorities and Resources](#)

Handbook Attachment B, [Title VI/Nondiscrimination Assurance](#)

Handbook Attachment C, [Sample Nondiscrimination Policy and Plan for Local Agencies](#)

Handbook Attachment D, [Sample Disadvantaged Business Enterprise \(DBE\) Statement](#)

[Triennial Title VI Program Review Tool for Local Government](#)

Local Technical Assistance Program SCAT and ADA training class recordings:

<https://floridaltap.org/localprograms/>

CHAPTER 9 AMERICANS WITH DISABILITIES ACT AND SECTION 504 OF THE REHABILITATION ACT NONDISCRIMINATION REQUIREMENTS

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9.1 OVERVIEW

The Department is the primary recipient of FAHP funds and passes through the funds to subrecipients to plan, design, and construct local transportation project priorities. To receive FAHP funds, the LA, and their contractors and consultants, must comply with Federal and State disability act authorities, including Florida statutes; USDOJ, USDOT and FHWA regulations, orders and notices; and the policies and procedures implemented by the Department in this Chapter. In addition, to maintain LAP certification, LAs must submit the [SCAT](#) once every three (3) years or at the request of the Department or the FHWA (see **Chapter 8.6**).

9.2 REHABILITATION ACT OF 1973, SECTION 504

[Section 504 of the Rehabilitation Act, as amended \(Section 504\)](#) and related authorities provide that no person shall on the grounds of disability be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. The **Civil Rights Restoration Act of 1987** further clarified **Section 504** in specifying that all programs, services, and activities of institutions receiving Federal funds must comply with Federal civil rights laws, not just the particular programs or activities that receive the funds. The regulatory authority for [Section 504 is at 49 C.F.R. 27](#).

9.2.1 Section 504 Scope

Section 504 applies not only to primary recipients like STAs, but also to any subrecipients, specifically including but not limited to LAs and their contractors and consultants. Regardless of the entity or the program receiving FAHP funds, all parties must take steps to prevent discrimination and ensure nondiscrimination in all programs, services, and activities. Thus, all programs, services, and activities of LAs receiving FAHP funding must comply with nondiscrimination requirements, whether or not the individual programs or activities receive Federal funding.

9.3 AMERICANS WITH DISABILITIES ACT OF 1990

The [Americans with Disabilities Act of 1990, as amended \(ADA\)](#) and related authorities provide that no person shall on the grounds of disability be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity, whether or not the program or activity receives Federal financial assistance.

9.3.1 Title II of the ADA Scope

Title II of the **ADA** requires that the Department and its LAs prevent discrimination and ensure nondiscrimination in all of their programs, services, and activities, whether or not they receive any Federal financial assistance. The regulatory authority for **ADA** in transportation is at [49 C.F.R. 27, 37, and 38](#) and at [28 C.F.R. 35](#). Title III of the **ADA** has similar requirements for corporations, partnerships and other private organizations.

9.3.2 Program and Facility Access Plans

States and LAs must have plans for providing accessibility to their programs and facilities by those who are disabled. However, those agencies with fifty (50) or more employees have additional responsibilities under **ADA/Section 504**, as outlined in **Section 9.5**.

9.4 ASSURANCES

The Department will ensure that the LA executes and provides an assurance in the form of the [Title VI/Nondiscrimination Agreement](#), per [49 C.F.R. 27.9](#) and as described in **Chapter 8**.

9.4.1 Scope of Assurances

Essentially, assurances serve two (2) purposes. First, they provide written commitment from the LA that no person will on the grounds of disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity conducted by the LA or its contractor(s) and consultant(s), regardless of whether those programs and activities are Federally funded or not. Second, assurances serve as a contract agreement for which remedy may be sought for breach.

9.4.2 Contract Insertions

The **Title VI/Nondiscrimination Agreement** contains required contract assertions labeled [Appendices A and E](#). It is important for the LA to ensure that the clauses are included in all LAP contracts and agreements. Appendices A and E are incorporated into the **LAP Terms for Federal-Aid Professional Services Contracts (FDOT Form No. 375-040-84)** and by reference in **FHWA 1273** (revised October 23, 2023).

9.5 IMPLEMENTATION PROCEDURES (ADA AND SECTION 504)

Compliant implementation of **ADA** and **Section 504** is a cooperative effort by the Department and its subrecipients.

9.5.1 Local Agency Responsibilities

- Issue a policy statement, which expresses its commitment to the nondiscrimination provisions of the **ADA** and **Section 504**. The policy statement must be circulated internally within the LA and to the general public. For convenience, the policy statement can also include other required protected classes, such as race, national origin, color, sex, age, religion, and family status. For more information and sample documents visit the LAP Title VI webpage and see the [Nondiscrimination Handbook for Local Agencies](#) and the [Sample Title VI/Nondiscrimination Policy and Plan for Sub-Recipients in the Local Agency Program \(LAP\)](#).
- Complete and submit the **SCAT** every three (3) years, generally, in conjunction with certification or upon request by the Department or FHWA.
- Perform a self-assessment of the accessibility of the programs and services provided by the LA, including pedestrian facilities, in accordance with [28 C.F.R. 35.105](#).
- Utilize current design standards that comply with minimum ADA requirements and Florida Laws and rules. Subrecipients of FAHP funds must comply with the ADA in all aspects of design and construction. Florida laws and rules require use of the **Florida Greenbook** design standards when planning, designing, and constructing transportation facilities for projects located on local roadways. FAHP funded projects require use of the **FDOT Design Manual (FDM)** when designing and constructing projects located on the SHS or NHS. Both the **Florida Greenbook** and the **FDM** meet or exceed the [US Department of Justice ADA Standards \(2010\)](#) and [US Department of Transportation ADA 2006 Standards for Transportation Facilities \(2006\)](#), the [Public Rights of Way Accessibility Guidelines \(PROWAG\)](#).
- Ensure compliance with the [DOJ/DOT Technical Memo](#) regarding alteration versus maintenance activities and the corresponding **ADA** requirements.
- Take action to correct any deficiencies found by the Department or FHWA within a reasonable time period, not to exceed ninety (90) days, in order to implement **ADA/Section 504** compliance in accordance with this agreement. The chief executive officer of the LA shall be held responsible for implementing **ADA** and **Section 504** requirements.
- The LA is required to adhere to the design exception and variation processes in the **Florida Greenbook** and/or the **FDM** to document any conditions of 'technical

infeasibility,' which prohibit the provision of all required accessibility elements or features.

- Ensure any person who believes that he or she, or any specific class of persons has been subjected to discrimination or retaliation prohibited by the **ADA or Section 504**, as amended and related authorities, may file a complaint. **Section 9.6** describes the complaint process in further detail.

9.5.2 Responsibilities of Local Agencies with 50 or More Employees

In addition, LAs with fifty (50) or more employees shall:

- Establish a complaint process to respond to accessibility complaints. As discussed in **Chapter 8**, the complaint process can include other discrimination complaint bases such as race, national origin, color, sex, age, religion, and family status. **Section 9.6** describes the complaint process in further detail.
- Designate an ADA Coordinator and publish their name and contact information. This person must have 'easy' access to the LA chief executive officer due to their role in recording and investigating complaints received by the agency.
- Develop and provide for public comment an ADA Transition Plan to prioritize, schedule, and report corrections of deficiencies identified during the self-assessment in accordance with [28 C.F.R. 35.150\(d\)](#). This is a requirement of all government agencies with fifty (50) or more employees *without* respect to funding [see **28 C.F.R. 35.105** and **150(d)**]. ADA Transition Plans must be publicly posted and updated periodically. If an agency has not started or has not maintained its ADA Transition Plan the Department offers resources to assist in the development of a plan. The Department, in partnership with FHWA and Florida International University, developed a web-based program that enables LAs to inventory their transportation facilities and will satisfy the requirements of the ADA Transition Plan - the [Safe and Accessible Pedestrian Facilities Inventory Model \(SAPFIM\)](#). Contact the State **ADA/Section 504** Coordinator or the State LP Administrator for additional information.

9.5.3 Department Responsibilities

- Review LA SCAT documents to verify LAs have current signed nondiscrimination assurances, a sufficient nondiscrimination plan, policy statement, and complaint procedure.
- Provide technical and program assistance to those LAs that are unable to demonstrate substantial compliance through the SCAT process.

- Review designs for FAHP projects to determine compliance with **ADA Standards**. Ensure the LA is following the **DOJ/DOT Technical Memo** on installing or upgrading curb ramps as part of alterations.
- Oversight of FAHP project construction to include regular and final inspections, to ensure compliance with **ADA Standards**. Ensure the LA is following the **DOJ/DOT Technical Memo** on installing or upgrading curb ramps as part of alterations.
- Provide LAs with assistance and suggestions in cases of technical infeasibility or any other situations where a design exception or variation may be needed due to constraints.
- Cooperate and assist in FHWA investigations of **ADA** complaints filed against LAs, to include docketing complaints, forwarding complaints to the appropriate FHWA authority, and conducting site inspections or remediation verification as requested or required.

9.6 DISCRIMINATION COMPLAINTS

Any person or any specific class of persons who believes they have been subjected to discrimination or retaliation prohibited by the **ADA** or **Section 504**, as amended and related authorities, may file a complaint. LAs follow their posted complaint filing/processing procedures, notifying the [FDOT State ADA/Section 504 Coordinator](#) for *any* complainants involving pedestrian or transportation facilities. However, if at any time a discrimination complaint cannot be satisfactorily resolved by the LA, it forwards the entire complaint and investigative file to the FDOT Statewide ADA/Section 504 Coordinator or the [FDOT State Title VI Coordinator](#). The Department and FHWA are designated nondiscrimination clearinghouses and will either assume jurisdiction for the complaint or forward it to the appropriate Federal or State authority for further processing.

9.6.1 Notification to the Florida Department of Transportation

Whenever possible, the LA will notify the FDOT State ADA/Section 504 Coordinator within five (5) calendar days of receiving a complaint involving pedestrian or transportation facilities. If possible, the following information should be included in the notification of complaint.

- Name and contact information of the Complainant, if available.
- Name(s) and contact information of the official(s) alleged to have discriminated.
- Basis of complaint (disability).
- Date of alleged discriminatory act(s).
- Date of complaint received by the LA ADA/Section 504 Coordinator.
- A description of the complaint.

- Other agencies (local, State, or Federal) where the complaint has been filed, if applicable.
- An explanation of the actions the LA has taken or is proposing to take to resolve the complaint.

9.6.2 Limitation on Local Agency Complaint Processing

Because laws may impose time limits on a Complainant's right to file discrimination complaints in Federal or State courts, at no time should the LA's processing of pedestrian or transportation facility complaints extend beyond ninety (90) calendar days without advising the FDOT State ADA/Section 504 Coordinator or the FDOT State Title VI Coordinator.

9.6.3 Employment Discrimination Complainants Excluded

Employment Discrimination Complaints under *Title I of the ADA* or other equal employment laws are specifically excluded from **Section 9.6** and should not be provided to the Department unless specifically requested, or if the primary objective of the financial assistance received is to provide employment ([42 U.S.C. 2000d-3](#)). Contact the FDOT State Title VI Coordinator for additional information.

9.6.4 Interagency Cooperation

Where **ADA/Section 504** discrimination complaints are received by or assigned to the Department or FHWA, the LA must fully cooperate with the ensuing investigation. This includes but is not limited to, adhering to deadlines for production of information; making project or program information available for inspection; cooperating with onsite visits and witness interviews; and engaging in conciliation or resolution conferences, where recommended.

9.6.5 Complaint Recordkeeping

The LA ADA/Section 504 Coordinator must maintain a log of all discrimination complaints received, even if unwritten or anonymous. The log includes:

- Names of Complainants, if available.
- Name of LA official or department against which the complaint is filed.
- Basis of complaint (disability).
- Dates of alleged discrimination, when the complaint was received by the LA and

when the Department was notified, if applicable.

- A brief explanation of resolution or referral action, along with the date the matter was resolved or referred.

9.7 SUB-RECIPIENT COMPLIANCE ASSESSMENT TOOL

A complete description of the LAP **SCAT** and the Department’s review requirements may be found in **Chapter 8**.

9.8 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Chapter 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the federal award. Federal award date under Department process is considered the Federal Authorization date. **Table 1** contains the minimum **ADA/Section 504** monitoring requirements performed by the Department. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

TABLE 1: Minimum Monitoring Requirements for Federal-Aid Projects		
MONITORING REQUIREMENT	REQUIREMENT DESCRIPTION AND ACTIVITIES	MINIMUM FREQUENCY BASED ON RISK LEVEL
SCAT Review	Central Office and FHWA designees review the LA’s Title VI, ADA and Nondiscrimination programs.	All LAs are reviewed triennially or when triggered by an audit
Title VI Assurance execution	The Title VI Assurance must be executed once every three years or when the chief executive officer changes. The Assurance expiration date is displayed in GAP. District program managers monitor dates in GAP and agency staffing changes and trigger a request for a new assurance when due or as needed.	All LAs are reviewed triennially or when triggered by staffing change at the LA.
Design Reviews for minimum standards	Review designs for FAHP projects to determine compliance with ADA Standards. Ensure the LA is following the DOJ/DOT Technical Memo on installing or upgrading curb ramps as part of alterations.	Design plans for each Department funded FAHP project are reviewed for conformance to minimum design standards, including ADA.
Construction Inspections	Oversight of FAHP project construction to include regular and final inspections, to ensure compliance with ADA Standards. Inspection frequencies are established in Chapters 21 and 22.	All FAHP funded construction projects are inspected for conformance with approved design in accordance with CH 21 & 22.

9.9 SANCTIONS

In the event the LA fails or refuses to comply with the terms described in this Chapter and the referenced authorities, the Department may take any or all of the following sanctions:

- Cancel, terminate, or suspend the LAP Agreement in whole or in part.
- Refrain from extending any further FAHP assistance to the LA with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the LA.
- Take such other action that may be deemed appropriate under the circumstances, including but not limited to LAP certification termination, until compliance or remedial action has been accomplished by the LA.
- Refer the case to the USDOT for appropriate legal proceedings.

9.10 RESOURCES

All resources referenced in this Chapter may also be accessed through the [LAP Website](#).

[Sub-recipient Compliance Assessment Tool \(SCAT\)](#)

[Appendices A and E](#)

[Nondiscrimination Handbook for Local Agencies](#)

Handbook Attachment A, LAP Nondiscrimination [Authorities and Resources](#)

Handbook Attachment B, [Title VI/Nondiscrimination Assurance](#)

Handbook Attachment C, [Sample Nondiscrimination Policy and Plan for Local Agencies](#)

Handbook Attachment D, [Sample Disadvantaged Business Enterprise \(DBE\) Statement](#)

[Triennial Title VI Program Review Tool for Local Government](#)

[DOJ/DOT Technical Memo](#)

[US Department of Justice ADA Standards \(2010\)](#)

[US Department of Transportation ADA Standards for Transportation Facilities \(2006\)](#)

[Public Rights of Way Accessibility Guidelines \(PROWAG\)](#)

[FDOT Design Manual \(FDM\)](#)

[Florida Greenbook](#)

Local Technical Assistance Program SCAT and ADA training class recordings:
<https://floridaltap.org/localprograms/>

CHAPTER 10

EQUAL EMPLOYMENT OPPORTUNITY, ON-THE-JOB TRAINING AND PREVAILING WAGES

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10.1 OVERVIEW

This **Chapter** pertains to requirements for FAHP construction contracts, including design-bid-build and design-build contracts where the work is awarded by the LA to a contractor. Per **Chapter 2**, LAP is the preferred mechanism for delivery of FAHP construction projects that include construction activities awarded to a contractor for the performance of the work. FAHP projects from various funding sources meeting the definition of construction shall be treated as “LAP” projects and utilize the LAP delivery mechanism. This **Chapter** is applicable to:

- LAP construction projects, including those that utilize design-build and alternative contracting efficiencies
- Emergency Repair projects
- Permanent Repair projects
- Non-traditional Federal-aid grants
- Federal Lands Acquisition Program “FLAP” grants transferred to and administered by FHWA, Florida Division Office. (FMIS will indicate “FHWA Administered”).

Individual project exceptions must be approved by Central Office, LP. Equal Employment Opportunity (EEO) requirements for professional services contracts are found in **Chapters 11 and 14**.

To effectively assure EEO, the FHWA requires that all FAHP construction contracts include specific requirements to implement the Title VI Program, related civil rights laws and regulations. These specific requirements apply to contractors and all their subcontractors (not including material suppliers) holding subcontracts of \$10,000 or more.

Multiple government agencies have responsibilities for an interest in the various elements of the construction contract compliance program. Program jurisdiction and roles are generally defined below but are not inclusive of every Federal or State agency who may have a vested interest or perform audits on contract compliance, either administrative or project specific.

FHWA approves the Department compliance program, reviews overall compliance activity through specified periodic reports, and reviews individual contracts and/or contractors as deemed appropriate. The U.S. Equal Employment Opportunity Commission (EEOC) investigates charges of discrimination or harassment filed by project workers.

The Department’s Equal Opportunity Office (EEO) is responsible for the development and monitoring of policies and procedures that provide assurances to the FHWA that all requirements are met on FAHP projects. The [Contract Compliance Manual \(CCM, FDOT Topic No. 275-020-005\)](#) reflects the compliance monitoring program approved by the FHWA for use on FAHP projects in the State of Florida. The LA shall use the **CCM** to monitor a contractor's performance on every LAP project. Any deviation from the policy outlined in the **CCM**, including additional requirements, requires prior approval from the

Department's State Construction Office and the EOO. The request must include a compelling justification by the District Construction Engineer.

The State Construction Office is responsible for the administration of the **Davis Bacon Act** (and other related acts) requirements relating to wage rates. The State Wage Rate Coordinator establishes policies and procedures pertaining to that requirement; Department Districts are responsible for the day-to-day project administration of wages. Additional information may be found on the Department's Construction website at <http://www.fdot.gov/construction/Wage.shtm>.

Under each District Construction Office, District Contract Compliance Managers (DCCMs) are responsible for the day-to-day administration of the Department's contract compliance program. Resident Compliance Specialists (RCS) monitor contract compliance at the project level on behalf of the LA.

10.2 LOCAL AGENCY TERMS OF COMPLIANCE

When the LA executes a grant agreement to receive FAHP funds it agrees to the following:

- To give the Department the information it requires for the supervision of compliance, and otherwise assists to achieve compliance.
- To refrain from entering into any contract or contract modification subject to **Executive Order 11246** of September 24, 1965, with a contractor barred from, or not eligible for, government contracts and Federally assisted construction contracts. This must follow the Executive Order and other relevant rules, laws, and regulations.
- To penalize contractors and subcontractors for violation of the EEO clause, following Part II, subpart D of the Executive Order. The penalties must be allowed by the State, FHWA, or the Secretary of Labor.
- Permit the Department's authorized representatives and authorized agents of FHWA (and other governmental agencies) to inspect all work, workmanship, materials, payrolls, and records and to audit the books, records, and accounts pertaining to the financing and development of the project.
- To assist and cooperate actively with the Department by having contractors and subcontractors comply with the EEO clause (below) and related rules, regulations, and relevant orders of the FHWA and/or Secretary of Labor.
- To be an eligible recipient of Federal-aid funds, LAs, contractors, and subcontractors must accept the following statement as their operating policy:

"It is the policy of this Company to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, age, disability, or national origin. Such action shall include: employment upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay

or other forms of compensation, and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

In addition, [Title VI Assurance – DOT 1050.2A, Appendices A and E](#) must be appended to every Federally funded contract.

10.3 OTHER REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS

A LA must include the required FAHP construction contract provisions, [FHWA 1273](#), into all construction contracts and subcontracts, regardless of tier, in order to ensure compliance with EEO and all other related contract compliance requirements. While consultant contracts do not require **FHWA 1273**, any contractor or subcontractor for design-build projects must include **FHWA 1273**. Notwithstanding, FHWA and the Department understand that all **FHWA 1273** provisions may not apply to design-build consultant contracts.

In addition, **FHWA 1273** references [Executive Order 11246](#) which must be referenced in all contracts. The Office of Federal Contract Compliance Programs, U.S. Department of Labor (OFCCP, USDOL) has the exclusive authority to determine compliance with **Executive Order 11246** and its regulations for implementation.

10.3.1 On-the-Job Training and Workforce Development

FDOT Standard Specification 7-25 On-the-Job Training Requirements is required on Federal-aid construction contracts that are 275-days or more in length and a contract value greater than \$2 million at award. LAs coordinate with the District LP Administrator and the DCCM on including **FDOT Standard Specification 7-25** in project bid documents, and then for monitoring project specific On-the-Job Training (OJT) requirements after contract award.

Regardless of whether the LAP project is subject to the **OJT Training Special Provisions, Section 6(b)** of **FHWA 1273** requires contractors to make full use of training programs to assist in developing skills of minorities and women.

10.3.2 Prevailing Wages (Davis-Bacon and Related Acts)

FAHP projects are subject to Davis-Bacon and Related Act Provisions as specified in **FHWA 1273**. Projects funded under **23 USC 133**, including projects carried out under the Transportation Alternatives (TA) Set-Aside under **23 USC 133(h)**, shall be treated as projects on a Federal-aid highway. This subjects all Surface Transportation Block Grant (STBG) projects (excluding the RTP set-aside) to, among other things, [Davis-Bacon Act prevailing wage requirements](#) and other Federal -aid requirements (e.g., [Buy America](#), planning, environmental review, letting, etc.).

To the extent the requirements of **23 USC 133** relating to *Treatment of Projects* conflicts with the express provisions in **Section 1524**, the provisions in **Section 1524** prevail because they are more specific than the general provision of **23 USC 133(i)**. The requirements apply to all projects located within the right of way of a roadway that is functionally classified as Federal-aid highway. Roadways functionally classified as local roads or rural minor collectors identified as exempt in **Section IV Davis-Bacon and Related Act Provisions of FHWA 1273**

(October 23, 2023) is now superseded by the FAST Act guidance for treatment of Federal-aid projects effective October 1, 2015. The [FHWA Memorandum on Special Federal-aid Funding](#) is applicable to related funding obligated on or after October 1, 2015, whether funded from the new STBG authorizations or STP funds authorized in previous years.

Applicable Federal-aid construction contracts must incorporate **FDOT Standard Specification 7-16** as expanded that references the current wage rate decision as posted on the [USDOL Wage Decisions](#) website applicable to the contract. It is imperative the LA incorporate the current wage rate decision in the bid documents and monitor the USDOL website for updates throughout the advertisement period of the contract. Wage rate decisions are updated as needed by the USDOL and may be revised multiple times in a year. The applicable wage rate decision is that which is posted ten (10) days prior to the bid opening date. If the wage rate decision is amended between the date of advertisement and 10-days prior to the bid opening, the LA will need to issue a bid addendum or contract amendment to incorporate the correct wage rate decision. The wage rate decision must be attached to all Federal-aid contracts and subcontracts as required in **FHWA 1273**. Per **Chapter 1, Section 1.1.6** of the **CCM** and Federal regulations pertaining to subrecipient oversight and monitoring, the LA is responsible for monitoring all Federal-aid subcontracts for inclusion of **FHWA 1273**.

Only the Department in coordination with its Federal partner, USDOL, may determine the applicability or exemption of prevailing minimum wage rates on a FAHP project. Neither a LA, nor the District LP Administrator has the authority to exempt a FAHP project from Davis-Bacon. To determine applicability on a project-by-project basis, the District LP Administrator will coordinate on behalf of the LA with Central Office, LP. To process exemption requests, the State LP Administrator requires identification of the project limits, system classification, and all Federal-aid funding sources associated with the project.

10.3.3 Modifications to Wage Rate Decisions

If the contracting agency has not sent the notice of award within 90-days after bid opening, modifications by USDOL to the wage decision prior to the notice of award shall be effective to that contract. The LA may request and obtain an extension of the 90-day period from the Wage and Hour Division (Reference US DOL Davis-Bacon FAQs website under [modifications to wage determinations](#)). The cut-off date used by Federal enforcement agencies for “notice of award” is defined as the “date the contracting agency formally notifies the bidder”.

The Department's [Classification Request Manager \(CRM\) System](#) is a web-based application for requesting and processing modifications to wage rate decisions during the construction period. Requests are processed on a contract-by-contract basis. Contractors cannot submit requests for modifications or additional classifications to the wage decision applicable to their projects unless two actions occur:

- 1) The LA creates a contract screen in the [GAP](#) system and enters a "contract award date". Instructions for how to create the contract screen in **GAP** are provided in the online [HELP guide](#) available in **GAP**.
- 2) The contractor(s) must request access to **CRM** from the State Construction Office.

10.4 LOCAL AGENCY CONTRACT ADMINISTRATION

10.4.1 Local Agency Compliance Monitoring

From preconstruction to final acceptance of the FAHP project, the LA must monitor the contractor's performance to make sure it complies with all provisions of **FHWA 1273** including the various EEO, OJT, Wages and DBE (see **Chapter 11** for additional information on DBE program) requirements. To accomplish this, the LA must designate an RCS. The RCS may be a LA staff member or a consultant competitively hired to perform Construction Administration (**Chapter 15**) for a specific project. If the LA uses consultant services for RCS functions, the LA must have a Responsible Charge (**Chapter 7**) who is a fulltime staff member and performs oversight of the consultant services.

Following the **CCM**, the RCS conducts reviews of the contractor, maintain records and reports concerning the contractor's performance, and ensures that the LA complies with its EEO and related nondiscrimination/affirmative action policies. The LA addresses questions about contract compliance monitoring to the [DCCM](#) or the District LP Administrator.

If deficiencies are found during the course of a project, the LA must ask the contractor to provide a corrective action plan and provide opportunity for the contractor to comply with the contract provisions. If the contractor clearly resists complying, or if it fails to comply after agreeing to specific corrective steps, then the LA must notify the DCCM and District LP Administrator. The Department will assist the LA in all remediation, termination or other actions deemed appropriate.

10.4.2 Local Agency Responsibilities

- Incorporate all required Federal contract compliance provisions and forms as identified on the **LAP Construction Checklist** and in this **Manual** in the solicitation package, fully executed contract, and contract changes or amendments (as applicable).
- Ensure the prime contractor incorporates **FHWA 1273** in all Federal-aid subcontracts.

- Conduct project preconstruction meetings to discuss DBE, EEO, OJT, and Prevailing Wage Rate Provisions for Federal Aid Contracts with the contractor.
 - Issue and explain all relevant procedures and forms, including those posted to the jobsite bulletin board. (The jobsite bulletin board must be posted within the project limits prior to any work being performed on the project.)
 - Ensure all relevant project personnel attend the meeting; including but not limited to Department staff, contractor, inspectors, invoicing specialists, the LA's RCS and the contractor's compliance specialist.
 - Ensure the contractor enters the anticipated DBE participation commitments into **Equal Opportunity Compliance (EOC)** system prior to the pre-construction meeting.
 - Preconstruction meeting minutes must be distributed to all attendees, uploaded into **GAP**, and retained in the project file.
- Ensure that the contractor posts and maintains required notices and posters throughout the life of the project, including the contractor's EEO policy, wage decision and additional classifications, if any. Required posters can be found on the [EOO website](#).
- Monitor on-site compliance with the EEO Required Contract Provisions and Labor Compliance and Training Special Provisions, as applicable.
- Ensure contractors locate, assess, and increase the skills of minority groups, women employees, and applicants for employment per **FHWA 1273**.
- Provide additional training and instructions upon request from the contractor.
- Prepare and/or ensure the preparation of the required EEO reports.
- Address any Department review findings in a timely manner and notify the DCCM and/or District LP Administrator once all findings have been addressed.

10.5 DEPARTMENT OVERSIGHT OF LOCAL AGENCY CONTRACT ADMINISTRATION

In addition to LA oversight, the Department and FHWA will monitor both the LA and its contractors for compliance as a part of the normal project management, oversight reviews and contract compliance reviews of selected contracts. The Department adheres closely to its [CCM](#) in determining compliance with EEO/OJT/DBE/Wages.

If there is reason to suspect that a contractor is noncompliant with **FHWA 1273, 23 CFR**, or other Federal authorities, the District shall conduct a compliance review to assess compliance with Federal provisions.

10.5.1 Department Compliance Reviews

The Department reviews include program and project level reviews of the LA's EEO, OJT, DBE, and prevailing wage documentation which is monitored by the LA RCS or consultant designee. This includes certified payrolls, wage rate interviews, comparison of interviews with certified payrolls with appropriate follow up as needed and project site display of required posters and wage rate information.

10.5.2 Department Compliance Review Schedule

At or before the project preconstruction meeting, Department staff provide an EEO script, technical assistance regarding contract compliance, and a draft compliance review schedule for the duration for the project. (Full details on preconstruction meetings are found in **Chapter 21**.) The number of reviews is determined by the DCCM and an updated schedule is provided to the LA no less than 2 weeks prior to the desired review date.

The review of the project and LA's processes should be conducted as early in the active portion of the project as practical, but no later than 30% construction completion to ensure proper documentation throughout the remainder of the project. The DCCM or designee will conduct this portion of the review in accordance with the requirements of the Construction Contract Compliance Administration (CCCA) Field Office Review as indicated in the **CCM**.

Additional compliance reviews are conducted when feasible. Department staff may review projects periodically based on risk (i.e. 60%, 90%) but will conduct reviews no less than twice for every FAHP project - at 30% construction and final completion of the project.

10.5.3 Compliance Review Documentation

Per **2 CFR 200.335 Methods for collection, transmission, and storage of information** and in accordance with the **May 2013 Executive Order on Making Open and Machine Readable the New Default for Government Information**, documents related to Federal-aid awards are encouraged to be stored electronically. Paper copies are not required to be stored by the LA, but files must be available upon request for auditors. Electronic files may be requested to be uploaded to **GAP** or other Department document file transfer tools, otherwise any project documents (electronic or paper) will be reviewed onsite at the LA, project site, contractor's place of business, or other location where project files are maintained or stored.

10.5.4 Compliance Review Findings and Corrective Actions

Any findings that require corrective action(s) will be documented and transmitted to the LA to address with the contractor. Review correspondence will be uploaded in **GAP**. If the LA or their contractor fails to perform corrective actions, Federal-aid funding may be withdrawn for any or all portions of the project or reimbursement withheld until the findings are addressed.

10.5.5 Other Agency Compliance Reviews

Further, FAHP project delivery is of interest to other Federal and State agencies, including USDOT, USDOL, the Offices of Government Accountability Offices (GAO), Program Management Improvement Teams (PMIT) and similar review groups. LAs should anticipate the possibility of project or program reviews, particularly for EEO and contractor compliance. Wherever possible, FHWA or the Department will provide reasonable notice

in advance of the review, along with the material to be inspected and staff interviewed, if any. LA cooperation is required by [USDOT](#) and [Highways regulations](#).

10.6 JULY EEO REPORTS

LAs must ensure that contractors complete and submit the **FHWA 1391**. The contractor and subcontractors submit this form showing the ethnic utilization breakdown on their Federal-aid highway construction projects. They submit the form each August for projects under construction during the month of July. The report is a summary of employees on their last payroll period which falls fully within July. The LA must submit the form to the DCCM by August 20th of each year for statewide reporting. The LA must also maintain this form in its project files.

10.7 REIMBURSEMENT AND RETAINAGE

Project progress invoices may be rejected by the Department if there are outstanding contract compliance findings related to the pay period for which the invoice was submitted. Reimbursement will be withheld by the Department until findings are addressed. Reimbursements may not be withheld for periods where there are no findings or after all findings have been addressed. Partial payments will be processed for portions of the work that comply, per F.S. and **FDOT Specifications**.

At the completion of the project, the DCCM or designee will conduct a final contract compliance review. Upon completion of the review and when all findings, if any, are addressed adequately per the DCCM, a notification of Substantial Compliance (or Completion) will be issued by the DCCM. The final invoice cannot be processed for payment if substantial compliance is not achieved. The notification shall be uploaded to **GAP** at the time of issuance.

LAs withhold payment from the contractor for non-compliance or take other sanctions or remedial measures per the LA's contract terms with the contractor and in accordance with **s. 255.077 and 255.078 F.S.** which places limitations on retainage LAs may withhold from a contractor. LAs withhold the final retainage or payment to the contractor until all contract compliance items are addressed and a Notification of Substantial Compliance is issued by the Department. Substantial compliance specifically includes but is not limited to demonstrating contractor prompt payment and return of retainage, if any. Per the **CCM, Section 4.6.5** and other Federal and State authorities, absent a showing of good cause, contractors must pay any subcontractors within thirty (30) days of receipt of payment by the LA. In addition, contractors must return any retainage to subcontractors within thirty (30) days of completion of the subcontract work. As a condition of substantial compliance, LAs must monitor contractors to ensure adherence with these requirements.

Per **49 CFR 26.29(a)**, a contract provision must exist in every FA contract that requires prime contractors and subcontractors pay for satisfactory performance of their contracts no later than 30 days from their receipt of payment. The Department uses **Form No. 700-010-38 Certification Disbursement of Previous Payment to Subcontractors** to

monitor for active compliance at every tier of the work performed. Use of **Form No. 700-010-38** is required by **FDOT Specification 9-5.6 Certification of Payment to Subcontractors**. If the LA removes the specification from its **LAP Division 1 Specs** package in lieu of its own prompt payment language; the LA must include a clause that meets the requirement in the **CCM, Section 4.6.5**. It is recommended the LAs use **FDOT Specification 9-5.6** on all FAHP projects.

10.8 LOCAL AGENCY PROGRAM SANCTIONS

In the event the LA fails or refuses to comply with the terms of this chapter, the Department may take any or all of the following sanctions:

- Cancel, terminate, or suspend the grant agreement in whole or in part.
- Refrain from extending any further assistance to the LA under the FAHP funding program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the LA.
- Take such other action that may be deemed appropriate under the circumstances, including LAP certification removal, until compliance or remedial action has been accomplished by the LA.
- Refer the case to the USDOT or USDOL for appropriate legal proceedings.

10.9 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Chapter 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the Federal award. Federal award date under Department process is considered the Federal Authorization date. **Table 1** contains the minimum monitoring requirements performed by the Department. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

Table 1: Minimum Monitoring Requirements for Federal-Aid Projects

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
EEO Contract Compliance Requirements- Solicitation Package Instructions and Contract Provisions	LA project solicitations and contracts are reviewed to verify incorporation of EEO related provisions and requirements. Forms and contract language as specified in this chapter must be incorporated into LA solicitation packages and contracts with contractors and consultants. District contract manager reviews LA solicitation packages and contracts prior to execution with the consultant or contractor to ensure provisions are incorporated.	All LA solicitation packages and contracts executed with consultants and contractors for FA projects are reviewed for compliance. Required contract provisions are identified on the LAP Construction and Professional Services checklists.
LA Contract Changes	Contract changes agreed upon between the LA	All contract changes are

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
	and their consultant/contractor are documented, justified, and submitted in writing to the grant manager for approval prior to the LA implementing the contract change. Department contract manager verifies contract changes are in compliance with State and Federal requirements.	reviewed and approved prior to implementation by the LA. SAs or time extensions to the Department grant agreement are issued as needed.
FDOT Contract Compliance Reviews	DCCM or designee provide a draft review schedule for the duration for the project at the project preconstruction meeting. The number of reviews will be determined by the DCCM and an updated schedule will be provided to the LA no less than 2 weeks prior to the desired review date. The DCCM or designee conducts reviews in accordance with the requirements of the Construction Contract Compliance Administration (CCCA) Field Office Review as indicated in the CCM .	<p>Low Risk- at or before 30% construction and final review at construction completion.</p> <p>Moderate- at or before 30% construction, one interim review if project duration allows, and final review.</p> <p>Elevated- at or before 30% construction, one interim review, and final review.</p> <p>High- at or before 30% construction, 60% construction, 90% construction and final review.</p>

10.10 RESOURCES

[Contract Compliance Manual FDOT Topic No. 275-020-005](#) (forms and other resources specific to contract compliance are located in the **CCM**)

[USDOL Wage Decisions](#)

[USDOL Executive Order 11246](#)

[FHWA 1273](#)

[FHWA Davis-Bacon Construction Program Guide](#)

[FHWA Buy America](#)

[FHWA Memorandum on Special Federal-aid Funding](#)

[Title VI Assurance – DOT 1050.2A, Appendices A and E](#)

[FDOT State Office of Construction Wages Webpage](#)

[FDOT Classification Request Manager application](#)

[FDOT District Contract Compliance Manager](#)

[FDOT Standard Specifications for Road and Bridge Construction](#)

[Form No. 700-010-38 Certification Disbursement of Previous Payment to](#)

[Subcontractors](#)

[Florida Grant Application Process "GAP" Login](#)

CHAPTER 11

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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11.1 OVERVIEW

USDOT regulations at [49 CFR 26](#) require recipients of FAHP and other funding to participate in the DBE program. The program is intended to remedy past discrimination and remove barriers to competition among disadvantaged businesses in Federal-aid contracting. All LAs and their contractors and consultants must take steps to make sure that DBEs are encouraged to compete for construction contracts, procurement contracts, grants, services, financial aid, or other benefits.

11.1.1 Contract Assurances

Under **49 CFR 26.13**, LAs are required to have a signed policy statement expressing their commitment to DBE participation. An example is included in the comprehensive template in [Attachment D](#) of the [Nondiscrimination Handbook for Local Agencies](#). All FAHP related grant agreements executed with the Department include the Federally required (DBE participation) assurance language provided at **49 CFR 26.13(a)**. In addition, each LA Federal-aid contract signed with prime contractors, prime consultants and all related Federal-aid contracts signed with subcontractors and subconsultants must also include the assurance language provided at **49 CFR 26.13(b)**.

For *construction* contracts, this assurance is included as part of the [FHWA 1273](#). The LA RCS is responsible for ensuring the prime contractor incorporates **FHWA 1273** in all Federal-aid construction subcontracts.

For *professional services* contracts, the assurance is included as part of the Department [LAP Terms for Federal-Aid Professional Services Contracts \(FDOT Form No. 375-040-84\)](#) and is available for LAs' incorporation into professional services or other non-construction contracts and subcontracts. The LA project manager or designated responsible charge is responsible for ensuring prime consultants incorporate the *LAP Terms for Federal-Aid Contracts* in all Federal-aid subconsultant contracts.

11.2 STATEWIDE GOVERNING DBE PROGRAM

The only approved DBE Program in the State of Florida for application on FAHP projects is the Department's [DBE Program Plan](#) and related [FDOT DBE Goal for FHWA Federal Fiscal Years 2021-2023](#).

LAs delivering FAHP projects may not use alternate DBE programs or goals on FHWA funded projects without USDOT approval, even if the program is approved by another modal or Federal agency. DBE programs approved by the Federal Transit Administration (FTA) are not applicable to FHWA assisted contracts and cannot be implemented in lieu of the FDOT DBE Program. A LA may track other programs and/or goals for informational purposes on FAHP projects, BUT they may not set contract goals for the use of these businesses and are prohibited from providing a preference for local, small, minority, or disadvantaged business use.

Under the Federal requirements and the direction of FHWA, the Department performs the following key actions on behalf of Federal-aid subrecipients:

- Establishes a [DBE certification program](#) which registers and certifies businesses.
- Provides a [DBE directory](#) listing of all eligible firms statewide and each firm's certified work type listed in association with their contact information.
- Reporting DBE awards or commitments and payments biannually by utilizing the [EOC](#) web-based application for payment data collection.
- Reporting bidder opportunity lists for all Federal-aid projects utilizing data collected in **EOC**.

11.2.1 Race Neutral Program

[49 CFR 26.51](#) requires the Department to meet the maximum feasible portion of its overall goal through race neutral means without setting DBE goals on individual projects. Further, because the Department has met and achieved its overall DBE goal for two or more consecutive years, it is not permitted to set race-conscious project goals until or unless it can no longer achieve its overall goal through normal, race-neutral competitive procurement processes.

If the Department does not meet the DBE program goal, it may be required to return to a race-conscious program. In a race-conscious program, goals are imposed on individual contracts, both construction and consultant. The same requirement would also be imposed on subrecipient delivered FAHP projects.

11.2.2 Overall DBE Goal

The Department is required to set overall DBE goals every three (3) Federal Fiscal Years (FFY). The current overall FDOT DBE goal of **10.67%** is in effect October 1, 2023 through September 30, 2025. The Department aspires to spend 10.67% of FHWA funds on projects with Certified DBEs as prime contractors/subcontractors and prime consultants/subconsultants. The goal is not a contractual requirement and neither the Department nor LAs delivering FAHP projects may take sanctions or other punitive actions for failure of contractor(s) to meet the 10.67% goal. However, the Department strongly encourages contractors to seek out, solicit bids/quotes and use DBEs wherever possible, and it expects subrecipients do likewise.

11.2.3 Training and Supportive Services

LAs requiring assistance with DBE program implementation contacts the District LP Administrator, who will arrange the necessary training with the Department's EOO. In addition, FHWA and the Department fund several supportive services for DBEs and firms/LAs seeking to use them. For information on how supportive services can assist LAs in meeting the overall goal or on the Department's overall Business Development Program services, visit the [EOO webpage](#).

11.3 BID OPPORTUNITY DATA COLLECTION

In order to ensure that the DBE program is narrowly tailored in compliance with **49 CFR 26.45** and applicable [Supreme Court decision\(s\)](#), the Department must maintain a statewide database of all firms that are participating or attempting to participate in FHWA-assisted contracts. The list must include all firms that bid on prime contracts or bid or quote subcontracts on FHWA-assisted projects, including both DBEs and non-DBEs. The *Bid Opportunity List* is used to record bidders' information for all subcontractors or subconsultants who submitted bids to primes. All bidders must submit their Bid Opportunity List in **EOC** within 3 days of bid submission to the LA.

The submission window for the Bid Opportunity List in **EOC** closes after six (6) months or 180 days from the grant agreement execution date between the Department and the LA. This means that **EOC** will not allow consultants or contractors to submit their bidder opportunity information greater than 180 days from the date the grant agreement was executed. LAs are required to advertise within thirty (30) days from the date of the NTP from the Department. Usually, Department NTPs coincide with the date of the grant agreement execution. If the 180 day submission window has expired, contractors and consultants must contact EOO Help in **EOC** to reopen the contract for bidder opportunity reporting.

Professional services contracts and continuing services contracts may be advertised before the LA enters into a grant agreement with the Department. In these cases, the bidder opportunity information is collected outside of the **EOC** database and the LA must report the information to the EOO by October 1 annually for inclusion in the annual data report submitted to FHWA.

LAP and MPO projects appear in **EOC** referenced by the assigned five (5) digit FDOT contract number for bid opportunity reporting. This would be the five (5) digit number beginning with 'G' found at the top of your grant agreement. This reporting function is separate from actual DBE commitment and payment reporting and does not require the LA to create a contract screen in **GAP** as described in **Section 11.5.1**.

11.3.1 Local Agency Responsibilities

LAs are required to notify their bidders of the requirement to report bidder opportunity information in **EOC** in their construction bid packages and professional services requests for proposals (RFPs). As part of the notification, the LA will need to provide the five (5) digit number beginning with 'G' found at the top of your grant agreement to all bidders and consultants.

Bid opportunity instructions to contractors are included in [FDOT Form # 275-030-11](#) and are required to be included in FAHP project solicitations. Best practices LAs may use to increase compliance with the bidder opportunity reporting include:

- Require bid opportunity reporting as a condition of responsiveness to the project solicitation.
- Remind potential bidders at the project information, pre-bid, and bid opening meetings to submit the information.

Note: Contractors and consultants must apply for an [EOC User ID and Password](#) to access the system.

11.3.2 Department Responsibilities

Prior to providing concurrence to award a construction or consultant contract, the District LP Administrator shall verify the bid opportunity information was reported in the **EOC** system. At a minimum, the recommended contractor or consultant for contract award must demonstrate compliance with bid opportunity reporting requirements. District LP Administrator's will access **EOC** to verify information as needed for concurrence. The example provided in **Table 1** is acceptable for concurrence of recommendation to award the contract.

TABLE 1: Bid Opportunity List Report

Sub Vendor ID		Sub Vendor Name	Specialty Area
F592027389		WINTER GARDEN GRASSING INC	561730 - LANDSCAPING SERVICES

11.4 REPORTING DBE COMMITMENTS, ACTUAL PAYMENTS

USDOT regulations identify DBE Commitments as the measure for goal achievement. However, the regulations at [49 CFR 26.37\(c\)](#) also require that the Department maintain a 'running tally' in order to compare the actual payments to commitments reported. The Department complies with these requirements through the **EOC** system.

All subcontractors/subconsultants must be approved by the LA before performing work since Federal and State laws require LAs to verify vendor eligibility information including suspension debarment status; therefore, a LA will have documentation of each sub approved to perform work on the project which can then be verified against commitment and subsequent payment information reported in **EOC**.

11.4.1 GAP and Equal Opportunity Compliance System Interface

For a subrecipient delivered FAHP project to appear in **EOC**, a "Local Agency Contract" screen must first be created for the project in **GAP**. Contract screens are created by the LA for both professional services and construction contracts at the time of contract award. Contract screens shall be updated if the total cost of the contract changes

during the project. GAP exports the contract information to **EOC** in a data load that occurs nightly. Instructions on how to successfully create a contract screen in **GAP** are provided in the *Help Guide* posted in **GAP**.

The following needs to be created on the GAP contract screen for the project to appear in **EOC** successfully:

- LA contract number
- Prime name and federal tax ID
- LA contract execution date
- Contract dollar amount

Note: the LA award date must also be entered for the contract to appear in the Office of Construction's **CRM system (Chapter 10)**.

11.4.2 Anticipated DBE Participation or Commitments

The prime contractor or consultant is required to enter anticipated DBE utilization data in the **EOC** System at or before the preconstruction or pre-work meeting. The anticipated DBE participation is also known as "commitments". The data includes:

- DBE company name
- Specialty code/North American Industry Classification System (NAICS) code identifying work to be performed
- Total subcontract amount

For construction contracts, this information would be found on the [Certificate of Sublet Work Form No. 700-101-36](#) submitted by the prime contractor. For professional services contracts, prime consultants identify subconsultants and add or remove subconsultants per the LAs' processes specified in the solicitation and original contract.

In addition, prime contractors/consultants are required to promptly update the **EOC** system whenever DBEs are added or removed from a contract, or when utilization changes. Even when DBEs are not used on a project, the prime contractor/consultant is responsible for reporting zero (0) DBE utilization in **EOC**. Prime contractors/consultants who are certified DBEs must report the portion of the contract which will be performed directly by them with their own workforces.

11.4.3 Payments to DBEs

The prime contractor/consultant must report data on actual payments, minority status, and the type of work of *all subcontractors/subconsultants and major suppliers* **monthly** in **EOC**. Included in the reporting are monies paid from each monthly pay application to each DBE for the work performed in their certified area(s). If no payment is made to a DBE, the Prime may report a zero (0) dollar payment. The zero (0) dollar payment feature is optional. It can be used if you don't have any payments to report for the month.

*Note: If you use this selection, you will need to specify the Zero Payment reason. The Prime must continue monthly reporting in **EOC** until such time that the DBE has been 'finalized or closed out' of the project.*

11.4.4 Prompt Payment

Monthly actual payment reporting requirements for prime contractors and consultants are based on prompt payment rules and laws. The same holds true for return of retainage after the subcontractor has completed its work, not when the overall project is finished. [Florida Law](#) requires timely payment for both construction and non-construction services. Generally, invoices for construction contracts must be paid within twenty-five (25) days of receipt. Invoices for consultant contracts are payable per the contract terms, but shall not exceed Federal regulations in [49 CFR 26.29](#) that requires payment of all subcontractors for satisfactory performance within thirty (30) days of payment to the Prime.

Note: The LA cannot be reimbursed by the Department without proof of payment to all prime contractors/consultants and subcontractors/subconsultants.

LAs review and compare monthly payment applications to actual payments reported in **EOC** and use all available means to ensure prompt payment for subcontractors or subconsultants. Both the Department and FHWA have a vested interest in promoting the growth and sustainability of DBEs and other small businesses. Unjustified late or default payments by the prime contractors and consultants to subcontractors or subconsultants thwart this goal, creating delays in project delivery often exposing the prime contractor to civil or even criminal liability.

11.4.5 DBE Affirmative Action Plans

The Department will monitor contractor compliance with DBE specifications in the contract and the contractor's implementation of the **DBE Affirmative Action (AA) Plan** through formal reviews including contract compliance reviews. The **DBE AA Plan** is not a requirement for individual LAP projects; however, a LA must comply with **49 CFR Part 26. FDOT Standard Specification 7-24** is applicable to construction projects; provisions **7-24.1** and **7-24.3** that describe the **DBE AA Plan** requirements are not applicable to LAP construction projects.

11.4.6 Local Agency Responsibilities

- LA project manager inputs the LA contract information in GAP.
- For FAHP professional services contracts, the LA project manager shall verify the consultants reporting of DBE commitments and payments in **EOC**.
- For FAHP construction contracts, the role of the RCS includes the review and approval of the DBE commitments and payments entered in **EOC** by the prime contractor. If a consultant RCS is utilized by the LA, the LA must also assign a

staff member to perform oversight of the RCS consultant's activities that includes **EOC** reporting.

A best practice is for the LA project manager to make a habit of reviewing **EOC** as part of their monthly invoice review process.

11.4.7 Department Responsibilities

The District LP Administrator and the DCCM both monitor FAHP projects for compliance with the Department's DBE program. Responsibilities may be performed by one or both periodically throughout the project. DCCM contract compliance review schedules are provided in **Chapter 10**.

- Verify the LA input the LA contract information in **GAP** prior to or at the time of the pre-construction or pre-work meeting.
- Verify the LA contract screen in **GAP** is updated when contract changes are approved by the Department that result in changes the total cost of the project.
- Verify subconsultant/subcontractor additions and removals are entered into **EOC** throughout the project.
- Verify subconsultant/subcontractor payments are entered into **EOC** as the work is performed.

A best practice is for the Department project manager to make a habit of reviewing **GAP** and **EOC** as part of their contract change approvals, invoice reviews, or when a project progress report is received.

11.5 AGENCY COOPERATION

Both the Department and FHWA are committed to transparency and accountability in subrecipient FAHP project delivery. Further, FAHP project delivery is of interest to other USDOT, Federal and State agencies, including Offices of Inspector General (OIG), GAO, PMIT, and similar review groups. LAs should anticipate project or program reviews, particularly for DBE compliance. Wherever possible, FHWA or the Department will provide reasonable notice in advance of the review, along with the material to be inspected and staff interviewed, if any. LA cooperation is both expected and required by [USDOT](#) and [Highways regulations](#). Review teams will always make efforts to minimize burden or business impacts to the LA during the review.

11.6 SANCTIONS

In the event the LA fails or refuses to comply with the terms of the DBE Program and the terms of their LAP certification, the Department may take any or all of the following sanctions:

- Cancel, terminate, or suspend the LAP Agreement in whole or in part.
- Refrain from extending any further FAHP assistance to the LA with respect to

which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the LA.

- Take such other action that may be deemed appropriate under the circumstances, including but not limited to LAP certification termination, until compliance or remedial action has been accomplished by the LA.
- Refer the case to the USDOT for appropriate legal proceedings.

11.7 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Chapter 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the federal award. Federal award date under Department process is considered the Federal Authorization date. **Table 1** contains the minimum DBE Program monitoring requirements performed by the Department. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

Table 1: Minimum Monitoring Requirements for Federal-Aid Projects

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
DBE Program Solicitation Package Instructions and Contract Provisions	LA project solicitations and contracts are reviewed to verify incorporation of DBE Program provisions and requirements. Forms and contract language as specified in this chapter must be incorporated into LA solicitation packages and contracts with contractors and consultants. District contract manager reviews LA solicitation packages and contracts prior to execution with the consultant or contractor to ensure provisions are incorporated.	All LA solicitation packages and contracts executed with consultants and contractors for FA projects are reviewed for compliance. Required contract provisions are identified on the LAP Construction and Professional Services checklists.
LA Contract Changes	Contract changes agreed upon between the LA and their consultant/contractor are documented, justified, and submitted in writing to the grant manager for approval prior to the LA implementing the contract change. Department contract manager verifies contract changes are in compliance with State and Federal requirements.	All contract changes are reviewed and approved prior to implementation by the LA. SAs or time extensions to the Department grant agreement are issued as needed.
Bid Opportunity Reporting	Prior to providing concurrence to award a construction or consultant contract, the District grant manager verifies the bid opportunity information is reported in EOC .	All LA contract awards are reviewed by the Department and concurred with prior to LA contract execution.
Local Agency Contract Screen Creation and Updates in GAP	Verify the LA input the LA contract information in GAP prior to or at the time of the Pre-Construction or Pre-Work Meeting. Verify adjustments to the total cost of the project and/or completion dates are updated in GAP throughout	All LA contract screens are reviewed in GAP before the consultant/contractor begins work on the

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
	the project duration.	project. All LA contract screens are reviewed in GAP when approving contract changes to the total cost of the project. All LA contract screens are reviewed in GAP at project close out.
DBE Commitments Reporting in EOC	Verify the DBE commitments are reported in EOC at the project start and when a sub is added or removed from the project. Verify adjustments are made in EOC if a contract change requires it.	All contract changes are reviewed and approved prior to implementation by the LA.
DBE Payments Reporting in EOC	Verify the DBE payments are reported in EOC when an invoice is received from the LA for payment. Verify adjustments are made in EOC if a contract change requires it.	Low- quarterly invoice submittals and biennial full invoice reviews. Final invoice review in full. Moderate- quarterly full invoice submittals and reviews Elevated- quarterly full invoice submittals and reviews High- monthly invoice submittals and full invoice reviews

11.8 RESOURCES

[Equal Opportunity Compliance \(EOC\) Resources Webpage](#)

[Equal Opportunity Construction Contract Compliance Manual FDOT Procedure No. 275-020-005](#)

[EOC System Login](#)

[FDOT DBE Directory](#)

[FDOT DBE Certification program](#)

[FDOT DBE Program Plan](#)

[FHWA 1273](#) required for inclusion on all construction contracts and subcontracts.

[GAP](#)

[LAP Terms for Federal Aid Professional Services Contracts FDOT Form No. 375-040-](#)

[84](#) required on all consultant and subconsultant contracts.

CHAPTER 12 VALUE ENGINEERING REQUIREMENTS

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12.1 OVERVIEW

Value Engineering (VE) is a systematic process used by an independent multi-disciplinary team to improve the value of a project, product or service through the identification and analysis of functions. Project functions are the intent or purpose of the components that make up the project. FDOT VE teams strive to optimize the use of allocated funds without reducing safety, quality, or performance by strictly following the **Value Engineering Program (FDOT Procedure 625-030-002)**.

Congress authorized the use of VE on FAHP projects beginning in 1970. The National Highways Designation Act of 1995 (amended in 2005 and 2012) requires VE be performed on FAHP as identified in [23 U.S.C. 106](#) and further defined in [23 CFR 627](#).

12.2 REQUIRED FEDERAL-AID PROJECTS

The following FAHP projects are required to utilize the VE process per [23 C.F.R. 627](#):

- Projects on the National Highway System (NHS) with an estimated total cost of \$50 million or more and are not delivered using the Design/Build method of construction.
- Bridge projects on the NHS with an estimated total cost of \$40 million or more and are not delivered using the Design/Build method of construction.
- Any major project (as defined in [23 U.S.C. 106\(h\)](#)) located on or off the NHS that utilizes Federal-aid highway funding in any contract or phase comprising the major project, and are not delivered using the Design/Build method of construction.
- Any other project the FHWA deems applicable.

The total estimated cost shall include all costs associated with all phases of the project, including environment PD&E, design, right of way, utilities, and construction.

The VE study shall be performed during one of the following phases of project development: Planning, PD&E, or Engineering Design. The optimal time to perform VE is during PD&E and continuing up to thirty (30) percent design plan review. Projects delivered with the Design/Build method of construction do not require VE Analysis.

12.3 ADDITIONAL PROJECTS

Additional projects outside of the Federal requirements identified in **Section 12.2** may also utilize the VE process. Projects to consider should include:

- Projects on the SHS with an estimated total cost of \$25 million or more that are not delivered using the Design/Build method of construction.
- Projects that significantly exceed initial cost estimates.
- Complex projects.
- Projects requested for VE by the Department.
- Projects with high right of way costs.
- Projects and processes with unusual problems.

12.4 VALUE ENGINEERING COORDINATION

The District LP Administrator will coordinate with the District VE Coordinator and the LA on those projects that require VE per the thresholds defined in **Section 12.2**. VE Analysis requires a multi-disciplinary team of experts and may also require consultant support. VE Analysis is eligible for reimbursement under the FAHP. District staff will coordinate with the Central Office on a project by project basis for additional support for VE.

12.5 VALUE ENGINEERING CHANGE PROPOSALS

Value Engineering Change Proposal (VECP) is a construction contract change proposal submitted by the construction contractor based on a VECP provision in the contract. These proposals may improve the project's performance, value and/or quality, lower construction costs, or shorten the delivery time, while considering their impacts on the project's overall life-cycle cost and other applicable factors.

LAs are encouraged to include a VECP clause or such a clause under a different name, such as Cost Savings Initiative (CSI) Proposal. Whenever such clauses are used, the LA considers changes that may improve the project's performance, value and quality, shorten the delivery time, or lower construction costs, while considering impacts on the project's overall life-cycle cost and other applicable factors. FDOT implements its CSI program through the use of the CSI specification in contracts and **FDOT procedure 625-030-005, Cost Savings Initiative Proposal**. LP projects on the SHS regardless of fund source and LAP Classification A, B, and C projects are required to use the **FDOT Standard Specifications for Road and Bridge Construction**, which includes the CSI specification.

12.6 RESOURCES

[Code of Federal Regulations, Title 23, Chapter I, Part 627](#)

Value Engineering Program Procedure (625-030-002)

<https://pdl.fdot.gov/api/procedures/downloadProcedure/625-030-002>

Cost Savings Initiative Proposal (625-030-005)

<https://pdl.fdot.gov/api/procedures/downloadProcedure/625-030-005>

Value Engineering - Project Management Web Page

<https://www.fdot.gov/designsupport/projectreview/valueeng/default.shtm>

CHAPTER 13

FHWA EMERGENCY RELIEF PROGRAM

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13.1 OVERVIEW

In ***Title 23, USC, Section 125***, Congress authorized a special program from the ***Highway Trust Fund*** for the repair or reconstruction of Federal-aid highways and roads. These roads must have suffered serious damage as a result of (1) natural disasters or (2) catastrophic failures from an external cause. This program is commonly referred to as the ***FHWA Emergency Relief (ER) Program***. It supplements the commitment of resources by States, their political subdivisions, or other Federal agencies to help in the repair of facilities damaged by eligible events.

The FHWA ER Program is activated when a Governor's Proclamation of a State of Emergency or a Presidential Declaration of a State of Emergency is issued. When the event is due to a natural disaster or catastrophic event, such as a hurricane, FHWA considers the ER event date to be the date of landfall of the storm. Additional information on types of events that trigger the program may be found in the [FHWA Emergency Relief Manual](#) and [FHWA Florida Division ER Q&A Guide](#).

There are two categories of emergency relief:

- 1) emergency repairs, and
- 2) permanent repairs.

Generally, all elements within the cross section of a Federal-aid highway that are damaged as a direct result of a disaster are eligible for repair under the FHWA ER Program. This includes, but is not limited to: pavement, shoulders, slopes and embankments, guardrail, signs and traffic control devices, bridges, culverts, cribbing or other bank control features, bike and pedestrian path, fencing, and retaining walls. The repair of a pedestrian or bicycle trail inside the right of way of a Federal-aid highway is eligible for ER funding whether or not the roadway itself is damaged. It is important to note that all emergency relief work must comply with ***National Environmental Policy Act*** (NEPA) requirements. Additional information on how to comply with NEPA and seek required approvals from the Department is found in ***Chapter 18: Environmental Compliance***.

Emergency and permanent work to be performed by a Local Government shall be in accordance with [Emergency Procurement During Governor Declared Emergencies, Procedure No. 375-040-130](#).

ER Program funds are allocated directly to the Department for each declared event precluding the LAs from seeking reimbursement for damage sites without Department assistance. LAs emergency relief projects are subject to the Department's Federal-aid,

emergency, and other relevant program policies and procedures to be eligible for reimbursement with FHWA ER Program funding. LAs work directly with the Department when seeking reimbursement through the FHWA ER Program.

13.1.1 Department Roles and Responsibilities in ER Activities

The [District Maintenance Engineers](#) are the primary point of contact for the FHWA ER Program during and after a declared event to provide guidance to LAs on preparing and submitting damage reports for repairs to the Department who in turn submits to FHWA. The Department assists the LA in preparing the necessary documentation for justification and reimbursement, and also coordinates directly with the FHWA District Transportation Engineer (DTE) on behalf of the LA. Each District coordinates site inspections, reviews, and approvals of the Detailed Damage Inspection Reports (DDIR) with the FHWA DTE. DDIRs submitted by a LA shall be reviewed and signed by the Department Maintenance Engineer or their designee. Due dates for the submission of DDIRs are provided in the Department's [Work Program Instructions, Part III, Chapter 10](#). Deadlines are communicated by the Department's Federal-Aid Office. The District LP Administrators will assist with the dissemination of critical information and deadlines to the LAs from the Department.

13.1.2 FHWA Roles and Responsibilities in ER Activities

The role and responsibilities of the FHWA in ER activities under **Sections 120** and **125, 23 U.S.C.** are:

- Administration of the ER Program by coordinating and implementing disaster relief policies and procedures.
- Assistance to State, Federal, or other highway agencies in seeking application for funds.
- Technical assistance to the State, Federal, or other highway agencies in the review, design, repair, and reconstruction of damaged highway facilities.

13.2 PROGRAM ELIGIBILITY

Title 23 C.F.R. Part 668, Subpart A provides that an event generally must have caused at least \$700,000 (Federal share) in eligible damage to the entire declared area for the event to be eligible for ER Program funding. Disaster damage totaling less than \$700,000 (Federal share) is generally considered to be heavy maintenance or routine emergency repairs. For exceptions to this damage threshold, see **23 C.F.R. 668.105(j)**. A minimum \$5,000 in actual damages per site, within the declared area, is used to determine if specific sites are eligible for ER funds. Sites that have sustained less than \$5,000 in

damage are generally considered to be heavy maintenance. Sites meeting the damage threshold are not guaranteed ER funding; the threshold denotes those sites that are eligible to apply for ER funding.

By statute, ER funding is limited to the cost of repair or reconstruction of a comparable facility. A comparable facility is a facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life. A risk-based analysis is used when designing and constructing repairs to ensure they are cost effective and to reduce the potential for future losses. The analysis applies the best available scientific and economic information to forecast and assess future risk factors.

13.2.1 Site Characteristics

Three basic characteristics that shall be met for a damage site to be potentially eligible for the ER Program are:

- 1) The event is declared by the President or the Governor.
- 2) The site is within the right of way of a Federal-aid highway facility.
- 3) The site meets a minimum threshold amount of \$5,000 in damage. Multiple locations on the same Federal-aid highway that are **less than** ¼ mile apart may be grouped together as one “site”.

13.2.2 Qualifying Roadways

A qualifying roadway must be a Federal-aid highway. Federal-aid highways are public roads that are classified as arterial, urban collectors and major rural collectors. Highways that are classified as minor rural collectors or local roads are not eligible for ER funding even if other Federal-aid funds have been used on those roads. The Department’s Transportation Data and Analytics updates reports and maps on Federal-aid highways monthly. The reports and maps to assist in determination of eligibility may be found at <http://www.fdot.gov/statistics/fedaid/default.shtm>. For additional information on eligibility for sites outside the right of way of a Federal-aid highway, consult the ***FHWA ER Manual, Chapter II, Section B.16.***

13.2.3 LAP Projects Previously Completed or in Active Construction

Previous LAP projects constructed with Federal-aid funds off the Federal-aid highway system are not eligible. An active construction project generally will not qualify for reimbursement under the ER Program. A roadway under construction should be treated the same as a roadway with an inherent deficient condition unless a roadway segment

cross section has been completed in conformance with the project's contract requirements. The contractor must take all necessary precautions to protect Federal-aid projects from damage prior to final acceptance by the LA and the State.

The District will defer to the [FDOT Construction Project Administration Manual \(CPAM\), Chapter 7.6](#) for procedures on how to determine eligibility of contract changes, claims, down time, and other contractual items on active projects related to Governor declared emergency events.

13.2.4 Ineligible Activities

Some common ineligible activities are listed below. Full descriptions are provided in the *FHWA ER Manual*.

- Pre-disaster activities by State or LAs are not eligible for ER reimbursement.
- Maintenance, administration, and overhead costs of State and LAs are not eligible.
- Repair to damaged utilities are not eligible.
- Ineligible highways that are neither Federal-aid highways nor on Federal Lands. The *Federal Emergency Management Authority (FEMA), Public Assistance Policy Digest, January 2008, Publication Number FEMA 321* provides program guidance, authorized by the *Stafford Act, P. L. 93-288*, and is available at <http://www.fema.gov/pdf/government/grant/pa/pdigest08.pdf>.

13.3 PRE-EVENT CONTRACTS

Pre-event contracts are allowable when Federal-aid requirements are met, including competitive low bid advertisements. FHWA approved boilerplate language, may be obtained from the Department, for CEI services, debris monitoring, cut and toss, and debris removal, traffic control signals, and permanent sign repair. Pre-event contracts for other work types may be acceptable as long as Federal-aid requirements are met during the procurement process and incorporated into the contract document. A list of approved pre-event scopes of service may be obtained by contacting the District Maintenance Engineer. A boilerplate for CEI services may be found on the Department's [State Construction Office](#) website.

FHWA recommends that LA contracts be consistent with the State approved boilerplate language. Consistent means that the contract includes all necessary Federal-aid contract requirements and contains all the same basic criteria as provided in the State standard scope(s). FHWA does not review pre-event contracts, but LAs are encouraged to allow the Department to review contracts prior to bid letting for FHWA eligibility requirements.

As contact their District Maintenance Engineer for additional guidance regarding pre-event contract requirements in order to preserve FHWA eligibility. Additional information on pre-event contracts may be found in the ***FHWA Emergency Relief Manual*** and ***FHWA Florida Division ER Q&A Guide***.

For pre-event contracts that identify a sole source material supplier, a Public Interest Finding (PIF) must be submitted to FHWA for approval in advance of executing the contract, as per **23 C.F.R. 635.411**. This applies to both the Department and LA pre-event contracts.

13.4 EMERGENCY REPAIRS

An eligible emergency repair is performed during (meaning after landfall for hurricanes) and immediately following a disaster and one of the following three criteria is met:

- 1) The purpose of the repair is to restore essential traffic; this includes proper Maintenance of Traffic (MOT) during emergency operations. Essential traffic is defined as emergency crews and debris crews; not restoring traffic to normal flow.
- 2) The purpose of the repair is to minimize the extent of damage.
- 3) The purpose of the repair is to protect remaining facilities.

Emergency repair work generally occurs in the first 270 days after the event date and may be eligible for Federal reimbursement at 100%. If access to a site is obstructed, time may be extended past 270 days. Emergency repairs incurred after the first 270 days are eligible for reimbursement under the permanent repair Federal share methodology described in **Section 13.2**.

Emergency repair work may begin immediately without FHWA's prior approval. A reimbursement eligibility determination is made by FHWA after a site review and/or documentation review with a DDIR. A DDIR, photographs, engineer's estimate, and scope of work are required documentation for each site.

13.4.1 Emergency Repair Work Type Examples

A list of common emergency repair work types is provided in the ***ER Manual, Chapter II*** and the ***FHWA FL Division ER Program Q&A***. More detailed information may also be found within both sources. Information regarding debris removal and FEMA versus FHWA jurisdiction over roadways is also located in the ***ER Manual***.

13.4.2 Emergency Repair Authorization and Agreement

A LA seeking reimbursement for emergency repairs is not required to be LAP Certified by the Department. The Department staff may execute the grant disbursement agreement [Form No. 350-000-15 Local Agency Emergency Repair Agreement](#) with a LA regardless of certification status. The grant agreement boilerplate contains reference to the Federal requirements the agency must comply with when seeking reimbursement with Federal funds.

Authorization items and activities to consider:

- NEPA actions may be completed concurrently with emergency repairs or completed after the repair is complete but must be done prior to the LA beginning permanent repairs.
- A Finding of Cost Effectiveness for Force Account emergency repair work is not required.
- Certifications or other documentation addressing utilities, railroad, right of way, and permits within the project limits per **23 C.F.R. 635.309(a)** are required.
- Execution of **Form No. 350-000-15** must occur during the time period that statutes are suspended pursuant to the Secretary's Emergency Order (reference **FDOT Procedure 375-040-130**).

Emergency repair work occurring within 270 days after the declared event date receives up to 100 percent reimbursement from ER funds. Expenses for work performed after 270 days will be reimbursable up to the normal Federal pro-rata rate.

13.5 PERMANENT REPAIRS

Permanent repairs are those repairs undertaken after the occurrence of a disaster to restore the roadway to its pre-disaster condition. Unless there is satisfactory justification for project delay to warrant its retention, projects for permanent repairs that have not advanced to construction obligation by the end of the second Federal fiscal year following the Federal fiscal year in which the disaster occurred will not be advanced [**23 C.F.R. 668.104(h)**]. LAs seeking reimbursement for permanent repair work must be LAP Certified and enter into a [Local Agency Program Agreement \(Form #525-010-40\)](#) with the Department.

Eligible reimbursement for permanent repairs is generally not 100 percent. A Federal share is determined by the type of Federal-aid highway being repaired. For Interstate highways, the Federal share is approximately 90 percent. For all other Federal-aid highways, the Federal share is approximately 80 percent. The Federal share is

determined based on the approved DDIR. For example, if the total DDIR is \$100,000 and the LA adds work not eligible under the ER Program and takes the total amount of the project to \$150,000, FHWA will only reimburse 90% or 80% of the \$100,000 previously approved. The LA will be required to provide any required matching funds. Ineligible costs related to a permanent repair project are not eligible for use as the LA's matching funds. The [Work Program Instructions, Part III- Chapter 10](#) provides funding codes and programming information for District use.

13.5.1 Permanent Repairs Authorization and Agreement

Before beginning any permanent repair work, the LA must confirm with the Department that the project has received necessary approvals from the Department and FHWA. For each permanent repair project, a DDIR, photographs, a LAP Construction Checklist, engineer's estimate, and approved scope will be required to request Federal Authorization. Permanent repair projects must be authorized by FHWA prior to beginning construction and must meet all the Federal-aid requirements.

If the project is to be advertised and awarded to a contractor, the process is identical to the traditional Federal-aid procurement process for construction projects. As applicable, the use of abbreviated plans or as-built drawings, a shortened advertisement period, and other cost or time saving measures may be appropriate depending on scope of work. These types of exceptions to the standard Federal-aid procurement process will be determined by the FHWA DTE.

Additionally, if the LA intends to perform permanent work by Force Account, they must receive the Department and FHWA approval in the form of a Finding of Cost Effectiveness [References: **23 U.S.C. 112, 23 C.F.R. 635.106(a), 635.204, 635.205, 635.407(a), 635.411(c)**]. Force Account, by definition, is the actual cost of all labor, equipment, and materials expended by the local or State agency. Percentage estimates are not a legitimate way of tracking Force Account expenditures. **Chapter 22** provides additional details on how to write the cost effectiveness findings and receive approval for Force Account work.

The Department executes a standard **LAP Agreement** with the eligible certified LA for permanent repair work. Any exceptions to the standard Federal-aid procurement process approved by FHWA will be incorporated into the Special Conditions of **Exhibit A (Form #525-010-40A)** of the **LAP Agreement**. All permanent repair projects are administered by the Department per the [LPM](#).

13.6 HOW TO SUBMIT A REQUEST FOR EMERGENCY RELIEF

If an event occurs, the LA should begin emergency repairs to restore essential traffic when conditions are safe for work. The LA maintains detailed descriptions and photographs of work performed and documents all costs incurred to the best of their ability (i.e., load tickets, landfill weigh tickets, timesheet hours for employees, photos). The LA determines which affected transportation facilities are Federal-aid eligible roadways as detailed above in **Section 13.2.2**. For non-Federal-aid roadways, contact FEMA as described in **Section 13.2.4**.

13.6.1 Mission Requests

The next step for a LA is to submit a mission request in the [WebEOC 8.4](#) emergency management platform for the State of Florida. **WebEOC** is the platform adopted by the State of Florida to provide county, State, Federal, and mutual aid entities use of the same operating environment when responding to and recovering from an emergency. The Florida Division of Emergency Management is responsible for coordinating, tracking, and assigning mission requests for emergency relief through the **WebEOC**.

Mission requests related to transportation are routed to the Department's Emergency Coordination Officer in Central Office. The request is reviewed in Central Office and is then assigned to the appropriate District. The District's Maintenance Engineer will coordinate with the LA and the FHWA DTE to complete the DDIR.

13.6.2 Detailed Damage Inspection Reports

A DDIR must be submitted on form [Department Form No. 500-000-25](#) to the Department. An eligibility determination is made by FHWA after a site review and/or documentation is provided on the DDIR form. Back-up documentation (including location information for work performed) is required to be available upon request to justify costs for which LAs seek reimbursement. Photos of the damage must be included in the DDIR. If emergency work has already been completed, then photos of the repairs must also be included in the DDIR.

The purpose of the DDIR is to determine eligibility, scope, and a preliminary cost estimate for the emergency and permanent work. The DDIR is only an estimate of quantities and cost. A DDIR is item specific and must relate all major cost items but does not need to be as detailed as an engineer's estimate. The LA may enter percentages of the total construction costs for the design work (10%) and the CEI work (12%) as the initial estimate for the costs related to these services.

The Department prefers to fill out two (2) separate DDIRs for emergency and permanent

repairs. The LAs are not required to fill out separate forms but may choose to follow Department procedure and fill out separate forms. If the LA provides separate DDIRs for emergency and permanent repair work for one site; it is critical that the Department identifies and provides a cross-reference between the projects in the Fiscal Management Information System (FMIS). If the LA provides only one DDIR for a site requiring emergency and permanent repair work, the Department will divide the activities in FMIS for authorizations.

13.6.3 Revising Detailed Damage Inspection Reports

- DDIRs will only be revised when there are changes in the scope of work or there is a 20% increase in cost. Coordination with the Department and the FHWA DTE is required.
- All documentation that supports any increase in the amount originally estimated on the DDIR must be provided at the time of any requests to FHWA for FMIS authorizations or modifications. Approval in FMIS request serves as FHWA acceptance of the revised cost amount.
- All Department Federal Aid Coordinators must make sure that copies of any new or revised DDIRs are sent to the respective FHWA DTE for review and signature. Also, the District Federal-Aid Coordinator will ensure an electronic copy is sent to Central Office.

13.7 FEDERAL-AID CONTRACTING REQUIREMENTS

In **Sections 13.4 and 13.5**, general applicability of Federal-aid requirements to repair work types and contracting methods were identified. This section is intended to expand the description of required conditions for emergency relief procurement and reimbursement eligibility. Listed below are the basic Federal-aid requirements that must be followed for emergency repair projects and permanent repair projects. These requirements apply to all State and LA contracts for both emergency and permanent repair projects. Requirements in this section cannot be waived due to a State or Presidential emergency event declaration. As stated in **Section 13.5**, all permanent repair projects delivered by LAs shall conform to the Department's LAP program and all requirements of the **LPM** shall apply.

13.7.1 Federal-Aid Construction Contract Requirements

Requirements for construction contracts include, but are not limited to:

- **FHWA Form 1273**, titled Standard Federal-Aid Provisions, must be physically incorporated (not referenced) into all prime and subcontractor contracts.

- **Davis-Bacon Wages Act** – waived for Debris Removal services only; applies to all other work types
- Buy America
- Disadvantaged Business Enterprises
- **Americans with Disability Act**
- Convict Labor Prohibition
- Cost Effectiveness Finding for Force Account permanent repair work

Competitive low bid is the preferred method of construction contracting for Federal-aid projects. Alternate procurement methods may be allowed for emergency work, but use should be minimal. Use of alternate contracting methods should be approved by FHWA Florida Division Office prior to contracting and awarding the project. Additional information on alternate procurement and contracting is found in the [FHWA FL Division ER Q&A, Section II Contractual Issues](#). Additional information on alternate contracting methods allowed for LAP projects is found in **Chapter 16** of the **LPM**. FHWA will only reimburse work outlined in a contractual document that includes a scope of work, estimated cost or actual unit cost. A purchase order may be used as a contract if the cost of the work is less than \$150,000 per Federal small purchase (*Simplified Acquisition*) requirements in **2 C.F.R. 200.88**.

13.7.2 Federal-Aid Professional Services Contract Requirements

Preliminary Engineering and CEI services are eligible for reimbursement under the ER Program. Per FHWA, it is the responsibility of the LA to hire responsible, qualified personnel who are experienced with the policies of the FHWA ER Program. Consultant acquisition must comply with **Chapter 287.055, F.S.** and **23 C.F.R. 172.5**. In some cases, noncompetitive negotiation is permitted in an emergency. **Chapter 14** provides additional information on professional services procurement for Federal-aid projects.

13.7.3 Invoicing

Reallocations to the State of ER funds for events declared in prior fiscal years are not guaranteed. Unobligated ER funds will be withdrawn for use in other States or events. It is of the utmost importance that the ER Program funds are obligated and expended in a short period of time. Quarterly (90 days) invoices are the minimum requirement for submission, but it is recommended the LA submits invoices every thirty (30) days due to the very short timeframes of these projects. If issues are identified with supporting documentation or contract compliance, they are more easily resolved when the contractor is still under contract. If the LA submits the invoice(s) after work is completed, it can increase the difficulty in achieving Federal-aid contract compliance and jeopardize

reimbursement.

LA reimbursement with Federal funds requires the LA to submit an invoice to the Department for payment. Once paid, the Department in turn submits an invoice to FHWA for reimbursement of invoices paid to the LAs. Invoices are submitted no less than quarterly (90 days) by both the LA and the Department. All Department invoices for emergency repair work are submitted to FHWA for payment within two years from the event date; Department invoices for permanent repair work are submitted to FHWA for payment within four years of the event date. Given that LA emergency repair work should begin within 270 days of the event date, and permanent repair may commence as soon as approvals are received from FHWA and the Department, the two- and four-year-time clocks should be achieved with few exceptions if consistent quarterly invoices are submitted and approved for payment. Invoicing procedures are found in **Chapter 6**.

The **Work Program Instructions, Part III, Chapter 10, Subsection D. Federal Highway Administration Reimbursement Emergency Relief** provide additional details on how invoices are processed for emergency work.

13.8 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Chapter 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the federal award. Federal award date under Department process is considered the Federal Authorization date. **Table 1** contains the minimum monitoring requirements performed by the Department on force account projects. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

ER projects are subject to the same monitoring requirements of the FAHP. Grant managers will use the applicable LP Manual chapters to develop additional monitoring requirements for each phase of work associated with the repairs.

Table 1: Minimum Monitoring Requirements for Federal-Aid Projects

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
Detailed Damage Inspection Report Approval	A DDIR is prepared and submitted to the Department using FDOT Form No. 500-000-25 . An eligibility determination is made by FHWA after a site review and/or documentation is provided on the DDIR form.	All DDIRs must be approved by the Department and FHWA prior to executing the grant agreement with the LA.

13.8 RESOURCES

[Form No. 500-000-25](#) Detailed Damage Inspection Report Form

[Form No. 350-000-15](#) Local Agency Emergency Repair Agreement

[Form No. 525-010-40](#) Local Agency Program Agreement

[Procedure No. 375-040-130 Emergency Procurement During Governor Declared Emergencies](#)

[The Work Program Instructions, Part III, Chapter 10](#)

[FHWA Emergency Relief Manual for Federal-Aid Highways](#), updated May 31, 2013

[FHWA Florida Division Emergency Relief Program Q&A guide, revised publication June 2018](#)

Federal-Aid Eligible Roadways Maps
<http://www.fdot.gov/statistics/fedaid/default.shtm>

Federal Emergency Management Authority (FEMA), Public Assistance Policy Digest, January 2008, Publication Number FEMA 321
<http://www.fema.gov/pdf/government/grant/pa/pdigest08.pdf>.

[FDOT Construction Project Administration Manual \(CPAM\), Chapter 7.6](#)

[WebEOC 8.4](#), State of Florida emergency management platform

CHAPTER 14

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14.1 OVERVIEW

A LA may use consultant services for a variety of tasks in the LAP including, but not limited to: planning; project development; preparation of design plans, specifications, and estimates; and CEI. The Department must ensure that when a LA seeks Federal-aid reimbursement for consultant services, the LA is in compliance with the procedures in this **Manual, Section 287.055, Florida Statutes (F.S.), 23 CFR 172, the Federal Brooks Act (40 USC 1101-1104)** and other applicable Federal and State regulations. The LA shall use the [LAP Checklist for Federally Funded Professional Services Contracts \(Form No. 525-010-49\)](#) and may use the Department's [Professional Services Procurement Manual \(Topic 375-030-003\)](#) as references for developing procurement procedures for LAP projects.

Chapter 14 identifies the most common Federal and State contract requirements for professional services procurement and contract award. The chapter is not inclusive of all State and Local laws, requirements, or policies. Where Federal law and State law are in conflict, the LA must follow the most restrictive requirement, except in cases where the State or Local requirement is in direct violation of Federal requirements (e.g., local preference ordinances). Professional services phases of work **not** funded with FAHP funds are subject to State procurement laws and are not applicable to **Chapter 14**.

A LA's consultant acquisition process may **not** proceed beyond contract negotiations, prior to receipt of the FFHWA authorization and a NTP from the Department. Work performed prior to Federal authorization of the funding and the date of the NTP issued by the Department is not eligible for Federal-aid or State funds participation. Once Federal authorization and Department concurrence is received, the LA may execute the consultant contract. Due to the variation in each LA's procurement process, project specific monitoring requirements will be identified by the District and provided to the LA at the onset of each phase of project delivery. Project specific monitoring is defined throughout **Chapter 14**.

If a LA chooses to retain a consultant at its own cost, the LA shall conform to procurement law pursuant to **Chapter 287, F.S.** Locally funded professional services phases of work where the contract was not procured in compliance with **23 CFR 172** may not be used as a "match" or non-Federal cost share for future phases of FAHP projects.

14.2 CONSULTANT QUALIFICATIONS

Qualification requirements shall match the detailed project scope of services. General consultant services (management support) or "umbrella" contracts for all engineering services, without a defined scope of work, are not allowed under **23 CFR 172.9(a)**.

14.2.1 Department Prequalified Consultants

LAs are required to use consultants prequalified by the Department for LAP Classification A, B, and C projects, as defined in **LPM Chapter 17.4**. Qualifications must be defined in the project advertisement or request for qualifications (RFQ), and request for proposal (RFP) documents (definitions provided in **Chapter 14.5**). **Chapter 14-75** of the **Florida Administrative Code (F.A.C.)** establishes minimum qualification standards by type of work for consultants. Prequalification requirements for sub-consultants are determined by the LA advertising the project, per **Chapter 14-75.003 subparagraph 3, F.A.C.** A link to **Chapter 14-75, F.A.C.** and a complete listing of Department prequalified consultants may be found on the Office of Procurement's website on the [Professional Services Prequalification page](#).

The definitions for "work group" and for "type of work" are provided in the [Department's Procurement Manual \(Topic No. 375-030-003\) Chapter 1](#). It is not sufficient to include a work group in the advertisement. The LA specifies the type of work (aka "work types") requested as categorized under each work group. The LA determines assignment or appropriateness of advertised work types, both major and minor, based on the scope of services or anticipated contract activities. The District LP project manager may assist with determinations as needed, but ultimately the LA is responsible for determining the minimum qualifications required for the contract activities. The RFP must include instructions on which work types must be met by the prime and which work types may be met by a subconsultant as needed. The Department's **Procurement Manual (Topic No. 375-030-003)** requires that the prime consultant must be technically prequalified in at least one or more of the major types of work specified in the advertisement and that each prime or subconsultant performing a standard type of work on a contract must first be qualified in that type of work.

Verification of qualification status using the Department's prequalified listing is insufficient. Each consultant firm prequalified by the Department is issued a "*Prequalification Letter*" from the Department's Procurement Office annually. A consultant firm's current prequalification status must be verified to the LA using the official *Prequalification Letter* issued to each firm. Each firm shall provide a copy of the Department issued letter to the LA for each contract award, for the prime consultant, all prequalified subconsultants, and peer review firms.

14.2.2 Local Agency Qualified Consultants

The LA may use its own consultant prequalification or qualifications process for LAP Classification D projects, also commonly referred to as "off-system" or local system projects. Qualifications requirements for Federal-aid projects must be consistent to ensure fair competition in the selection process. A description of the prequalification process must be clearly defined in each procurement document issued for Federal-aid projects, unless using the Department's prequalification process described in **Section 14.2.1**. The LA must "*provide a clear, accurate, and detailed description of the scope of work, technical requirements, and qualifications of consultants necessary for the services*

to be rendered” [(23 CFR 172.7(a)(1)(ii)].

14.3 CONFLICT OF INTEREST

Conflict of Interest is addressed in **23 CFR 1.33** and in **Sections 337.14 and 287.057 Florida Statutes**. A LA must adhere to the Florida Department of Transportation’s **Topic No. 375-030-006 [Conflict of Interest Procedure for Department Contracts](#)** for all projects partially or wholly funded by the Department.

LAs must include [Conflict of Interest Certification/Confidentiality Certification For Consultant/Contractor/Technical Advisors \(FDOT Form No. 375-030-50\)](#), in each RFQ or RFP and collect the forms from each consultant firm that submits a proposal as a key component of the qualifications-based selection process. Each LA staff member who participates in the selection process for Department funded professional services contracts shall certify the appropriate version of **FDOT Form No. 375-030-50** that defines their role in the selection process. The forms must be uploaded into **GAP**. District LP staff will review the forms received from both the consultant firm and the LA staff in **GAP** as part of their contract award concurrence process.

Allowing the EOR to perform CEI services on the same project funded by the Department is in violation of **Section 337.14, F.S.** and Department Procedure **Topic No. 375-030-006**.

The Office of Construction maintains [Conflicts of Interests - Frequently Asked Questions](#) to assist with further clarification where conflict may arise in the life cycle of a transportation project. Any exceptions to the Department’s **Conflict of Interest Procedure** shall be requested in writing and approved by the District Secretary where the project is located before the consultant firm responds to the project solicitation.

14.3.1 Local Agency Conflict of Interest Procedures

The LA must ensure there are compensating controls in the form of policies, procedures, practices, and other safeguards to guarantee a conflict of interest does not occur in the procurement, management, and administration of consultant services and must include contract provisions specifying contracting agency requirements pertaining to conflicts of interest, as specified in **23 CFR 1.33** and the requirements of **23 CFR 172.7(b)(4)**, **LAP Agreement Section 14.f.** and as detailed in the **LAP Professional Services Checklist, Requirement No. 5**. The FHWA Program Administration website provides [questions, answers, and examples of controls](#). Conformance with **23 CFR 1.33** and **s. 287.057 F.S.** is the responsibility of the LA.

14.4 METHODS OF PROCUREMENT

The procurement of professional consultant services for FAHP funded contracts directly related to a highway construction project shall be subject to the provisions of **23 USC 112(a)** and shall be conducted in accordance with one of three methods:

- 1) **Small purchases**, also known as simplified acquisition
- 2) **Competitive negotiation**, also known as qualifications-based selection
- 3) **Noncompetitive** procurement, under specific conditions:
 - Emergency repairs
 - After solicitation, it is determined inadequate competition exists
 - Service is only available from a single source (LA must first attempt to procure competitively before single sourcing). This action requires a PIF approved by the Department.

Non-competitive procurement requires prior approval from the District LP Administrator on a project specific basis and will not be discussed in detail in **Chapter 14**. Contact your District LP Administrator for additional information, as needed. Applicable State laws, regulations, and procedures which are not in conflict with applicable Federal laws must be followed.

Chapter 14 describes the processes for the competitive negotiations and small purchases procurement methods in detail. Contracts that may be procured under these methods include:

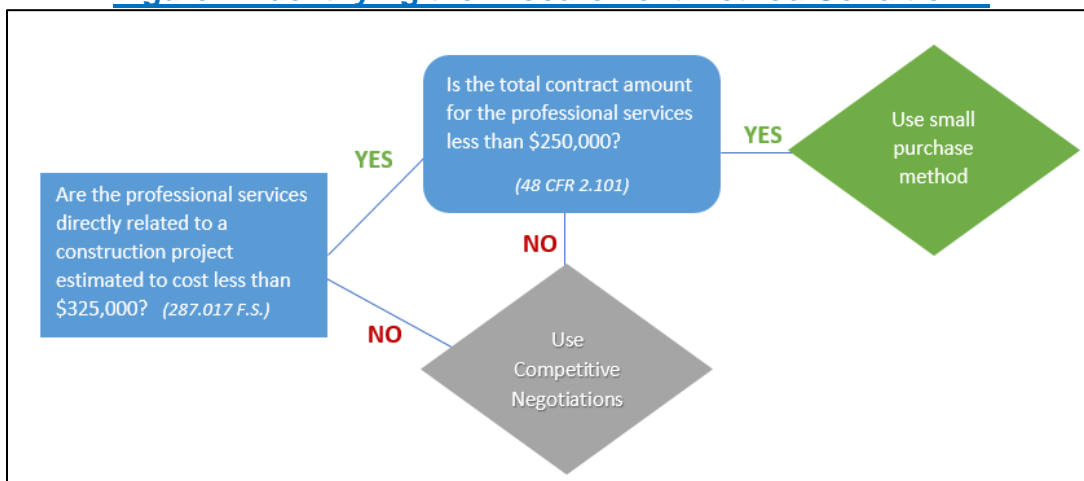
- **Project specific contracts** for the performance of services as detailed in the scope of work related to a specific project or projects.
- **Multi-phase contracts** for project specific services where the detailed scope of work is divided into phases, which may be negotiated and authorized individually as the project progresses (example: Design and Post Design phases of work).
- **On-call or indefinite delivery/indefinite quantity (IDIQ) contracts** for continuing services where performance is defined by the scope of services for an undefined number of projects. Task work orders for a detailed project specific scope of services are issued as needed for an established contract period.

14.4.1 Small Purchases or Simplified Acquisition Process

When a project meets the criteria established in **Category Two or Category Five**, as set forth in **s. 287.017, F.S.**, the project can be exempt from formal advertising and selection using the “Small Purchase” process. In the event a contract is procured under the small purchase criteria, the total fee cannot exceed the appropriate limits established in **48 CFR 2.101**, or the State limit, whichever is lower at the time of the review. Although exempt from formal advertisement, **a minimum of three qualified consultants are evaluated and ranked in order of qualifications**. Once the LA has contacted no less than three consultants and selected the most highly qualified, the LA must conduct negotiations as described in **Section 14.7**. The small purchase procedures may be used under the

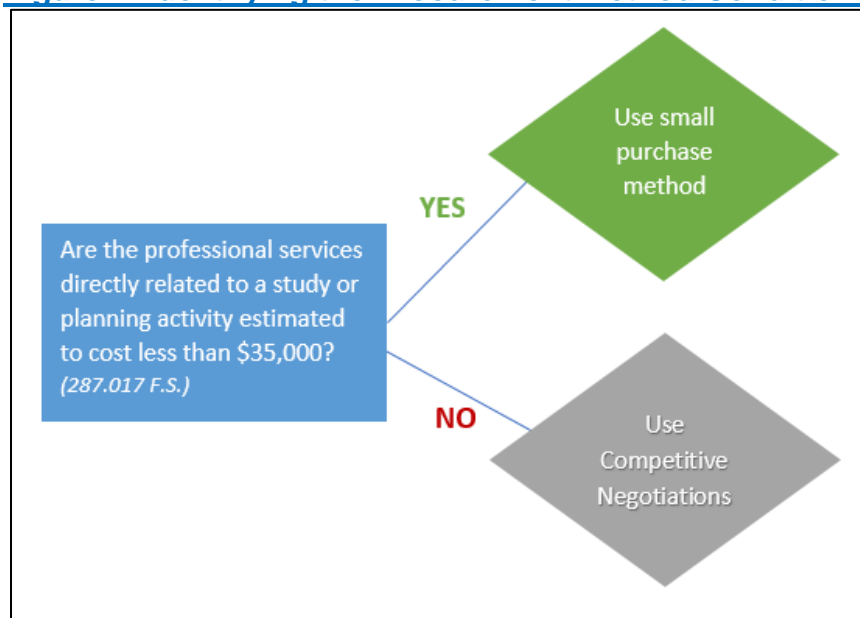
following two conditions illustrated in **Figure 1** and **Figure 2**.

Figure 1: Identifying the Procurement Method Condition 1



Note: A FHWA Memorandum issued December 3, 2018 increased the threshold to \$250,000 in advance of its inclusion in the Federal Acquisition Regulation (FAR) definitions at **48 CFR 2.101**. The memo is found here: <https://www.fhwa.dot.gov/federalaid/services/181203.cfm>.

Figure 2: Identifying the Procurement Method Condition 2

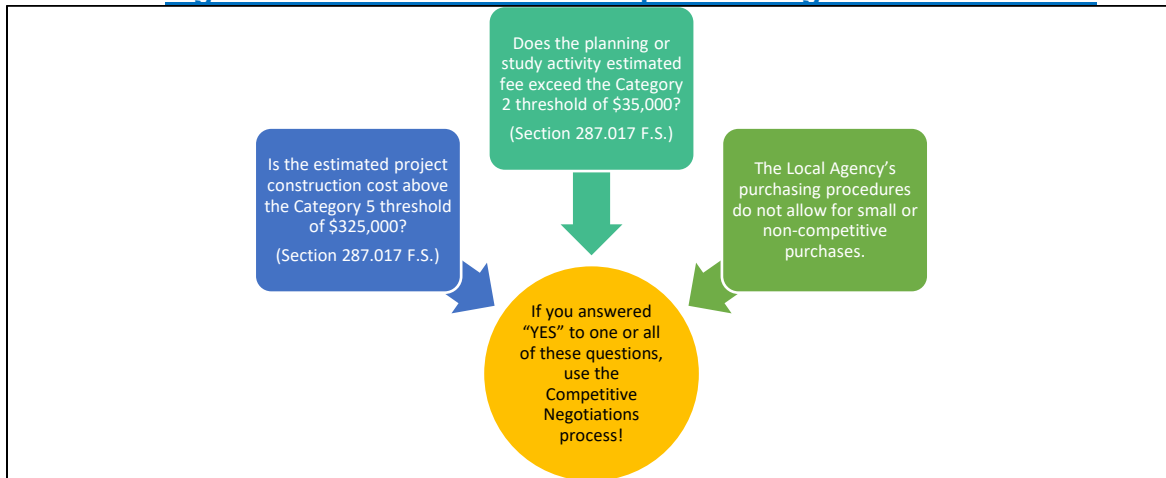


Note: The State threshold of **\$35,000** per study or planning activity is the lesser when compared with the Federal threshold; the State threshold is the limiting factor.

14.4.2 Competitive Negotiations/Qualifications-Based Selection

Competitive negotiations procurement of professional services applies as illustrated in **Figure 3** on the next page. Competitive negotiations process involves a number of steps that lead to the final procurement of a professional services contract.

Figure 3: When to Use the Competitive Negotiations Method?

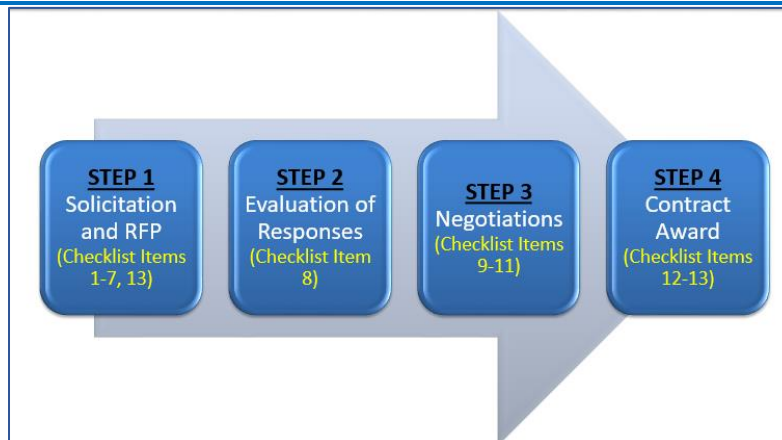


14.4.3 LAP Checklist for Professional Services Contracts

Once a procurement method and contract type is identified, the LA shall draft the RFP and/or the RFQ packages, based on the **LAP Checklist for Federally Funded Professional Services Contracts (FDOT Form No. 525-010-49)**. The draft documents shall be submitted to the District LP Administrator via **GAP**. The District LP Administrator confers with functional area experts as necessary to complete their review of the documentation. The final procurement package, as advertised, is uploaded into **GAP** by the LA.

The **LAP Checklist for Professional Services** is organized by common procurement process methodology as follows in **Figure 4**.

Figure 4: LAP Professional Services Checklist and the Procurement Process



The **LAP Checklist for Professional Services Contracts** identifies:

- the requirements described in this chapter,
- the related compliance documentation the LA shall retain or submit to the Department, and
- the District LP staff's monitoring responsibilities for each procurement action.

DID YOU KNOW?

The LAP Checklist does not include all applicable local, state, and federal laws, rules, or requirements. The LA is responsible for complying with current laws, rules, and regulations within each procurement action, or addressing conflicts within each procurement action and documenting justification for the LA's process.

District monitoring requirements may exceed the responsibilities identified on the Checklist as necessitated by the level of risk to the Department with each LAP project. The responsible LA staff person must execute the Checklist and certify the procurement action complies with Federal and State requirements. By executing the Checklist after the LA, the LP Administrator certifies the District monitored the procurement action and verified to the best of their ability that the LA's procurement action complies with Federal and State requirements as defined in this Chapter and on the Checklist.

14.5 PROCUREMENT PROCESS - STEP ONE

Figure 5: Procurement Process Step One - Solicitation and RFP



14.5.1 Project Solicitation(s)

The solicitation shall:

- Publicly announce projects in a uniform and consistent manner pursuant to **Section 287.055(3)(a)1, F.S.** and **23 CFR 172.7(a)(1)(i)**.
- Announce projects via a public forum (e.g. newspaper advertisement, ad service, etc.) that “assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract”.

- Be posted for a minimum of **14 days** and contain a submittal deadline. In unusual circumstances, the State LP Administrator *and* FHWA may provide exceptions to the 14-day minimum requirement. Requests for exceptions must be sent in writing to the District LP Administrator who will seek approvals accordingly.
- Addenda to the solicitation shall be submitted to the District LP Administrator for review and concurrence prior to issuance. This is to ensure compliance with the requirements and the project maintains Federal-aid eligibility.

The procurement officer or point of contact for questions regarding the solicitation must be a single individual who will not serve on the selection committee (reference **Section 14.6, Figure 7**).

The solicitation method utilized by the LA determines the information required to be published in the public announcement, as shown in **Table 1**. Either of the Single-Step or Two-Step processes are acceptable, but issuance of an RFP as the tool to evaluate consultants per **23 CFR 172** is a required step in the LA's process. The two-step or additional issuance of an RFQ document is optional.

TABLE 1: Required Contents of Public Solicitations for LAP Projects

Single-Step Process or Request for Proposal (RFP) Process	Two-Step or Request for Qualifications (RFQ) Process
<ul style="list-style-type: none"> • General project description • General scope of services • Qualifications requirements, including FDOT Prequalification Work Types if applicable • Consultant response due date • Access to the RFP to all interested consultant firms via website address, email address, telephone, physical address, etc. 	<ul style="list-style-type: none"> • Detailed project description • Detailed scope of services • Qualifications requirements, include FDOT Prequalification Work Types if applicable • Evaluation criteria • Description of the procurement process including selection schedule and response due date. • Instructions for how to submit responses by the due date.

The most common solicitation method LAs use in LAP is a **single step** process issuing a single RFP to all interested consultants specific to the project, task, or service that includes the evaluation method of a consultant's specific technical approach and qualifications. A full description of the RFP requirements is provided in **Section 14.6.3**. Evaluation criteria, a description of the procurement process, and detailed descriptions of the items listed may appear in the RFP versus the solicitation in the single step process.

LAs may also use a "**two-step**", multi-phase, or longlist process. In step one, the initial solicitation is limited to publication of an RFQ and the responding firms are initially ranked based on the qualifications specified (longlist ranking). The LA evaluates the "longlist" of consultant firms' qualifications based on the responses to the RFQ, generating a

“shortlist” of firms to provide with the RFP. In step two, the LA issues to a minimum of the three (3) most highly qualified candidates the RFP and proceeds with evaluation and final ranking of the shortlisted respondents based on the RFP responses.

14.5.2 Request for Proposal Requirements

Per **23 CFR 172.7**, the RFP shall provide all information and requirements necessary for interested consultants to provide a response to the RFP and compete for the solicited services. The RFP shall:

- **Provide a clear, accurate, and detailed scope of work, technical requirements, and qualifications of consultants necessary for the services to be rendered**, including:
 - Project purpose
 - Project description
 - Services to be performed
 - Deliverables to be provided
 - Estimated schedule for performance of work
 - Applicable standards, specifications, and policies to the contract.
- **Describe the procurement process.**
 - Include protest procedures pursuant to **Chapter 120.57(3)(a), F.S.**
 - Identify requirements for discussions (optional or mandatory) that may be conducted with consultants following the submission and technical evaluation of proposals. Parameters must be consistently applied for all shortlisted firms. Discussions are not required if technical proposals contain sufficient information to evaluate the consultants.
 - Discussions may be written, by telephone, video conference, or by oral presentation/interview.
 - Requirements for when and how discussions will be conducted must also specify evaluation criteria if they differ from the technical evaluation criteria.
 - Identify the final ranking/scoring process if discussions are held.
 - **Include a schedule of key dates for the procurement process** and establish submittal deadlines that provide sufficient time for interested consultants to prepare and submit a proposal (no less than 14 days). Key dates may include publication date, pre-proposal meeting date, deadline for questions, evaluation or selection committee meeting dates, discussion dates, negotiations meeting dates, contract award date.

Florida Laws for Public Meetings and Procurement

Public meetings are held when necessary, are properly noticed, and minutes taken or recorded. Under Florida law, sealed bids, proposals, or replies received by a LA pursuant to a competitive solicitation are exempt from public records until the LA provides notice of an intended decision to make a contract award or until 30 days after opening the bids, proposals, or replies, whichever is earlier. Oral presentations, negotiations, vendor question and answer sessions, and discussions of negotiation strategies are all exempt meetings. A complete recording shall be made of an exempt meeting. No portion of the exempt meeting may be held off the record. The recording is exempt until such time as the LA provides notice of an intended decision to make a contract award or until 30 days after opening the bids, proposals, or replies, whichever occurs earlier, pursuant to **Chapter 286.0113(2)(c), F.S.**

- **Include qualifications-based tie breaker procedures, as applicable.** Tie breaker procedures are not mandatory. Coin toss or preference programs are not acceptable tie breakers on Federally funded procurements. LA tie breaker procedures that include these types of non-qualifications based conditions will need to be amended or removed in order for the procurement procedure to comply with Federal regulation. If the LA chooses not to include tie breaker procedures and a tie occurs during the scoring process, the LA shall be required to re-advertise the contract.

DID YOU KNOW?

The Department’s prequalification work types include a minimum number of years of experience to be qualified in each type of work. When applying the Department’s prequalification requirements, the LA must review and mitigate for conflicts in “years of experience required” between the evaluation criteria and F.A.C. 14-75 types of work minimum requirements.

- **Identify evaluation criteria, including weight (or point value) for each criterion, and define each criterion** by specifying what type of information is required for evaluation (i.e. resumes, references, project histories, etc.). The LA may use the same criteria or include separate criteria if both technical review of the proposals and presentations will occur (see also item above). Example criteria are provided in **Table 2**.

TABLE 2: Examples of Evaluation Criteria Allowed and Not Allowed for Use

QUALIFICATIONS-BASED CRITERIA, ALLOWED FOR USE	NON-QUALIFICATIONS BASED CRITERIA, NOT ALLOWED FOR USE
<ul style="list-style-type: none"> • Technical approach (e.g. project understanding, innovative concepts or alternatives, quality control procedures) • Work experience • Specialized expertise • Staff capabilities • Workload capacity (based on current volume of work) • Past performance • Locality criterion of no more than 10% with State LAP Administrator and may require FHWA approval. Locality is the distance from the consultant’s managing or field office to the project limits, NOT the LA’s offices.¹ 	<ul style="list-style-type: none"> • Price or cost elements (i.e. salaries, indirect, or direct rates) • In-state or local business preference • Preference for consultant firm location • Purchasing or materials preferences • FDOT Disadvantaged Business Enterprise (DBE) Program, • Other local, minority, small or disadvantaged business programs • Hiring preferences (e.g. homeless, welfare-to-work, veterans) • Exclusionary business preferences restricting competition in specific geographic locations, except those indicated by the US Department of State or US Department of the Treasury. • Equal distribution or rotating of work (based on past or current volume of work with the awarding agency). • Any other <u>non</u>-qualifications based criteria.

¹This criterion cannot be based on political boundaries and is established on a case-by-case basis for projects where a need has been established. If a firm currently outside the locality criterion indicates as part of its proposal that it will satisfy the criterion in some manner, such as establishing a local project office, the firm has satisfied the locality criterion.

- **Specify contract type** as defined in **Section 14.4**.
- **Specify method(s) of payment** applicable to the contract per **23 CFR 172.9**.
 - Lump sum – A firm fixed price not subject to adjustment due to the actual cost experience of the Consultant in the performance of the contract. Shall

only be used when the agency has established the extent, scope, complexity, character, and duration of the work to be required to a degree that fair and reasonable compensation, including a fixed fee, can be determined at the time of negotiation.

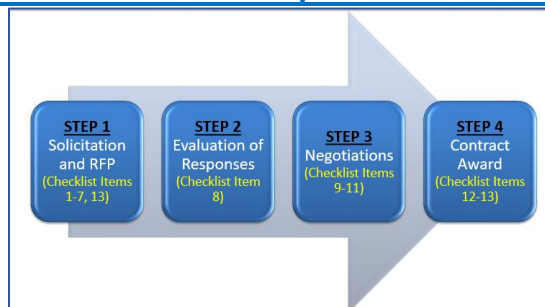
- Cost plus fixed fee or cost per unit of work – Agency shall specify a maximum amount payable or not to exceed amount with contract modification.
- Specific rates of compensation – Rates are established for units of time, usually per hour. Provides for reimbursement based on direct labor hours at specified hourly rates, including direct labor costs, indirect costs, and fee or profit, plus any other direct expenses or costs, subject to an agreement maximum or not to exceed amount. Shall only be used when it is not possible to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy at the time of procurement. This method should be limited to contracts or components of contracts for specialized or support type services where the consultant is **not** in direct control of the number of hours worked, such as CEI services.

Additional information and definitions regarding Methods of Compensation are found in the [FDOT Negotiation Handbook](#).

- **Identify special provisions or contract requirements associated with services.**
 - Attaching the agency’s boilerplate, template, or draft project related contract to the RFP satisfies the requirement.
 - Reference **Section 14.8** and the **LAP Professional Services Checklist** for required Federal-aid and State contract terms, forms, and certifications to be incorporated as applicable.
- **Require submission of cost proposals or elements of cost be concealed** and separate from the technical/qualifications proposals. *Proposers SHALL NOT be evaluated, ranked, or selected based on cost or price.* Contract prices cannot be listed as “guaranteed” in the solicitation. Contracts must be negotiated and a cost determination completed to ascertain that costs are fair and reasonable.
- **Provide instructions for compliance with the Department’s Disadvantaged Business Enterprise (DBE) Program** including reporting of Bid Opportunity and DBE Commitments and Payments in the Department’s **EOC** web-based application (**FDOT Form No. 275-030-11**). Detailed information on how to comply with the Department’s DBE Program is located in **Chapter 11**.

14.6 PROCUREMENT PROCESS - STEP TWO

Figure 6: Procurement Process Step Two - Evaluation of Responses



14.6.1 Consultant Responses

A minimum of three (3) qualified responses are required when utilizing each method of procurement. If the LA does not receive a minimum of three (3) qualified responses, contact the District LP Administrator for additional guidance. The solicitation period may need to be extended or the project may need to be re-advertised. A LA may not move forward with the evaluation and selection process when less than three (3) qualified responses are received without approval in writing from the State LP Administrator. Approvals will require justification from the LA why it is not possible to receive adequate competition on the contract award.


14.6.2 Qualifications Verification

Upon receipt of the responses to the solicitation, the LA shall verify consultant and identified subconsultants' qualifications and disqualify those respondents not meeting the minimum qualifications requirements as set forth in the solicitation. Department prequalified consultants are required as specified in **Section 14.2**. Records of the verification process shall be maintained in the LA project file. Examples of common documentation include a copy of the Department issued *Prequalification Letter(s)*, professional license(s), insurance certifications, etc. The documentation shall include the [Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Federal-Aid Contracts \(FDOT Form No. 375-030-32\)](#) and corresponding verification of suspension debarment information performed by the LA (reference **LAP Checklist for Professional Services, Requirement No. 6**).

14.6.3 Ranking Qualified Consultants

The LA shall rank, in order of preference, a minimum of three (3) consultants determined to be most highly qualified to perform the services based on the established and published evaluation criteria. All staff in a decision making or recommendation capacity must be free from conflicts of interest, or have recused themselves where conflicts exist (**23 CFR 1.33; Topic 375-030-002, Section 1; LPM Chapter 14.3**).

Figure 7: Florida Department of Management Services Florida Certified Contract Manager Training

		Stage 3 Review – Evaluation/Negotiation Team
Online Modules		Should the procurement officer serve on the evaluation team?
Ethics		<ul style="list-style-type: none"> No – they shouldn't
Stage 1		If the solicitation is a Category Four or higher, how many members must be on the evaluation team?
Stage 2		<ul style="list-style-type: none"> Minimum of 3 (§ 287.057(16)(a), Florida Statutes)
Stage 3		
Stage 4		Once a competitive solicitation is released, members of an evaluation team or a negotiation team cannot discuss proposals or replies outside of a public meeting. Not even through informal phone calls or through email.
Stage 5		

The LA shall submit raw, individual, and/or consolidated ranking or scoring sheets to the District LP Administrator for review, for each evaluation conducted by technical or selection committee members. Department concurrence to enter into negotiations with the most highly qualified consultant cannot be issued until rankings (and an independent staff hour estimate as described in **Section 14.7**) have been reviewed by the District staff.

LAs are required by Florida laws to properly notice and/or record selection committee meetings pursuant to **Chapter 286.0113(2)(c), F.S.** and maintain all such records in the LAP project file(s). The Department (and other interested parties per the LAP Agreement) reserve the right to request documentation of all meetings held in conjunction with the selection and award of Department-funded contracts.

14.7 PROCUREMENT PROCESS - STEP THREE

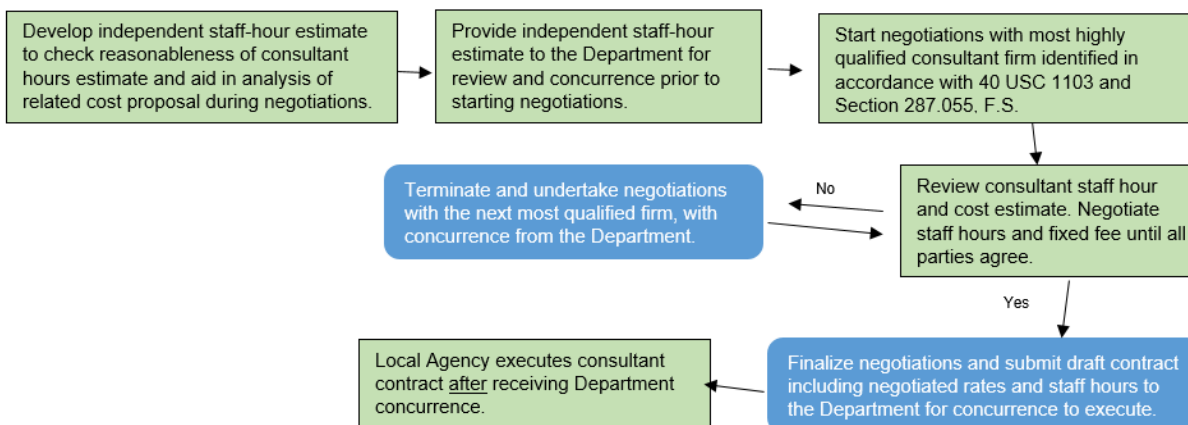
Figure 8: Procurement Process Step 3 - Negotiations



14.7.1 Negotiations Overview

Figure 9 provides an overview for negotiating the consultant agreement including basic steps and related decision points encountered during the process.

Figure 9: Negotiations Process Overview



The LA negotiator uses all resources available to conduct effective negotiations. These include, but are not limited to, the independent staff hour estimate, the refined scope of work, and the evaluation factors and their relative importance.

14.7.2 Negotiations Resources for LAP Projects

Definitions for terms used in **Section 14.7** are provided in the [LAP Negotiations Quick Reference Guide](#). The Guide provides detailed information on each element of a consultant audit package and to aid in compliance with Federal and State requirements. The Guide includes: alternate names used by LAs for each element, detailed definitions, whether the item is negotiable or not, how a LA would verify what a consultant provided them for that item, variations in the process for that item that can occur or that have occurred and are not allowed, examples of each item, and resources available for that item.

The LA [Negotiations Verification Process flowchart](#) is a partner tool to be used with the LAP Negotiations Quick Reference Guide. This document illustrates the “yes” “no” decision-making process a LA uses to verify and document the negotiations process. The Department does not request or retain complete negotiations records for LAP projects; therefore, it is the responsibility of the LA to have this information available upon request.

The [LAP Consultant Fee Mock Up](#) spreadsheet is a multi-use tool that can be used to develop independent staff hour estimates and actual contract costs. Use of the LAP Consultant Fee Mock Up is a recommended best practice and may be required by your District. The tool is required for use to verify the operating margin to fixed fee conversion. See **Section 14.7.5** for detailed information on fixed fee.

The LA may request the consultant submit their cost proposal using the Department’s **Automated Fee Proposal (AFP)** worksheet. The AFP may or may not correspond to the LA’s method of calculating loaded rates; therefore, the LA should consult the [AFP LAP Guidance](#) document posted to the LAP Professional Services webpage to determine if this tool is useful for them.

Additional resources are available on the [LAP Professional Services webpage](#).

14.7.3 Independent Staff Hour Estimates

- The LA must develop an independent staff hour estimate prior to receipt or review of the consultant's proposal. The estimate is intended to check the reasonableness of the consultant estimate and conduct an analysis of costs proposed by the consultant.
- Estimates must include appropriate breakdown of the work or labor hours, job classifications, direct costs, and indirect rates including fixed fees for the defined scope of work for both prime and subconsultant tasks as applicable.
- A copy of the independent staff hour estimate shall be uploaded to **GAP** for Department review prior to entering into negotiations with the most highly qualified consultant. Documentation of Department's concurrence to enter into negotiations must be placed in the project file.
 - The independent estimate must be resubmitted for concurrence if revisions to the document occur after the Department's initial concurrence. Audit findings show that LA's with longer periods of time between initial concurrence with the estimate and negotiations with a consultant firm result in revisions to the independent estimates that have not been reviewed by the Department's LP Project Manager.

The Department offers various resources for the LA to use in developing independent staff hour estimates.

- Best practice is to use the [LAP Consultant Fee Mock Up](#) spreadsheet posted to the [LAP Professional Services webpage](#). Districts may require the use of this tool.
- The LA may use the Department's [Consultant Wage Rate Report](#) to view direct wage averages for job classifications.
- The LA may use average indirect cost rates provided in the Department's **Negotiation Handbook**.
- The LA may use the Department's **Operating Margin Justification Form No. 375-030-82** to estimate the operating margin also known as fixed fee for the project. See **Section 14.7.3** for definitions.
- The LA may also access sample scopes and a man hour estimating spreadsheet here: <https://www.fdot.gov/designsupport/Scope/>.

14.7.4 Consultant Audit Packages

Consultant Indirect Cost Rate audits are required annually to be performed by a certified public accountant and are supported with a Contractor Cost Certification form completed by the Consultant's Certifying Official. The audit is performed in accordance with generally accepted government auditing standards to test compliance with the requirements of **FAR Part 31** and applicable Cost Accounting Standards. LAs shall use the consultants' Department approved indirect cost rates established by an audit report prepared by an independent Certified Public Accountant, or a Federal or State agency. The Department

uses the “*Prequalification letter*” to establish the approved rates on an annual basis and the LA is required to use the rates established in this letter. *Prequalification letters* have an annual expiration date. *Prequalification letters* that expire during the LA’s negotiations period and prior to contract execution with the LA may not be used to establish contract rates. The LA must obtain the new *Prequalification letter* from the consultant prior to contract execution.

Contact the State LP Administrator for assistance if a consultant is self-certified or does not have Department approved audit rates. The Department’s State Procurement Office may have a self-certification on file if the consultant has submitted self-certification information within the past 12-month period.

DID YOU KNOW?

The LA is required to use FDOT’s (cognizant agency) approved indirect rates as provided on the FDOT prequalification letter even when FDOT’s prequalification is not required in the RFP?

“(ii) Contracting agencies shall accept a consultant’s or subconsultant’s indirect cost rate(s) established for a 1-year applicable accounting period by a cognizant agency ...once the most highly qualified consulting firm is identified, contracting agencies must use the consulting firm’s cognizant approved indirect cost rate, or rate accepted for use by the contracting agency if a cognizant approved rate does not exist...”

The contracting agencies shall apply these approved indirect cost rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and the indirect cost rates shall not be limited by any administrative or de facto ceilings (shall not be capped). A lower indirect cost rate than the audited rate may be used if submitted by the consultant firm; however, the consultant’s offer of a lower indirect cost rate shall not be a condition of contract award. The LA is responsible for documenting all deviations from the audited rates. If all parties are in agreement, the consultant’s approved audited rates may be applied to a period beyond one-year on the contract.

The LA shall maintain records of the consultant’s audit package in their project files and only transmit the information to the Department upon request. Consultant audit packages contain confidential cost data and must be protected in compliance with **23 USC 112(b)(2)(E)** and **23 CFR 172.11(d)**. The LA’s staff and the Department’s staff managing LAP projects must not share, transmit, or upload confidential cost data via unsecure methods. Confidential cost data cannot be shared with other consultant firms or their staff, including those working under contract for the LA or the Department. Security protocols in **GAP** limit user access to the documents uploaded under “Negotiations Documentation” and “Professional Services Contracts” to LA, Department, and FHWA staff user roles. **GAP** is an acceptable method of storing and transmitting documents upon request to Department and/or FHWA staff due to the security feature.

Consultant audit packages generally include:

- **Overhead Rates** – Indirect cost rate derived from costs of items attributed to “overhead” or non-project specific costs.

- **Direct Expense Rates** – Audited rate that is used in place of reimbursing direct expenses. When the Consultant is reimbursed on the basis of an audited direct expense rate (as referenced in the FDOT *Prequalification letter*), the consultant firm shall not be reimbursed for itemized direct expenses on the contract. If the consultant does not have an audited direct expense rate, the LA may reimburse for actual expenses. Review the Department’s **Negotiation Handbook** for a complete definition of what types of expenses are included in the direct expense rates.
- **Facilities Capital Cost of Money (FCCM) Rates** – Audited rate derived from costs associated with the consultant’s investment in fixed assets. Not all consultant firms have an audited FCCM rate. If this is the case on your project, as evidenced by the FDOT *Prequalification letter*, FCCM would not be included in the multiplier calculation for the contract.
- **Direct Salary or Wage Rates** – Direct salary rates are not negotiated per **23 CFR 172.11(b)(2)** but must be supported in the form of payrolls or other documentation of direct wages for each employee. Negotiating or averaging direct salary rates is not allowed. If multiple employees will serve under one job classification on a specific contract, then the LA may average only those employees’ direct salary rates performing services on that contract. The consultants’ direct wage rates for CEI services may not be limited or capped to the 75th percentile.
- **Consultant Fee Schedule** - List of pay items for defined services measured in unit prices; each consultant firm publishes a unique fee schedule of prices for the services. These fees may be negotiated.

14.7.5 Negotiating Fixed Fee

In accordance with **23 CFR 172.3**, the definition of fixed fee is “*a sum expressed in U.S. dollars established to cover the consultant’s profit and other business expenses not allowable or otherwise included as a direct or indirect cost*”. Fixed fee shall be negotiated based on the scope and complexity of the project and must be contract or task-specific. Fixed fee must not exceed 15% of the total direct labor and indirect costs of the contract or task order. The methodology for calculating fixed fee is different from the Department’s methodology for calculating operating margin. In accordance with the Department’s **Negotiation Handbook**: “*Operating margin in Department contracts is calculated as a percentage of direct salaries. The percentage is negotiated within a range of 12% to 42%. The resulting dollar amount is the “fixed fee” portion of a cost plus fixed fee type contract or becomes part of the total fixed price in a lump sum agreement, or part of the fully loaded billing rate.*” Fixed fee is an amount. Operating margin is a percentage that is applied to direct labor, resulting in a fixed fee amount.

Fixed fee must be negotiated between the LA and the prime and each subconsultant performing work on the contract. Best practice is for both parties to use the Department’s **Operating Margin Justification Form No. 375-030-82** to estimate and then negotiate an operating margin. The form will calculate operating margin in the range of 12% to 42%. Due to the differing methodologies for calculating fixed fee and operating margin, the Department developed a conversion tool that automatically determines if the negotiated

operating margin exceeds the Federal threshold of 15%. Justification and approval must be received from the State LP Administrator when fixed fee exceeds 15%. FHWA may provide additional approvals on select PODIs.

The fixed fee conversion tool is located in the [LAP Consultant Fee Mock Up](#) spreadsheet posted to the [LAP Professional Services webpage](#).

14.7.6 Finalizing Negotiations

Upon concluding negotiations with the most qualified firm, the LA submits a request to the District LP Administrator for concurrence to execute the consultant agreement or contract. The District LP Administrator confers with functional area experts as necessary to complete their review of the documentation. The LA shall not execute a contract or issue its NTP until concurrence is obtained, in writing, from the District LP Administrator. If work is performed prior to concurrence and/or a NTP from the District LP Administrator, the contract shall not be eligible for Federal reimbursement. The LA retains all negotiations documentation in their project file and must make it available upon request to auditing agencies and the public.

14.8 PROCUREMENT PROCESS - STEP FOUR

Figure 10: Procurement Process Step Four - Contract Award



14.8.1 Required Contract Provisions for Award

Per **23 CFR 172** and **287.055, F.S.**, all required contract terms or provisions shall be incorporated into the professional services contract document for Federal-aid reimbursement eligibility. **Chapter 14** and the **LAP Professional Services Checklist** identify the most common Federal and State contract requirements for professional services procurement and contract award; but they are not inclusive of all State and Local laws, requirements, or policies.

14.8.2 Local Agency Compliance with State Requirements

Contracts and subcontracts must contain the following State provisions:

CONTRACT PROVISIONS REQUIRED BY STATE LAWS OR RULES

- Minimum insurance requirements must adhere to F.S. **LAP Agreement FDOT Form No. 525-010-40, Section 15** requires the FDOT be named as the certificate holder. The prime consultant provides proof of insurance. Self-insured retention is not allowed per the terms of the **LAP Agreement, Section 15**.
- Indemnification and Hold Harmless Clause required by **LAP Agreement, Section 15**.
- E-verify (included in LAP Terms for Federal-Aid Contracts FDOT Form #375-040-84)
- Public Entity Crimes Statement per **287.133 F.S.**
- Local Government Prompt Payment Act provisions per **Ch 218, Part VII, F.S.**
- Public Access to Public Records Language per **Ch 119 F.S.**
- Records retention for a minimum of five years from date of final payment per the **LAP Agreement, Section 5**.
- Truth in Negotiation certification and contract provision pursuant to **Section 287.055(5)(a) F.S.** for any lump sum or cost-plus-a-fixed-fee professional services contract over the threshold amount provided in **Section 287.017 F.S.** Category Four.
- Cooperation with the Inspector General required by **Section 20.055(5) F.S.** and **LAP Agreement, 17.o**.
- Tangible assets are identified, as needed. If there are no tangible assets contemplated under the contract, this does not need to be addressed in the contract documents.

Local requirements for conducting business as a drug-free workplace are acceptable for use on Federal-aid contracts. Drug-free workplace must not be used as a tie-breaker on Federal-aid professional services contracts, as it is not a qualifications-based method of evaluation or contract award. Do not use preference language for drug-free workplace as allowed by **287.087 F.S.** in the RFP or contract.

14.8.3 Local Agency Compliance with Federal Requirements

Contracts and subcontracts must contain the Federal provisions:

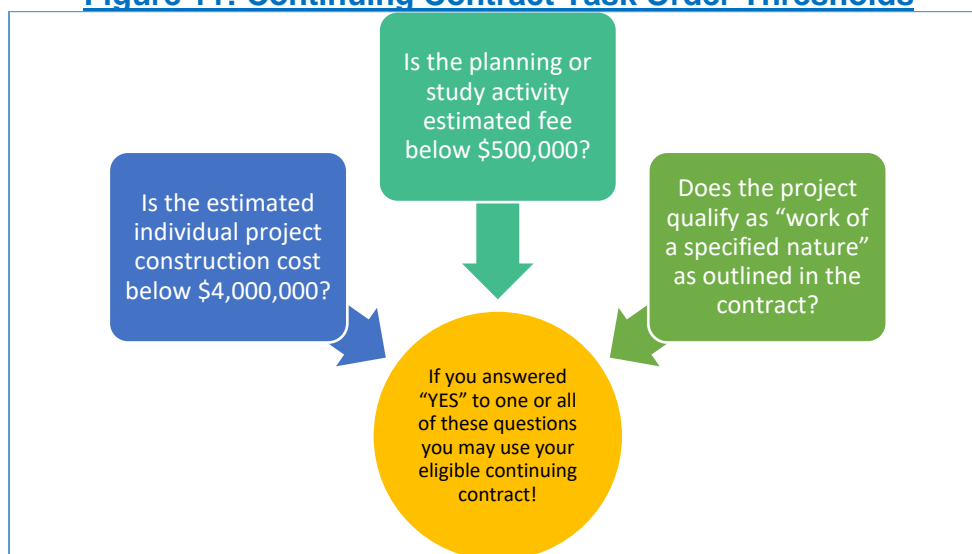
CONTRACT PROVISIONS REQUIRED BY FEDERAL REGULATIONS, LAWS, OR RULES

- **FDOT Form #375-040-84 LAP Terms for Federal-Aid Contracts** incorporated. Includes required contract terms and provisions for the following requirements:
 - Access to records by the recipient, subrecipient, FHWA, US DOT OIG, US Comptroller General, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
 - Standard DOT Title VI Assurances- LAP Appendices A and E (DOT Order 1050.2A).
 - Disadvantaged Business Enterprise (DBE) assurance.
 - Prompt pay requirements as specified in 49 CFR 26.29.
 - Provision for notification of change in status to Certification of Debarment, Suspension, Ineligibility and Voluntary Exclusion, as set forth in 29 CFR, Section 29.510.
 - Notice of contracting agency requirements and regulations pertaining to reporting, copyrights, and rights in data.
 - Administrative, contractual, and legal remedies for breach or violation of contract terms and conditions, and provide for sanctions and penalties as may be appropriate.
 - E-verify.
- Termination provisions for cause and convenience including manner and basis for settlement in the event of breach of contract.
- Performance evaluation of the consultant and conditions thereof.
- Determination of allowable costs in accordance with the Federal cost principles.
- Contracting agency requirements pertaining to consultant errors and omissions, separate from any Errors and Omissions insurance requirements.
- Lobbying certification and disclosure (all contracts greater than \$100,000) as specified in **49 CFR 20**.
- **F.A.R. 52.203-5** Covenant Against Contingent Fees: Contract warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee.
- Contracting agency requirements pertaining to conflicts of interest, as specified in **23 CFR 1.33, LAP Agreement Section 14.f**, and in **Section 287.057 F.S.**

14.9 PROFESSIONAL SERVICES PROVIDED ON A CONTINUING BASIS

In accordance with **Section 14.5** of this chapter, the LA must publicly announce in a uniform and consistent manner each project that exceeds the thresholds specified in **Section 14.5**. FHWA and State law permit the use of on-call type contracts (referred to in Florida as continuing contracts) when specialized services are needed for a number of different projects. In accordance with State law (Ref. [s. 287.055\(2\)\(g\), F.S.](#)), continuing contracts for professional services are restricted in use to services for projects as illustrated in **Figure 11**. Work of a specified nature refers to specific activities that may be performed by the consultant that are expressly referenced in the contract Scope of Services.

Figure 11: Continuing Contract Task Order Thresholds



Note: The State thresholds of \$500,000 per study or planning activity and \$4,000,000 per construction project were increased effective July 1, 2020.

Continuing contracts shall be limited in duration to a period **not to exceed five (5) years** per Federal regulation. The **total cumulative contract amount of \$1.5 million** is limited per Department procedure, since Federal law requires a maximum dollar amount of the contract defined within the advertisement and contract provisions. LAs may choose to use a continuing contract with the Federal terms on non-Federally funded projects. The \$1.5 million threshold applies regardless of fund source for each task work order.

Continuing contracts must include the required Federal provisions contained in the Department's **LAP Terms for Federal-Aid Contracts (Form 375-040-84)**, and all required Federal provisions and forms as noted in **Sections 14.6-14.8**. The required Federal forms must be signed as part of the continuing contract and the applicable Federal provisions must be a part of the original contract. These items cannot be added after the master contract is executed via an amendment, supplemental agreement, or

task work order. Existing contracts executed without the Federal requirements, or new contracts where the Federal requirements were inadvertently omitted will not be eligible for Federal reimbursement.

DID YOU KNOW?

LA RFPs for continuing services shall be sent to the State LAP Administrator for review and concurrence prior to soliciting for services.

The LA shall seek concurrence from the District LP Administrator for the continuing contract award(s) prior to execution. Alternately, District Offices may procure continuing contracts per Department procedures and allow use of the contract to a LA for tasks specific to a Department-funded professional services phase of work under the LAP program. Additional information is provided in **LPM Chapter 14.10** and the Department's **Professional Services Procurement Manual (FDOT Topic No. 375-030-002)**.

14.9.1 Solicitations for Continuing Contracts

All requirements for FAHP funded engineering and design-related services contracts shall be made by public announcement with evaluation and selection based on demonstrated competence and qualifications for the type of services required as specified in **23 U.S.C. 112(b)(2)(A)**, **40 U.S.C. 1101**, and **23 CFR 172.7(a)(1)**.

A LA may advertise and award for any eligible professional services phase the LA is certified to perform in the LAP (per **Chapter 7**). Solicitations for professional services under continuing contracts must include the scope of work, clearly defined contract award procedures, the cost and time limits identified in **Section 14.6**, and reference the Federal provisions. Each continuing contract must be work group, work type, or phase specific.

14.9.2 Limitations of Services Provided under Continuing Contracts

Services for multiple phases of work cannot be awarded under one contract. For example, a contract inclusive of both design and CEI services would be representative of multiple phases of work. These types of multi-phase contracts are not eligible for use on FHWA assisted contracts.

14.9.3 Awarding Multiple Contracts under a Single Solicitation

Multiple continuing contracts for the same phase of work may be awarded under one single solicitation, but ranking and award of each contract must fully comply with all Federal and State requirements.

- The solicitation must expressly state multiple contracts will be awarded and the number of contracts anticipated to be awarded. A maximum may be stated if the exact number is unknown by the LA at the time of project solicitation.

- Where multiple contracts are being selected with one solicitation, at least two more consultants than number of contracts being awarded shall be considered for evaluation of proposals and discussions.
- The procedures for assignment of task orders among the selected firms must be defined in the solicitation and contract provisions. Task orders may be assigned to the selected, qualified firms through an additional qualifications-based procedure (i.e. staff availability at the time services are required) with opportunity for discussions between the contracting LA and qualified firms for each specific task order; or on a regional basis when consultants are selected to provide services within an assigned region as established in the advertisement. The procedures for awarding task orders among the selected firms shall be based on scope and qualifications, and **not** based on a bidding process or cost proposals or based on “rotating” the work. In accordance with Florida law, firms providing professional services under continuing contracts shall not be required to bid against one another [**s. 287.055 (2)(g), F.S.**].
 - When assigning task orders based on region, it is also recommended to include language allowing assignment of task work orders across the assigned geographic boundaries in the event the other consultant(s) does not have qualified staff available during the time period the task is needed and the other consultant(s) is available.

14.9.4 Qualifications

A LA may elect not to require consultants be FDOT prequalified and use other established qualifications definitions. If the consultant firm(s) awarded the continuing contract is not FDOT prequalified, project tasks will not be eligible for reimbursement for LAP Classification A, B, or C projects as defined in **Chapter 17**. The LA determines assignment or appropriateness of proposed advertised work types based on the scope of services or anticipated contract activities. The District LP Project Manager may assist with recommendations or advise as needed, but ultimately the LA is responsible for determining the minimum qualifications required for the contract activities.

14.9.5 Scope of Services

The scope of services for a continuing contract shall identify the phase of work to be performed. When utilizing the FDOT prequalification process, the LA shall identify both major and minor types of work in accordance with **Chapter 14-75.003, Florida Administrative Code**. The tasks that may be potentially assigned under the phase type shall be clearly identified or listed in the scope. For example, a design scope may include work types for roadway design, geotechnical, field surveying, traffic signal design, lighting design, etc. Known Federal-aid projects may be identified in the scope of services when advertised and new Federal-aid projects may be added by task work order after the continuing contract is awarded. New projects identified after contract award must include only those specific tasks identified in the original scope of the contract as awarded and must not exceed the thresholds identified in **Section 14.9.1**.

14.9.6 Independent Staff Hour Estimates and Negotiations

Contract negotiations must comply in full with **Section 14.7**. The LA will negotiate job classifications for the master contract. The LA will verify direct and indirect cost rates via the consultant audit package for each job classification and consultant personnel identified to provide services. The LA must prepare independent staff hour estimates before receiving bids or proposals for services associated with each task order. Task order negotiations focus on staff hours, level of staffing, and job classifications required, and fixed fee. Task orders on continuing contracts may be negotiated as either cost plus fixed fee or lump sum method of payment. It is especially critical lump sum fees be established based on negotiated staff hours and negotiated level of staffing, involving key staff as identified in the consultant technical proposal.

A separate fixed fee must be negotiated for each task order. The LA must structure their master contract cost exhibit accordingly to show the fixed fee amount will be calculated at the task order level of the process. Some examples include:

- Show fixed fee as “to be determined”.
- Estimate a rate for fixed fee and note that the fixed fee amount will be established for each task order.

14.9.7 Task Work Orders

Task work orders are provided to the consultant on a continuing contract to identify what work and services are required for specific projects. The accumulated total of issued task work orders may not exceed the \$1.5 million limit for LAP eligible continuing contracts. The project services to be rendered by the consultant for each task work order will be completed within the time period specified in each task assignment, noting all services performed under the contract must be complete within five years from the execution date of the continuing contract. Post design/plans update services extending beyond five (5) years are not eligible for Federal funding.

The District LP Administrator shall request Federal Authorization and execute the LAP Agreement prior to execution of each Federally funded task work order. The District LP Administrator shall review the draft task work orders prior to issuance to the consultant to ensure tasks meet the original scope of the executed continuing contract.

14.9.8 Local Agency Responsibilities

All Federal and State requirements identified in **Chapter 14** are applicable to the procurement of continuing contracts. The LA may refer to the **LAP Professional Services Checklist Form 525-010-49** during the development, advertisement, negotiation, and award of the continuing contract. Each item identified on the LAP Checklist will be submitted to the District LP Administrator following the same process as a LAP project specific professional services advertisement and contract award. Submittal of a LAP Professional Services Checklist will not be applicable to project specific task

work orders issued under an awarded continuing contract.

DBE utilization data and payment reporting will be required of the consultant on each LAP project utilizing the established methods identified in **Chapter 11**.

14.10 MANAGING, MONITORING, AND EVALUATING THE AGREEMENT

All LAs shall assign one of their personnel as Project Manager to monitor the consultant's performance and ensure quality products are received. This person must be a public employee in responsible charge. The LA's Project Manager shall:

- Negotiate supplemental amendments to existing agreements and provide the LA's independent estimate of the costs for the work involved. Supplemental amendments may only be made for the type of services and work included within the original scope of services. **Services outside the scope of work established in the original contract are not eligible for Federal reimbursement unless they are solicited under a separate agreement.**
- Ensure no work is done or costs incurred until the agreement(s) and supplement(s) are concurred with by the Department.
- Act as the contact between the LA and the consultant to ensure compliance with the terms of the agreement.
- Monitor the consultant's progress reports to ensure progress follows the schedule and the consultant reports problem areas and takes corrective action.
- Establish controls to monitor the time for completion of each agreement to ensure the consultant does not exceed specified time limitations.
- Validate the accuracy and approve invoices to ensure they match the work performed. The LA keeps cumulative cost records for each agreement to ensure costs are allowable, allocable, and reasonable.
- Establish controls to prevent payment greater than the agreement amount.
- Monitor the consultant to ensure compliance with the EEO provisions of the agreement.
- Monitor and validate any DBE Business Enterprise participation and Compliance.
- Perform the final performance evaluation of the consultant, provide a copy of the evaluation to the consultant, and upload the evaluation to **GAP** for the project record.

14.10.1 DBE Data Reporting

Once the LA issues its NTP, the LA will record the contract data in **GAP**. This data includes but is not limited to the name of the consultant firm, the contract award amount, and execution date of the contract. This information is vital to the monitoring and proper recording of DBE activities and subrecipient auditing per **Chapter 11**. Instructions for recording the contract data are available within **GAP** under the "Help" module.

DBE information for LA continuing contracts as discussed in **Section 14.9** is reported for each task work order issued that correlates to a LAP Agreement and is tracked via **GAP**.

DBE information for Department continuing contracts discussed in **Section 14.10** is not reported through **GAP** and does not require action on the part of the LA Project Manager.

14.10.2 Invoicing and Progress Reports

The LA submits quarterly reimbursement requests to the District LP Administrator, per **Section 7** of the **LAP Agreement**, unless they are utilizing the Department's continuing contract as outlined in **Section 14.13** of the **LPM**. The reimbursement requests shall contain sufficient detail to determine the status of the project and all charges incurred by the LA and the consultant where Federal participation is requested. Invoicing and payment requirements as set forth by the State of Florida and Federal regulation are provided in **Section 5** of the **LAP Agreement**.

The LA shall ensure the consultant has met all terms and conditions of the agreement and has completed all services under the agreement before the final payment to and release of the consultant. LAs and their consultants shall be responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with Federal cost principles.

14.10.3 Department Monitoring Responsibilities

The Department will decide on the degree of monitoring, which will depend on the nature and character of each project. Project records shall be maintained in accordance with the provisions of **2 CFR 200.333**. Upon completion of the project, the District LP Administrator will provide the LA with a copy of the LAP Performance Evaluation as described in **Chapter 7**.

14.11 TRAINING

Per **Chapter 7** of the **LPM**, [LAP Professional Services Checklist Training FDOT Course No. BT-05-0152](#) must be attended by a minimum of one LA staff person biennially. Additional LA staff who procure, participate in activities related to the procurement (i.e. serve on the selection committee, members of the negotiations team, etc.), or manage LAP related professional services contracts are highly encouraged to attend. This is an in-person course, instructed by Department and FHWA staff, and offered in each District periodically. LA, Department staff, or consultants may register on a first come, first serve basis via the [Florida LTAP Training Calendar](#).

In addition, the Department offers a [LAP Professional Services Computer Based Training](#) online. The CBT is an introduction to Federal procurement and should be used as a prerequisite or as a refresher to the in-person training. The District LP team may require LA staff to take the CBT as needed for certification or if corrective actions are required of the LA based on performance.

14.12 DEPARTMENT CONTINUING CONTRACTS AVAILABLE FOR LAP

PROJECT DELIVERY

Districts may establish dedicated continuing services task work order driven contract or contracts to be utilized exclusively for delivery of LAP projects, for Design and CEI phases of work, at their discretion. Contracts are procured by the District in accordance with the procurement procedures referenced in the ***Professional Services Procurement Manual, Topic 375-030-002***. Task work orders shall be issued for individual LAP projects, by the Department's Project Manager. LAP delivery continuing contracts must comply with Department Conflict of Interest policies.

It is recommended the Districts award a minimum of two (2) contracts per solicitation and consider awarding task orders to the selected firms on geography as allowed by **23 CFR 172**. It is also recommended to include language allowing assignment of task work orders across the assigned geographic boundaries in the event the other consultant(s) does not have qualified staff available during the time period the task is needed and the other consultant(s) is available. LAP projects are not always geographically contiguous within the District and the District must consider staffing and resource limitations if awarding a single contract for services. In addition, the anticipated volume of LAP project delivery within the 5-year contract period must be carefully analyzed when considering the number of contracts to award. The total cumulative contract amount may be expended much faster than the 5-year contract term.

14.12.1 Department Responsibilities

In addition to the direct procurement and administration of the consultant continuing contract, the Department's Project Manager shall be responsible for:

- Reviewing the LA's independent man-hour estimate for each task,
- Negotiating the task work order with the LA project manager,
- Maintaining the contract budget,
- Ensuring task work order amendments are timely and appropriately issued,
- Approval and payment of invoices through Consultant Invoice Transmittal System (CITS),
- Contract and task work order oversight, and
- Conducting the performance evaluation of consultant with the LA project manager.

The Department Project Manager shall hold a project kick off meeting with the consultant project manager, the LA project manager and other relevant staff to ensure all parties are in agreement on the project scope, schedule, and deliverables identified in the task order. The Department Project Manager is responsible for mediating any disputes that may arise between the consultant and the LA.

14.12.2 Local Agency Responsibilities

The LA must be LAP Certified per ***LPM Chapter 7*** and shall assign a person or persons in responsible charge of the task at all times. Department oversight and responsibility for

the task work order does not alleviate the LA's project management responsibilities for LAP projects. The LA project manager shall be responsible for:

- Developing the task work order scope.
- Developing the independent man hour estimate that includes estimated staff hours, level of staffing or job classifications required.
- Negotiating the task work order with the Department Project Manager, including establishment of the fixed fee amount for the task work order.
- The day-to-day task services as the entity in responsible charge of the project.

Functional activities of task management include but are not limited to conducting project meetings, deliverable reviews and approvals, invoicing reviews, and directing consultant's work in accordance with the project schedule and other activities as identified in **Section 14.11**. The LA project manager must communicate to and include the District contract manager in all activities related to the project delivery. Changes to a task order must be approved by the District contract manager. The LA Project Manager must participate in the performance evaluation with the District contract manager at the end of the task(s).

14.12.3 Eligibility and Funding

The District managing the continuing contract is responsible for identifying eligibility requirements for use of the contract by its partner LAP certified agencies. LAP projects are prioritized and funded with Federal-aid per the traditional process applicable to each LA and the fund source. Additional Federal-aid funding is not available to Districts utilizing this contracting method. Administrative costs must come from the District's annual funding allocations. Non-participating services related to ineligible project costs are the responsibility of the LA and will not be paid for with Department funds.

Programming LAP projects must conform to the [Department's Work Program Instructions](#). Programming and sequencing of Department staff in-house, consultant task, and LA phases of work may vary depending on the District's consultant contract and funding agreement with the LA. The LA may request project management reimbursement per the **Work Program Instructions, Chapter 17, E**. Additional allocations of Federal-aid funding are not available for project management costs and must be considered in the initial project funding request.

A **LAP Agreement (FDOT Form No. 525-010-40)** is only required when the District reimburses the LA for costs directly incurred delivering the professional services phase of work (i.e. project management costs). Resolutions or other documentation endorsing project delivery utilizing a Department contract is required in conformance with [Program Management Bulletin 15-03](#).

14.13 FORMS

The listed forms are available in the [LAP Forms Library](#) on the [LAP Website](#). Additional

forms may also be found on the [Professional Services Forms](#) webpage.

14.14 RESOURCES

[Automated Fee Proposal Worksheet Guidance for LAP Projects](#)

[Conflicts of Interests- Frequently Asked Questions](#)

[Consultant Wage Rate Report](#)

[FDOT Negotiation Handbook](#)

[FDOT Work Program Instructions](#)

[FHWA Professional Services Guidance Q&A](#)

[LAP Consultant Fee Mock Up](#)

[LAP Forms Library](#)

[LAP Negotiations Quick Reference Guide](#)

[LAP Negotiations Verification Process flowchart](#)

[LAP Professional Services webpage](#)

[Department's Professional Services Procurement Manual \(FDOT Topic No. 375-030-003\)](#)

[Professional Services Forms](#)

[Professional Services Prequalification page](#)

[Program Management Bulletin 15-03](#)

[Scope of Services and Staff Hour Estimation](#)

[Suspension Debarment resources:](#)

Federal verification website:

<https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>

DMS State and Federally disqualified vendors link:

https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists

CHAPTER 15

CONSTRUCTION ADVERTISING AND AWARD PROCEDURES

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15.1 OVERVIEW

This **Chapter** outlines the general process for LAs that advertise and award construction contracts under the Department's LAP program. LAs advertising, awarding, and administering Federal-aid eligible construction contracts must develop and follow procedures and processes in compliance with **Chapters 120 and 337, F.S. and 23 CFR 635**, and attain LAP Certification as described in **Chapter 7** (where applicable).

LAs may advertise and award contracts for construction projects provided the following conditions are met:

- The LA meets Federal and State requirements for the advertisement, selection of lowest responsive and responsible bidder, and award of the contract as established through the LAP Certification process.
- The LA has an approved Plans, Specifications & Estimates (PS&E) package; **LAP Construction Checklist Form No. 525-010-44**; and Federal authorization has been received.

A *responsive bidder* is one that meets all the requirements of the advertisement and proposal. A *responsible bidder* is one that has the financial wherewithal and is physically organized and equipped to undertake and complete the contract.

The approved PS&E package as described in **Chapter 20** and as required for Federal authorization of the construction phase must incorporate the LAs' contract terms and conditions. This **Chapter** identifies the requirements and guidelines the LAs must follow to develop the contract terms and conditions of the bid, also known as "front end" or "Division One" bid documents. The contract terms and conditions development is treated separately in this **Chapter** for the purposes of organization and better distinction of those Federal and state requirements related to Federally funded construction contracting language.

15.2 DEPARTMENT ISSUED NOTICE TO PROCEED

The District LP Teams issue an NTP to the LA for each LAP project. NTPs may not be issued unless both Federal and state funding approvals have been received by the District LP Team. All LAs are required to advertise a project within 30 days of the NTP per the terms of the **LAP Agreement (7B)**. Timely contract award is critical for maintaining financial activity on Federal projects per **Chapter 5 and 6** and **23 CFR 630.106(a)(5)-(6)**.

All contract awards shall be concurred with by the District LP Administrator prior to contract execution as detailed in the following sections.

15.3 PREPARATION OF THE PROJECT BID PROPOSAL

Although a project is funded through the Department, the LA prepares its bid documents following its standard procurement process. The LA is responsible for compliance with all local, state, and Federal requirements. The [Local Agency Program Checklist for Construction Contracts Form No. 525-010-44](#) (**LAP Construction Checklist**) is used by the Department to monitor compliance with identified requirements. The **LAP Construction Checklist** is inclusive of the most common Federal and state requirements or those that present the highest risk to eligibility to receive Federal funds and is described in additional detail in **Section 15.3.4**. FHWA also posts a matrix of contract provisions relevant to both Federally funded construction and service contracts located here: <http://www.fhwa.dot.gov/construction/contracts/provisions.cfm>.

15.3.1 Bundling Multiple Projects

Multiple Federal-aid projects may be bundled into one advertisement and contract award as a cost and time savings. Multiple projects of the same work type in one jurisdiction and/or proximity of projects are two of the most common ways to bundle projects for advertising and award. Contact the District LP Administrator for additional information.

15.3.2 Bid Alternates

Bid alternates are allowed as a mechanism to control costs and/or time on a project. Additional information on alternative contracting may be found in **Chapter 16** and the **FHWA Contract Administration Core Curriculum Manual** or by contacting the District LP Administrator.

15.3.3 Contractor Qualifications

The LA is prohibited from establishing any procedures or requirements for qualification or licensing of contractors that might restrict competition, prevent the submission of bids, or prohibit consideration of bids submitted by any responsible contractor. This applies whether the contractor is a resident or a nonresident of the State of Florida.

The LA shall certify that the [Department's prequalified contractors](#) established in accordance with **Rule 14-22 F.A.C.** will be used to construct LAP projects located on the NHS, the SHS, or if the project is a Class B or C project as defined in **Chapter 17.4**. However, when the project is on the NHS or SHS **and** the contract is estimated to cost less than \$250,000, then a Department prequalified contractor is not required, per the

Department's Standard Specification 2-1, Prequalification of Bidders. If a project bid is estimated to cost less than \$250,000, but bids come in higher than the \$250,000 threshold; the LA is not required to re-advertise the project if prequalification was waived in the initial bid.

The LA is responsible for the prequalification of prospective bidders on local roadways ("off-system"). They may use their agency prequalification procedure, or the Department's prequalification procedure (**Rule 14-22 F.A.C.**). There shall be no procedure or requirement for bonding, insurance, prequalification, qualification, or licensing to prohibit the contractor from submitting or awarding a bid based on residency or tax receipts where the work is to be performed. Contractors must meet Federal and state bid performance and payment bonding requirements under **2 CFR 200.325** and [255.05 F.S.](#)

When a LA does not prequalify prospective bidders, the LA must include enough information in the bid package to enable the bidders to provide evidence of its capability to perform the work. Qualifications requested in the construction bid package must be fair and consistent. Evaluations performed by LAs should consider experience, personnel, equipment, financial resources, and performance record, or some combination thereof.

15.3.4 Federal and State Construction Contracting Requirements

All items identified on the **LAP Construction Checklist** must be addressed when compiling the construction bid package. The checklist is inclusive of the most common Federal and state requirements, or those that present the highest risk to eligibility to receive Federal funds. The LA is responsible for compliance with all local, state, and Federal requirements.

As part of the continuing effort to streamline processes and support statewide best practices, **LAP Division One Specifications** for LAs are documents available for incorporation into LAP construction project bid packages. The documents, available in Microsoft Word 1997-2003 format (.doc), include standard contract language for items found on the **LAP Construction Checklist** that also appear in the **FDOT Standard Specifications for Road and Bridge Construction**. FDOT Specifications are reviewed by FHWA and FDOT legal and meet the contractual requirements for use on Federal-Aid Highway Program projects. Use of the full **LAP Division One** documents is not mandatory, but may save the LA time and effort in researching and developing contract language that meets Federal and state requirements. The LAs must determine if adaptation of the Department's specifications qualify for an engineer's sign and seal under **Chapter 471 F.S.**

Two versions of the **Division One Specifications for Local Agencies** document are available for use on LAP projects:

1. **LADIV1-OFFSYS** is for LAP Class D projects.
2. **LADIV1-ONSYS** is for use on LAP Class A, B, and C projects. This version includes the required language for synchronization with FDOT Division Two and Division Three specifications that are required for use on these class projects.

The documents do not satisfy all requirements of the **LAP Construction Checklist** but do compile requirements found in the **FDOT Standard Specifications for Road and Bridge Construction** published by the Department. In addition, not all the FDOT Specifications included in the documents are required for each LAP project. LAs may omit those non-applicable requirements as needed. References to LA processes or procedures may need to be added for consistency with the bid package. The LA is responsible for addressing all conflicts between their construction specifications and what is provided in the **LAP Division One** documents.

Figure 1: Specs on the Web



The document files are located on the Departments ‘**Specs on the Web**’ at: <https://fdotewp1.dot.state.fl.us/SpecificationsPackage/Utilities/Membership/login.aspx?ReturnUrl=%2fSpecificationsPackage%2fdefault.aspx>. **Specs on the Web** is a web application that creates specification packages for transportation projects including provisions that are required with Federal-aid projects. Each file is downloadable and may be formatted or edited as needed. To download the document, visit the website and select the ‘Browse’ hyperlink associated with either document. Both document files will be updated bi-annually by Central Office during the rollout of the **FDOT Standard Specifications for Road and Bridge Construction**, which is also published on a bi-annual basis.

In addition to contracting language identified in the **LAP Construction Checklist**, the LAs are also required to specify the bid terms in compliance with Federal and/or State requirements. Some general requirements are listed here:

- Each bid shall be made on the forms provided by the LA and shall be signed by the bidder with the signature in full.
- If a corporation makes the proposal, the officer(s) with authority to sign contracts shall sign the proposal in the name of the corporation.
- The address of the bidder should be printed on the proposal.
- A unit or lump sum price, as required in the proposal, shall be submitted on each item of work included in the group or division for which bids are requested.
- Each unit or lump sum price shall be written in figures.
- Causes for bid rejection must be clearly defined by the LA. Common causes listed in Federal and State guidelines include:
 - Any price omission on items shown in the proposal form.
 - Any condition, limitation, or provision that is not officially invited in the proposal.
 - Failure by the contractor to meet project qualifications.
 - Contractors suspended, debarred and/or otherwise disqualified from bidding on Federal and/or State contracts.

Section 15.3 is not inclusive of all local, State, and Federal requirements, laws, and rules the LA may need to comply with. It would be impossible to republish all of the existing requirements within the **LPM**. The Department certifies a LA to advertise, award, and administer LAP construction contracts with the reasonable expectation that the LA develops procedures and processes in compliance with local, State, and Federal requirements including **Chapters 120 and 337, F.S.** and **23 CFR 635**. Additional assistance may be requested from the District and/or State LP Administrators as needed.

15.4 ADVERTISING OF THE PROJECT

Federal-aid construction projects shall be advertised for a minimum of three (3) weeks or four (4) weeks before the opening of bids. The advertising period begins when the first of two (2) advertisements is published.

For projects that do not require a FDOT prequalified contractor, the LA complies with the minimum three (3) week regional advertisement for FHWA and also with:

- **255.0525 F.S. Advertising for Competitive Bids or Proposals** requires the solicitation of competitive bids or proposals for any county, municipality, or other political subdivision construction project that is projected to cost more than

\$200,000 shall be publicly advertised at least once in a newspaper of general circulation in the county and/or regionally where the project is located at least **21 days** prior to the established bid opening and at least five (5) days prior to any scheduled pre-bid conference.

- **255.0525 F.S.** for construction projects projected to cost more than \$500,000 shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least **30 days** prior to the established bid opening and at least five (5) days prior to any scheduled pre-bid conference.

For projects that require FDOT prequalified contractors, the local will comply with the minimum three (3) week regional advertisement for FHWA and also with:

- **337.11(3)(a) F.S.** requiring two (2) newspaper advertisements for all contracts under \$250,000 or any contract less than \$500,000 that has prequalification requirements waived.
- **337.11(3)(b) F.S.** requires that on all construction contracts greater than \$250,000, the bid solicitation notice is provided to all prequalified contractors at least two (2) weeks before the date bids are scheduled to be received.

Provided the LA places the advertisement for all contracts under \$250,000 in a newspaper and that advertisement runs for at least once a week for no less than two (2) consecutive weeks, and the first publication of the advertisement is placed in the newspaper within 14 days of the letting, compliance with the statutory requirement has been met. Coverage should be proportionate to the size of the project and must be regional to meet **23 CFR**. The LA may opt for additional notification.

Bidding opportunities will be given on a nondiscriminatory basis to all qualified bidders regardless of State or LA boundaries, race, gender, color, religion, age, disability, marital status, or national origin.

No bidder will 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 who is authorized to do business with the State of Florida. **Negotiations with contractors are not permitted during the advertisement, award, or execution periods of the construction contracting process.**

Department cost estimates are confidential per [337.168, F.S. Confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring system.](#)

A document or electronic file revealing the official cost estimate of the department of a project is confidential and exempt from the provisions of s.

119.07(1) until the contract for the project has been executed or until the project is no longer under active consideration.

It is up to the LA's legal counsel to determine if the LAA is required to disclose the cost estimate under Florida's broad public records laws. The Federal regulations do not stipulate confidentiality. They allow the states to make the decision to keep estimates confidential.

15.4.1 Bid Addendums

If an addendum is necessary during the advertising period, the LA shall submit the addendum to the District LP Administrator for review and concurrence prior to publication. On FHWA oversight projects, the District LP Administrator will submit the addendum to FHWA for approval per the oversight plan. Bidders must present written notice of receipt of each addendum received along with the bid.

15.4.2 Davis-Bacon Act Wage Rate Tables

The contractors must pay Davis-Bacon Act predetermined wage rates to all covered workers on Federal-aid construction projects exceeding \$2,000 on roadways that are functionally classified as Federal-aid highways. The Davis-Bacon requirements do not apply to force account work performed by LA forces. The application of wage rates on a LAP project depends on the relationship or linkage to a Federal-Aid Highway and the Federal fund types (e.g. Transportation Alternatives, Highway Safety). Additional information on wage rates may be found in **Chapter 10**.

The wage rates used will reflect the latest rates approved by the USDOL. The effective date for Federal rates is determined as follows:

- Federal wage rates are received from the USDOL, who publish the "General Wage Determinations Issued under the Davis-Bacon and Related Acts." The USDOL issues modifications weekly. To minimize the possibility of out-of-date Federal wage rates at the time of bid opening, the LA developing the construction documents access the wage rates through the following link seven (7) working days before the advertising date: <http://www.fdot.gov/construction/Wage.shtm>
- Modifications published by the USDOL less than 10 days before the opening of bids will be effective unless the LA determines that there is not sufficient time before bid opening to notify bidders. The LA inserts a report of the determination in the contract file. No report is necessary if the notification is published after bid opening.

- If the contract has not been awarded within 90 days after bid opening, any modification published before award will be effective unless the LA receives approval of an extension of the 90-day period from the USDOL. The LA must support this request with factual evidence that the extension is necessary, proper, and in the public's best interest.

15.5 BID OPENING & EVALUATION

The LA will publicly open and announce all bids it receives by total amount in accordance with the terms of the advertisement. If any bid received is not read, the LA must publicly announce the name of the bidder and the reason for not reading the bid at the bid opening.

The LA's contracting office must submit adequate justification for rejecting any bids to the District LP Administrator. The District LP Administrator may also provide the justification to the State LP Administrator and/or the FHWA as needed.

15.5.1 Evaluation of Bids for Award

After the bid opening, the LA must verify all bidders are both responsive and responsible as defined in **Section 15.1**. The LA verifies all bidders have properly submitted and executed all required bid documents and forms. The LA reviews all bids for accuracy, checks for conformance to the engineer's estimate, evaluates unbalanced bid items, and confirms tabulations.

The LA shall prepare a tabulation of bids showing the item details and total bid for all responsible bids. A responsible LA official certifies that these tabulations are correct and performs unbalanced bid analyses as needed per **23 CFR 635**. It is important that the LA thoroughly reviews all submitted individual surety bonds to establish their authenticity.

15.5.2 Bid Rejection

The LA may reject the bids in the following circumstances:

- Where the low bid differs from the engineer's estimate by an unreasonable amount (reasonable conformance pursuant to **23 CFR 635.114(c)**).
- Where obvious unbalancing of unit prices has occurred.
- Where competition is considered to be inadequate relative to the size, type, and location of the project.

The LA shall notify the District LP Administrator when bids are rejected. If all bids are rejected, the project may be re-advertised and will remain eligible for Federal

reimbursement if all Federal requirements continue to be met. **Negotiations with contractors are not permitted during the advertisement, award, or execution period of the contracting process.**

15.5.3 Bid Concurrence from the Department

The LA shall submit the bid tabulation to the District LP Administrator along with all back up documentation and/or justifications needed to support the bid award to the lowest responsive, responsible bidder. If the LA determines that the lowest bidder is not qualified, it must document this information before seeking District concurrence to award to the next lowest responsive, responsible bidder.

The District LP administrator shall review and concur with the award recommendation in writing. FHWA may also need to provide concurrence on oversight projects. Bid concurrence documentation must be uploaded to **GAP**.

15.5.4 Award Exceptions

The LA must document exceptional circumstances of an award in its project files. The LA may award the contract, **with District concurrence**, if there are exceptional circumstances such as those listed below:

- Where the competition is adequate relative to the size, type, and location of the project, but less than three (3) bids were received.
- Where the project is essential to the public interest (safety or public, emergency repair, etc.) and deferring it would endanger that interest.
- Where the engineer's estimate is clearly in error by a significant amount.
- Where re-advertising would not likely result in lower bids because the plans and specifications already contain all possible cost reduction measures.

Before awarding a project which exceeds the engineer's estimate by a significant amount, the LA must seek concurrence from the District LP Administrator. The LAP Agreement may be supplemented if the award amount is greater than the authorized amount at the discretion of the District Program Management Administrator and the LP Administrator. Details regarding supplemental agreements and availability of additional funds are located in **Chapter 5** and the **Work Program Instructions**.

15.6 CONTRACT AWARD AND EXECUTION

Before notifying the contractor of the award, the LA must post its intent to award in accordance with the local rules or ordinances and must receive the District's concurrence to award. The LA is also responsible for resolving any protests that are filed.

The LA will prepare and forward an official award letter to the contractor with a copy to the District LP Administrator. All letters must be identified in the subject area with the following: 1) Financial Project Number, 2) Federal Aid Number, and 3) County in which the project is located.

State law requires that a LA may not carry out a contract with any contractor who is not registered or licensed in accordance with State laws. A LA is **not** permitted to bid in competition or enter subcontracts with private contractors for construction of Federal-aid projects. The designated LA office prepares the necessary contract documents and forwards them for execution by the successful bidder and the proper officials of the LA. The LA must submit a copy of the executed contract to the District LP Administrator in **GAP**.

15.7 RESOURCES

It is the LA's responsibility to incorporate construction contracting requirements and periodically verify the contract assurances and/or forms are up to date. Links to all forms, sample forms, templates, and other contract documentation are found on the [LAP Website Forms Page](#).

Specs on the Web:

<https://fdotewp1.dot.state.fl.us/SpecificationsPackage/Utilities/Membership/login.aspx?ReturnUrl=%2fSpecificationsPackage%2fdefault.aspx>.

CHAPTER 16 SPECIAL CONTRACTING METHODS

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16.1 OVERVIEW

The Department allows use of special contracting methods for Federal-aid projects, as allowed under **Chapters 337.025 Florida Statutes (F.S.)** and **287.055(9) F.S.** and **23 USC 502**. The Department recognizes that items such as quality, delivery time, safety, life-cycle costs and use of new or improved technologies are also valuable in addition to cost alone. In 1995, the Florida Legislature authorized the Department to use the design-build process for buildings, major bridges, and rail corridor projects. In 1996, this authority was further expanded to include all project types as a part of the "innovative" practices package. Alternative contracting techniques may control time and cost increases on construction projects.

Since 1990, the FHWA has been evaluating methods for improving the efficiency of delivering transportation improvement projects under the **Special Experimental Projects 14 Program (SEP-14 program)**. The **SEP-14** program provides State DOTs with a vehicle for evaluating various types of non-traditional contracting methods on Federal-aid highway contracts. The objective of the **SEP-14** program is to evaluate project specific innovative contracting practices that have the potential to reduce the life cycle costs of projects, while maintaining product quality.

Project delivery methods that have graduated or been proven under the **SEP-14** program become operational and are referred to in this **Chapter** as "Alternative Contracting Methods" (**Section 16.2**). These operational methods do not require additional FHWA approvals as delivery methods for LAP projects, rather the Department may approve their use in LAP. Methods that are still being tested or vetted and require additional approvals under the **SEP-14** program are referred to in this **Chapter** as "Innovative Contracting Methods" (**Section 16.3**).

This **Chapter** identifies only those alternative and innovative contracting methods allowed in LAP. For a complete listing of definitions for all types of alternative and innovative contracting methods, reference the [FHWA Contract Administration Core Curriculum Manual](#) and the FDOT Office of Construction website at: <http://www.fdot.gov/construction/AltContract/AltContract.shtm>.

16.2 ALTERNATIVE CONTRACTING METHODS

Alternative contracting methods are also referred to as "operational" methods by FHWA. Alternative methods are approved for use on all Federal-aid highway construction projects. LAs must receive Department concurrence for use of alternative contracting methods for LAP project delivery. FHWA's alternative contracting website provides

sample specifications and contracting provisions for these techniques from various transportation agencies at:

<https://www.fhwa.dot.gov/construction/contracts/acm/>.

16.2.1 Bid Alternates

Additive or deductive bid alternates are techniques employed on a transportation project to achieve the maximum project scope within an available budget. The LA defines its critical project scope components as the “base” bid and defines specific additional components as “alternates.” Priority order of additive or deductive bid alternates shall be clearly defined. The contract is awarded to the lowest responsive and responsible bidder providing the maximum scope (within the budget).

Additive alternates: As the budget allows, bid alternates are added to the base in a predefined order to establish the low bid.

Deductive alternates: To meet the budget, bid alternates are deducted from the base scope in a predefined order to result in a contract that fits the budget.

It is strongly recommended that LAs use this method to maximize their budgets and also adjust for pay item cost fluctuations on LAP projects. Per the terms of the LAP Agreement, the Department may only allocate available funds to a LA. The LA is responsible for all project costs exceeding the Department funded amount(s). Additional information on Bid Alternates may be found in **Chapter 13** and the ***FHWA Contract Administration Core Curriculum Manual***.

16.2.2 Cost-Plus-Time (A + B Bidding)

Cost-plus-time bidding, more commonly referred to as A + B bidding, reduces total construction cost by making time a factor, in addition to cost, when awarding a contract. A daily road user cost must be identified in the contract and will be used to calculate the low bid. Under the A + B method, each submitted bid consists of two components:

- The ‘A’ component is the traditional bid price for the contract items based on unit prices and quantities
- The ‘B’ component is the bidder’s estimate of the time required to complete critical construction pay items as defined in the contract. Calendar days are typically used to reduce potential for disputes.

For the purposes of determining the apparent low bidder, the B component is converted to a dollar value by multiplying the number of days by the daily road user cost identified

in the contract. When an A + B bidding procedure is used, the contracting agency incorporates an incentive/disincentive (I/D) provision based on the “daily road user cost rate”.

16.2.3 Design-Build

Design-build assigns the design and construction of a project to one firm (or team), allowing construction to begin before plans are complete. This contracting method provides a single point of contact for quality, cost, and schedule from design through completion of construction, thus generally reducing contract time, change orders, and claims due to errors and omissions. A LA that is certified to design projects and administer construction may also be LAP certified to perform design-build projects.

To accelerate certain major construction projects, the Florida Legislature allows the use of design-build contracts to accelerate the project completion schedule under **Section 337.11(7), F.S.** Design-build minor contracts are allowed under **Section 337.025, F.S.** The two categories of design-build contracts, major and minor, do not apply for LAP projects. LAP projects are simply considered as design-build projects. Federal requirements for design-build contracting are described in **23 CFR 636**.

For LAP Classification A, B, and C projects, the LA must use **FDOT Procedure No. 625-020-010, Design-Build Procurement and Administration** for selecting a design-build team. LAP project concept designs must be reviewed and approved by the Department’s Structures Office before procurement. The Department may at its sole discretion, reject designs which do not meet Department standards. The Department may also, in its sole discretion, allocate Department-managed resources, including structures engineers and/or project managers to projects involving complex design structures and other design structures not commonly used by the Department. In addition, all complex bridges and bridge types not commonly used by the Department constructed via the LAP delivery method will be monitored and inspected by Department personnel. In addition, the Department provides standard contract language to be used for LAP Classification A, B, and C projects at:

<https://www.fdot.gov/programmanagement/Implemented/LAP/Default.shtm>.

For LAP Classification D projects, the procedure used by the LA for selecting a design-build firm should be similar to the **FDOT Procedure No. 625-020-010, Design-Build Procurement and Administration**. LAP project concept designs must be reviewed and approved by the Department’s Structures Office before procurement. The Department may at its sole discretion, reject designs which do not meet Department standards. The Department may also, in its sole discretion, assign a project manager and/or structures engineer to projects involving complex design structures. [Chapter 287.055\(9\) F.S.](#)

governs LA design-build procedures and procurement methods allowed under Florida laws.

16.2.4 Incentive/Disincentive

I/D contracting uses incentive monies, which are paid to the contractor for early completion of a project as provided for in the contract. Disincentive monies are subtracted from the amount paid to a contractor for completing the project later than time allowed by the contract. I/D may be a stand-alone method, or may be applied to other alternative contracting techniques including No Excuse Bonus (see **Section 16.3**), A + B Bidding, Lane Rental, Design-Build or any combination.

I/D contracts are assessed on a daily basis and are typically used to achieve specific milestones within a project to encourage timely completion of the total contract. If intermediate milestones are used, it is recommended that a milestone also be placed at the end of the project to ensure overall reduction of contract time. Bonuses must be included in the original contract award. Bonuses added to the contract after contract award are not eligible for Federal-aid participation.

16.2.5 Indefinite Quantity/Indefinite Delivery Contracting

Effective January 18, 2019, [FHWA Notice 5060.2](#) makes ID/IQ contracting operational, which authorizes State DOTs to enter into ID/IQ delivery construction contracts without seeking a **SEP-14** approval when the conditions of the Federal Notice are met.

ID/IQ contract – The term “ID/IQ contract” means a type of contract that does not specify a firm quantity of supplies or services (other than a minimum or maximum quantity) and provides for the issuance of orders for the performance of tasks or delivery of supplies or services during the period of the contract. The ID/IQ contracts are also known as “push-button contracts,” “on-call contracts,” and “task order contracts.” For the purpose of the notice, ID/IQ contract is specific to Federal-aid construction projects. It is a single award task or work order contract and is awarded by competitive bidding to the lowest responsive bidder.

Job Order Contract – The term “Job Order Contract” (JOC) for Federal-aid construction projects means a type of ID/IQ contract that utilizes a construction task catalog with pre-priced work item descriptions. Contractors bid “adjustment factors” and the contract is awarded by competitive bidding to the lowest responsive bidder determined by their mark-up rate.

State DOTs and their subrecipients are authorized to execute ID/IQ contracts when the following conditions are met:

- **Projects qualify as categorical exclusions under NEPA** – NEPA categorical exclusions are actions that meet the definition contained in **40 CFR 1508.4**, and, based on past experience with similar actions, do not involve significant environmental impacts. See also **23 CFR 771.117**.
- **Low-cost contract** – A low-cost contract is a short-term (1 to 2 year) base contract that is awarded to the lowest responsive bidder where the total value of task or work orders may not exceed \$2,000,000 per year on average over the contract term. With FHWA approval, the base contract may be extended up to five (5) years.

Subject to the limitations of **FHWA Notice 5060.2**, State DOTs may use ID/IQ contracting and JOC, a form of ID/IQ contracting, to perform a variety of construction work including, but not limited to:

- Preventive maintenance and bridge preventative maintenance as described in FHWA Memorandum "[Guidance on Highway Preservation And Maintenance](#)" dated February 25, 2016 and the [FHWA Bridge Preservation Guide \(Spring 2018\)](#)
- Construction of pedestrian facilities (including ramps)
- Intelligent transportation system (ITS) installation
- Pavement resurfacing
- Safety improvements
- Traffic control device installation
- Traffic signal installation
- Clearing for construction contracts to avoid sensitive habitat

Contact the State LP Administrator for concurrence prior to entering into an ID/IQ contract for LAP projects.

16.2.6 Lane Rental

Lane rental is a contract provision that incentivizes contractors to schedule and work during non-peak periods by charging rental fees for lane or shoulder use, with higher fees during peak periods. The lane rental fee is based on the estimated cost of delay or inconvenience to the road user during the rental period. The fee is assessed for the time that the contractor occupies or obstructs part of the roadway and is deducted from the monthly progress payments.

The rental fee rates are stated in the bidding proposal in dollars per lane per time period, which could be daily, hourly, or fractions of an hour. Neither the contractor nor the contracting agency estimate the anticipated amount of time for which the assessment will apply, and the low bid is determined solely on the lowest amount bid for the contract items. All lane closures shall be documented on the **Lane Rental Form No. 700-050-57** for LAP Classification A, B, and C projects.

16.2.7 Lump Sum Bidding

Lump sum bidding requires the contractor to provide a lump sum price to complete a project as opposed to bidding on individual pay items with identified quantities. The benefits include reductions in quantity overruns and in paperwork associated with quantity measurement and verification.

The Department has used this method for Federal-aid projects including resurfacing, bike path construction, box culvert extensions, or minor bridge widening. Lump sum guidelines are published in the [FDOT Design Manual](#) and the method is allowed under **Section 337.11 F.S.**

16.2.8 Warranty

NHS project warranties: All warranties proposed on NHS projects must be pre-approved by the FHWA, Florida Division Office prior to advertising and awarding the construction contract. Product warranties (as offered by manufacturers) are allowed and are not applicable to this guidance.

FHWA provides specific warranty guidance applicable to all Federal-aid highway construction projects on the NHS in **23 CFR 635.413**. FHWA's policy against use of warranties on Federal-aid construction projects was based on the logic that participation in a warranty payment constituted indirect participation in routine maintenance. Maintenance costs are not eligible participating costs on Federal-aid projects. Updated guidance received from the FHWA in 2015 now allows warranty provisions for specific highway construction products or features in Federal-aid contracts on the NHS. General warranties for the entire project are **not** acceptable unless the project in question is delivered by a design-builder per **23 CFR 635.413(e)**.

General rules of thumb for NHS project warranties include:

- A warranty may not cover any item ineligible for Federal-aid participation.
- A warranty may not cover damage caused by others.

- A warranty may not cover routine maintenance.
- A warranty may cover preventative maintenance as defined in the October 8, 2004 FHWA memorandum on “**Preventative Maintenance Eligibility.**”
- Contractors cannot be required to warrant items over which they have no control.
- Length of warranty is dependent on the surety’s willingness to underwrite the warranty. Five years is a general maximum.

SHS project warranties are regulated by the **FDOT Standard Specifications** and the **FDOT CPAM**. Warranty provisions must be approved by the Department for use on all LAP projects located on the SHS.

Local roadway warranties are subject to the LA policy. Federal-aid participation is not allowed for warranty bonds, and a separate pay item may be added to the project estimate in order to isolate cost(s) associated with the warranty.

16.3 INNOVATIVE CONTRACTING METHODS

The Department’s innovative contracting methods are authorized under **Section 337.025, F.S.** The allowed methods applicable to LAP are those experimental methods also allowed by FHWA under the **SEP-14 program**. The **SEP-14** program strives to identify, evaluate, and document innovative contracting practices that have the potential to reduce life cycle cost of projects while maintaining product quality. The use of an experimental method on a Federal-aid highway construction project requires prior approval of the **SEP-14** program workplan by **FHWA’s Office of Innovative Program Delivery**.

In some cases, the methods listed here are not categorized the same by the FHWA and FDOT and additional approvals may be required by one or both agencies for LAP projects. Always confirm with your District LP Administrator prior to employing any of these methods for local project delivery.

16.3.1 Construction Manager at Risk

Construction Manager at Risk or CM@Risk contracting is described as an integrated team approach applying modern management techniques to the planning, design, and construction of a project. These techniques help to control time and cost, and to assure quality for the project owner. FHWA refers to this method as Construction Manager/General Contractor (CM/GC) and the Florida Division Office must pre-approve this method for use on LAP projects. **Section 1303 of MAP-21** made CM/GC operational on October 1, 2012, but FHWA is still formulating policy directives to fully implement

CM/GC. This is an authorized procurement method by the Department under **s. 337.025, F.S.**

The contract is awarded to a team consisting of the owner, the architect/engineer, and the construction manager (CM). CM@Risk includes pre-construction and construction services, allowing the CM to provide direct input on construction decisions, project phasing, risk allocation, and innovations. The following are types of projects that can benefit from CM@Risk:

- Building type projects where construction methods and specifications vary between professional groups (i.e. engineer/architect and constructions trades).
- Innovative funding scenarios, where multiple owners may dictate final project criteria.
- Projects where limiting budgets threaten the delivery of the project and where the CM alternative can help maintain costs.
- Major projects that are technically complex or have challenging schedules.
- Lengthy Corridor Projects.
- Bridge Rehabilitation (Bascule).

A LA shall develop procedures for the CM@Risk delivery method subject to review and acceptance by both the Department's Central Office and FHWA. The District LP Administrator coordinates reviews with the LA, Central Office, and FHWA.

16.3.2 No Excuse Incentive/Bonus

The contractor is given a "drop-dead date" for completion of a phase or project and receives a bonus for meeting that completion date. No excuses are accepted for delays in meeting that date. Other than the bonus date, normal contract administration procedures are followed. This method is recommended for projects where the LA desires project completion by a specific date.

16.4 DISALLOWED CONTRACTING METHODS

Currently, Bid Averaging and Reverse Auction methods are not allowed on Federal-aid highway construction projects. LAs may direct all questions or requests for clarifications to the District LP Administrator or to the State LP Administrator in the Central Office of Program Management.

16.5 RESOURCES

[FHWA Contract Administration Core Curriculum Manual](#)

FDOT Office of Construction website:

<http://www.fdot.gov/construction/AltContract/AltContract.shtm>

FHWA's alternative contracting website:

<https://www.fhwa.dot.gov/construction/contracts/acm/>

FDOT Procedure No. 625-020-010, Design-Build Procurement and Administration

LAP Classification A, B, and C projects required contract language:

<http://www.fdot.gov/programmanagement/Implemented/LAP/Default.shtm>.

[FDOT Standard Specifications Book](#)

[FDOT Construction Project Administration Manual \(CPAM\) \(Topic No. 700-000-000\)](#)

[FDOT Design Manual \(Topic No. 625-000-007\)](#)

CHAPTER 17 PRELIMINARY ENGINEERING AND DESIGN

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17.1 OVERVIEW

Various FDOT publications contain information on procedures, criteria, and standards for guiding and controlling preconstruction activities. These activities include project development, preliminary engineering analyses, environmental impact documentation, location surveys, right of way mapping, roadway and bridge/structures designs, and the development of PS&E. The Offices of Planning, Environmental Management, Right of Way, Design, and Program Management develop and control these manuals, guidelines, and standards. LAs must work with these offices through the District LP Administrator for current criteria, procedures, and standards that may apply to the design of a project.

For transportation projects on, under, or over Department-owned right of way, Florida law, **Section 334.175 (2), F.S.**, requires the Department to review the project's design plans for compliance with Department design standards. In its sole discretion, the Department may reject designs which do not meet Department standards. The Department may also, in its sole discretion, allocate Department-managed resources, including structures engineers and/or project managers to projects involving complex design structures and other design structures not commonly used by the Department. In addition, all complex bridges and bridge types not commonly used by the Department constructed via the LAP delivery method will be monitored and inspected by Department personnel.

17.2 PROJECT DEVELOPMENT AND ENVIRONMENT PHASE

The PD&E phase consists of the evaluation of project potential impacts on natural, physical, social, and cultural environment. In this phase, various project alternatives are developed and analyzed to assess project impacts on the environment. Project alternatives may include geometric alignments and typical sections that avoid or minimize environmental impacts. Additionally, design parameters that support project progression from concept and preliminary design to final design are established during PD&E. Interagency coordination and public involvement must be conducted throughout the entire duration of the process to identify project impacts, permit requirements, commitments, and funding sources.

Each LA project must comply with the **NEPA, FDOT PD&E Manual (Topic No. 650-000-001)** and the **LPM, Chapter 18**.

17.3 LOCATION SURVEYS AND RIGHT OF WAY MAPPING

Field survey data for engineering and related right of way mapping activities may be required in the project development phase and will almost always be required in the final

design of local projects. For location survey and right of way mapping activities and products, LAs refer to **Topic 550-030-101, Surveying and Mapping** for guidance and may additionally use the **FDOT Surveying and Mapping Handbook**, as a reference, but all such activities must comply with the **Rule Chapter 5J-17, F.A.C. pursuant to Chapter 472, F.S.** Where applicable, survey work must obey the **State Jurisdiction Boundary Surveys** of the FDEP.

17.4 ROADWAY AND STRUCTURES DESIGN

Design criteria are intended to ensure that transportation projects are safe, economical, and fully functional transportation facilities. The Department supports the use of the highest level of criteria and standards that is practical for all facilities according to good engineering practice. LAs determine and document which standards apply when preparing the project prospectus and application for Federal funds. There are many local, State, and Federal laws, rules, and executive orders that may impact the design of a project.

The application of appropriate design criteria is dependent upon the LAP Project Classification. Classifications are determined by three primary factors: 1) highway system location, 2) total project cost, and 3) bridge/structures scope components.

LAP projects may be one of four types of classifications.

- **Class A** – On the SHS or NHS.

Further information on roadways included in the NHS is found at the Department's Transportation Data and Analytics Office website: [National Highway System Maps](#).

- **Class B** – Off the SHS and NHS with an estimated construction value of \$10 million or greater.
- **Class C** – Off the SHS and NHS and includes structural components inclusive of a vehicular bridge, a pedestrian bridge over a roadway, or a box culvert that meets the definition of a bridge.
- **Class D** – Off the SHS and NHS; may include structural components inclusive of pedestrian bridges not over a roadway, bridges on multi-use paths not over a roadway, and box culverts that do not meet the definition of a bridge.

A bridge is defined per [23 CFR 650.305](#) as a structure including supports erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments

or spring lines of arches, or extreme ends of openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

The project classification determines the minimum design criteria and standards, the construction specifications, related materials testing requirements, and the qualifications requirements that are applicable to a project. Additional information on incorporating the appropriate project construction specifications and materials testing requirements is provided in **Chapter 20** of the **LPM**. Additional information on FDOT Prequalification programs for consultants and contractors is found in **Chapters 14** and **20** respectively. An illustration of how design standards, construction specifications, materials testing and related qualifications requirements are tied to project classifications is shown in **Table 1** on the next page. **Table 1** identifies the **minimum** criteria required for a LAP project, LAs may use standards above the identified minimums to develop projects.

For **Class A** construction projects, **Class B** construction projects, and the structures components in **Class C** projects apply the [FDOT Design Manual \(FDM\)](#) (**Topic No. 625-000-002**), [Standard Plans for Road and Bridge Construction](#) (commonly referred to as the Standard Plans), and the [Utility Accommodation Manual](#) (**Topic No. 710-020-001**) (commonly referred to as the **UAM**).

The **FDM** is reviewed by FHWA annually, which designates its application for NHS projects per **23 CFR 637.201-207**. NHS projects must meet FHWA's quality assurance criteria as described in the referenced CFR. Since the State's process is the only process "approved" by FHWA, all NHS projects must use the FDOT's approved design criteria, specifications, and construction quality assurance program (the **CPAM** is the approved construction QA program).

For the **Class C** non-structural components and **Class D** construction projects apply the **Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways**, commonly known as the [Florida Greenbook](#) (**Topic No. 625-000-015**). The **Florida Greenbook** provides uniform minimum standards and criteria for the design, construction, and maintenance of all public streets, roads, highways, bridges (as defined by [23 CFR 650.305](#)), sidewalks, curbs and curb ramps, crosswalks, bicycle facilities, underpasses, and overpasses used by the public for vehicular and pedestrian traffic.

TABLE 1: Project Classifications

**Full Manual titles and Topic Numbers are identified in the following paragraphs and Chapter 20*

PROJECT CLASSIFICATIONS	DESIGN CRITERIA AND STANDARDS ¹ *	SPECIFICATIONS*	MATERIALS TESTING*	QUALIFICATIONS
Class A On the SHS or NHS	FDOT Design Manual, FDOT Structures Manual and FDOT Standard Plans	FDOT Standard Specifications for Road & Bridge Construction	Samples Testing and Reporting Guide and FDOT Materials Manual	FDOT Prequalified consultants and contractors
Class B Off the SHS and NHS with an estimated construction value of \$10 million or greater.	FDOT Design Manual, FDOT Structures Manual and FDOT Standard Plans	FDOT Standard Specifications for Road & Bridge Construction	Samples Testing and Reporting Guide and FDOT Materials Manual	FDOT Prequalified consultants and contractors
Class C Off the SHS and NHS and includes structural components: <ul style="list-style-type: none"> • a vehicular bridge • pedestrian bridge over a roadway • box culvert meeting the definition of a bridge as stated in 23 CFR 650.305 	1) For structures components, use the FDOT Design Manual, FDOT Structures Manual and FDOT Standard Plans 2) For all other components, use the Florida Greenbook	1) For the structures components, FDOT Standard Specifications 2) For all other components, LAP Big 3 or approved Local Agency Specs	1) For structures components, use the Samples Testing and Reporting Guide and FDOT Materials Manual 2) For all other components, use Local Agency materials testing process	FDOT Prequalified consultants and contractors
Class D Off the SHS and NHS, may include structural components: <ul style="list-style-type: none"> • pedestrian or shared use path bridges not over a roadway • box culverts that do not meet the definition of a bridge as stated in 23 CFR 650.305 	Florida Greenbook -Or- Approved Minimum Design Standards chosen by local agency which conform to the minimum criteria provided in Florida Greenbook	LAP Big 4 or approved Local Agency Specs	Local Agency materials testing process	Local Agency qualified consultants and contractors

¹For structures constructed within State Road right of way, the Department reserves the right to review and approve the bridge concept. In general, spans constructed within State Road right of way shall utilize “form-follows-function” design philosophies. Concept shall avoid non-structural attachments, cables, or cladding elements.

Additional requirements for the design and construction of transportation facilities include the:

- [Manual on Uniform Traffic Control Devices](#) (commonly known as the *MUTCD*)
- [2006 ADA Standards for Transportation Facilities](#) as required by **49 CFR 37.41** or **37.43**
- [2012 Florida Accessibility Code for Building Construction](#) as required by Rule [61G20-4.002, F.A.C.](#)

For situations where specific design criteria and standards are not currently addressed in Department publications, use current approved technical publications, such as ***A Policy on Geometric Design of Highways and Streets, American Association of State Highway and Transportation Officials, AASHTO Guide for the Development of Bicycle Facilities and AASHTO Guide for the Planning, Design and Operation of Pedestrian Facilities*** as design guidelines. LAs must ensure that project designs meet or exceed the referenced design criteria and that the standards developed are appropriate for the proposed facility.

The [FDOT Design Office's Documents and Publications webpage](#) provides a listing of publications that establish the criteria for the critical areas of roadway and bridge/structure designs.

17.5 DESIGN EXCEPTIONS, UTILITY EXCEPTIONS, AND DESIGN VARIATIONS

The LA must identify all Design Exceptions and Design Variations for the project early on during PD&E or initial engineering design phase, as appropriate. This allows time for designers to evaluate design alternatives and to obtain Design Exceptions and Design Variations approval before plans are in the final design phase.

Design Exceptions, Design Variations, and Utility Exceptions must be prepared and submitted for review according to the governing design criteria. If the project is on the SHS or NHS, the EOR shall obtain approval consistent with the [FDM 122 – Design Exceptions and Design Variations](#). If the project is off the SHS and NHS, the EOR obtains approval of the Design Exceptions, consistent with the [Florida Greenbook, Chapter 14 – Design Exceptions](#). For all utilities located on the SHS, the criteria in the **UAM** govern, and the Utility Agency/Owner (UAO) must use the Utility Exception processes found therein.

17.6 SOLE SOURCE OR PROPRIETARY PRODUCTS

The use of patented and/or proprietary products may only be used with approval from the Department. Specifications should be formulated to allow full opportunity for competition among equivalent materials, equipment, and methods. References in specifications and on plans to single trade name materials, sole-source processes, or if a project calls for a proprietary product, the Department's **FDM 110.4.1** must be followed. The District's Design Project Manager will coordinate approvals and **PSEE** tracking per the **FDM** process.

17.6.1 Approved Products List

The Department maintains a database that identifies products that have been approved for use on SHS and NHS called the [Approved Products List](#) (APL). The products are listed by Specification, Structures, or Design Index reference that identifies the product or material requirements. If a desired product for an LAP project is not on the APL, the LA or their EOR may contact the District LP Administrator for further assistance. The APL may contain products produced by convict labor under the State's "PRIDE" program. Convict produced materials (or labor) are not allowed on Federal-aid highway projects.

17.7 LOCAL AGENCY RESPONSIBILITIES

Funding for the design phases of LAP projects varies from project to project. Whether the Department reimburses the LA for the design or the LA funds the design work itself, the Department must review and accept design plans prior to construction for all LAP projects. Specific details on executing a LAP Agreement and procuring a Federal-aid participating design contract may be found in **Chapters 5** and **14** of the **LPM**.

17.7.1 Use of Department Technology for Project Administration and Review

The LA is required to use the Department's [Electronic Review Comments](#) (ERC) application and [GAP](#) for submission of various documents during the design phase, as applicable. Specific documents are identified in the **LPM**, but coordination with the District LP Teams for periodic updates and project specific requirements may be required of the LA. Department staff may request any documentation required to administer and monitor LAP projects. Furthermore, LAs should subscribe to the [Department's Contact Mailer](#) system for design updates. Contact Mailer is the Department's primary mechanism for notifying our customers of changes that impact the way the Department and our partners do business.

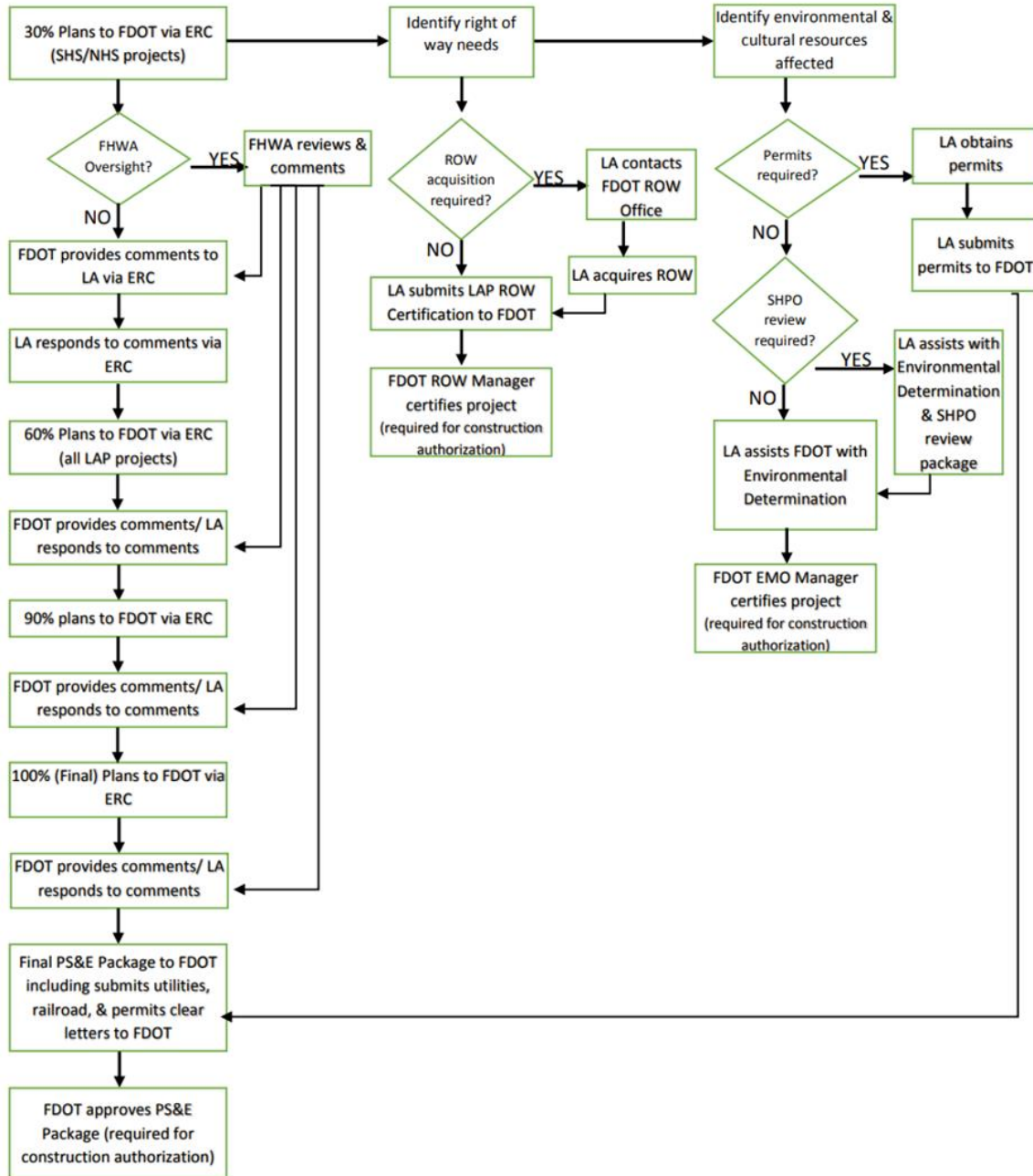
17.7.2 Design Phase Review Process

The process outlined in this **Chapter** represents a high-level outline of how a design phase may be administered by the Department. **Figure 1: Design Phase Submittals Flowchart** on the next page provides an overview of the general LAP project design process and those elements in the process requiring Department review and acceptance in order to obtain Federal Authorization for the construction phase of the project. Due to the nature of construction projects, the Districts must establish a detailed process tailored to each project. Contact the District LP Team to coordinate a schedule and specific requirements for your project.

In addition, [FDM 301, Table 301.2.1](#) “**Summary of Phase Submittals**” provides an excellent guide to what sheets are expected at each phase submittal and whether the sheets should be preliminary, complete, or final.

The number of phase submittals, complexity of right of way acquisition, and environmental impacts may vary by project. **Chapter 19** contains detailed information on the LAP right of way acquisition process. **Chapter 18** contains detailed information on the **NEPA** documentation process.

Figure 1: Design Phase Submittals Flowchart



17.8 RESOURCES

[FDOT Project Development & Environment \(PD&E\) Manual](#) (Topic No. 650-000-001)

FDOT's Right of Way Mapping Policy (Topic No. 550-030-015)

[FDOT Right of Way Mapping Handbook](#)

[FDOT Design Manual](#) (Topic No. 625-000-007)

[FDOT Construction Project Administration Manual \(Topic No. 700-000-000\)](#)

[Utility Accommodation Manual](#) (Topic No. 710-020-001)

[Florida Greenbook](#) also known as the Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (Topic No. 625-000-015)

[FDOT Design Office's Documents and Publications webpage](#)

[Electronic Review Comments](#) (ERC) application

[GAP](#)

[National Highway System \(NHS\) Maps website](#)

[Florida Federal Aid Systems](#)

[FDOT's Contact Mailer system](#)

CHAPTER 18 ENVIRONMENTAL COMPLIANCE

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18.1 OVERVIEW

Environmental evaluations are required for all projects to comply with Federal and State laws and Department policy. The level of assessment and documentation depends on the nature of the project, the potential for impacts, and the level of Department involvement. The type of environmental documentation for Federal or State funded projects depends upon the lead agency and the actions being taken. This chapter discusses how Federal and State projects will be managed when a LA is a subrecipient of grant funds and takes on the role of “lead agency” for the environmental evaluation.

If the project needs a Federal permit or action from an agency such as the U.S. Army Corps of Engineers (USACE), follow the Federal provisions or **NEPA** process described in this **Chapter**. For example, if the project affects any historic or archaeological resources, then the project must comply with **Section 106** of the **National Historic Preservation Act (NHPA)**. However, if no Federal permit or action is required and no Federal funds are involved, consultation with the Florida Division of Historical Resources (DHR) is required.

18.1.1 Basis of State Requirements

A LA may advance a project through any one of several State funding programs described in the **LPM**, [Chapter 339, F.S.](#), and [FDOT's Work Program Instructions](#). For these projects, if State funds only are being used, the LA follows the procedures outlined [PD&E Manual Part 1, Chapter 10](#) to prepare a Project Environmental Impact Report (PEIR) when necessary. The LA may prepare a PEIR to support its acquisition of appropriate environmental permits and satisfy other agreements with the Department. The LA acts as the lead agency and is responsible for compliance with Florida laws and rules. State environmental compliance requirements are set forth by other State agencies, such as Florida Department of Environmental Protection (FDEP) and the Florida DHR. It is the LA's responsibility to document any compliance actions taken in the project file.

18.1.2 Basis of Federal Requirements

Pursuant to [23 United States Code \(U.S.C.\) § 327](#) and the implementing [Memorandum of Understanding \(MOU\)](#) executed on December 14, 2016, the Department has assumed FHWA responsibilities under **NEPA** for highway projects on the SHS and LAP projects off the SHS. In general, the Department's assumption includes all highway projects in Florida whose source of Federal funding comes from FHWA or which constitute a Federal action through FHWA. This includes responsibilities for environmental review, interagency consultation and other activities pertaining to the review or approval of **NEPA**

actions. Consistent with law and the MOU, the Department will be the Lead Federal Agency for highway projects with approval authority resting in the Office of Environmental Management (OEM).

Whereas, all Federally funded projects must comply with **NEPA**, projects converted to Federal funds from other fund sources must be evaluated for Federal-aid funding eligibility and **NEPA** compliance. Additionally, the need for Federal environmental permits will require evaluation and consultation activities that meet requirements under the Federal regulatory agency's **NEPA** process. For projects that will be pursuing Federal funds or need to maintain Federal eligibility, the LA should coordinate with FDOT on the preparation of the environmental document. The Department's PD&E Process meets these requirements. The LA must be well versed with the Department's [PD&E Manual \(Topic No. 650-000-001\)](#) and specifically, **Part 1, Chapter 2**, which determines the level of documentation required under **NEPA** and **Part 2, Chapter 22** Commitments, to understand how commitments are made and tracked. The preparation of **NEPA** documents is described in detail in **Part 1** of the **PD&E Manual**.

The Department maintains a comprehensive **PD&E Manual** detailing the steps involved for **NEPA** compliance, therefore, the purpose of this **Chapter** is to provide basic information on the processes that may be required on a LAP project and when a LA should seek additional information from the **PD&E Manual**. Many LAP projects are determined by the Department to be a Type 1 Categorical Exclusion (CE) in accordance with the **Part 1, Chapter 2** of the **PD&E Manual**, but this **Chapter** identifies requirements for all project Class of Action (COA) determinations.

18.2 EFFICIENT TRANSPORTATION DECISION MAKING

18.2.1 Federal Funded Project Requirements

As part of the planning and programming of Federal-aid projects, an environmental screening and interagency review is completed as part of the Department's Efficient Transportation Decision Making (ETDM) process on qualifying projects (see the [ETDM Manual Topic No. 650-000-002](#)). ETDM provides information used to aid in developing and focusing the project scope for the **NEPA** document. The decision of whether a project is screened in ETDM is based on a qualifying project type (**ETDM Manual Chapter 2, Section 2.3.1**), and the conditions illustrated in the ETDM Programming Screen Matrix contained in **Table 2.2** of the **ETDM Manual Chapter 2, Section 2.3.1**. The screening of qualifying projects provides sufficient information to support agreement on a COA determination by the Department.

A LA cannot make the COA determination. For projects qualifying for screening, the

District ETDM Coordinator must enter the proposed COA into the Environmental Screening Tool (EST) for OEM approval. The District administers the screening event on behalf of the LA and completes the ETDM process for qualifying projects. For non-qualifying projects coordinate with the District to determine the COA.

Planning activities that may take place before the **NEPA** process (e.g., ETDM process and Alternative Corridor Evaluation process) can be used to narrow the **NEPA** scope. The Department has these procedures established in the **ETDM** and **PD&E Manual** that link planning and the **NEPA** process. If the LA intends to perform planning activities and intends to seek adoption into the **NEPA** process, then it should coordinate with the Department as early as possible. LAP projects should follow the processes and documentation methods outlined in **Part 1 Chapter 4, Section 4.2.2** of the **PD&E Manual** to the extent practicable.

18.2.2 State Funded Project Optional Screening

At the option of the LA, a PEIR project can be screened in the EST, if it satisfies qualifying project type and the conditions of the **ETDM Screening Matrix for Qualifying Projects in Chapter 2**, of the **ETDM Manual, Topic No. 650-000- 002**. The requesting entity contacts the District Environmental Office if they anticipate project screening in the EST.

18.3 PROJECT DEVELOPMENT AND ENVIRONMENT

The **NEPA** process requires an assessment of the environmental effects of Federal actions. The environmental review process ensures consideration of effects to the human, natural, and physical environments. Furthermore, it informs and involves citizens; documents project impacts and efforts taken to avoid, minimize, and mitigate any project impacts; and documents that informed decisions have been made and duly considered the impacts resulting from the project. All applicants for Federal funding must document the impacts of a proposed action through one of the following COAs:

- CE, Type 1 or Type 2
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

The level of documentation required for each COA is described in **Part 1** of the **PD&E Manual**.

The Department is responsible for review, quality assurance, and approval of **NEPA** documents. The administrative process may require OEM to review and approve documents, including re-evaluations. This review depends on the COA according to **Parts**

1 and **2** of the Department's *PD&E Manual*. The Department may authorize the LA to prepare portions of the *NEPA* documents, but this will be determined on a case-by-case basis. The District Environmental Administrator prepares and approves the **Status of Environmental Certification for Federal Project**, for all COAs. This is created in the Statewide Environmental Project Tracker (SWEPT).

A project cannot be submitted for Federal Authorization for construction without an executed **Status of Environmental Certification for Federal Project** attached to the request. The form must be submitted within one (1) year of signature date by the District, otherwise a re-evaluation of the environmental document is required as described in **Part 1, Chapter 13** of the *PD&E Manual*.

The Final Design cannot be initiated until the *NEPA* process is complete. If a LA intends to advance preliminary engineering activities, then it must coordinate with the Department to ensure compliance with FHWA requirements as described in **Part 1, Chapter 4** of the *PD&E Manual*.

For projects determined by the Department to be a Type 1 CE (in accordance with the **Part 1, Chapter 2** of the *PD&E Manual*), the environmental review occurs concurrently with Design and must be coordinated with the District Environmental Office. The environmental review must be concluded prior to advancing the project to the right of way or construction phase.

18.4 LOCAL AGENCY FEDERAL PROJECT RESPONSIBILITIES

When the COA is determined by OEM (Type 2 CE, Environmental Assessment or Environmental Impact Statement) or the District (Type 1 CE), the LA is responsible for conducting environmental analysis, obtaining permits, preparing the *NEPA* documentation, and coordinating with Department staff. The requirements for the environmental and engineering analyses are described in the *PD&E Manual*. Requirements may include, but are not limited to, providing the Department assistance with cultural resource assessments, DHR reviews, Contamination Assessments, as well as Threatened and Endangered Species Surveys. The District LP Administrator, in consultation with the District Environmental Office, will coordinate with and obtain needed approvals from OEM.

The LA must follow [Procedure No. 650-000-003, FDOT Commitment Tracking](#). This procedure provides guidance on tracking and documenting project commitments throughout project development, design, right of way, and construction phases. If or when project commitments are identified for a LAP project by either LA staff or Department staff (i.e. project engineer, project manager, Environmental Office), a Project Commitments

Record (PCR) Form must be generated and provided to the LA and District LP Administrator for the project file. The PCR Form is generated in [PSEE](#). The PCR must be included in the LA's construction and CEI contracts if commitments have been identified prior to advertisement. In addition, the final version of the PCR showing all commitments are met must be included in the LAP project close out package (**Chapter 21**).

Per **FDOT Standard Specifications 7-1.4 and 7-1.8**, LAs must ensure compliance of the contractor's proposed staging/storage area with the [Endangered Species Act, Section 4F](#) and [Section 106 of the Code of Federal Regulations](#). Required **Sections of 7-1.4 and 7-1.8** of Standard Specifications are included in FDOT's Division 1 Specification Package for Local Agencies on the FDOT [Specs on the Web](#) page (additional information on Specs on the Web is located in **Chapter 20**).

18.5 RESOURCES

[Project Development and Environment \(PD&E\) Topic No. 650-000-001](#)

[ETDM Manual Topic No. 650-000-002](#)

[36 C.F.R. 800.3 – Initiation of the Section 106 Process](#)

Project Commitments Record (PCR) Form is generated in [Project Suite Enterprise Edition \(PSEE\)](#), for more information on PCR see [Procedure No. 650-000-003, Project Commitment Tracking](#).

Office of Environmental Management Training Program:
<https://www.fdot.gov/environment/sched/train1.shtm>

CHAPTER 19 RIGHT OF WAY PROCEDURES

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19.1 OVERVIEW

Examples of right of way activities that may be necessary for the construction, operation, and maintenance of a State or Federally funded projects include the following:

- Acquisitions, including donations, of real property interests (i.e., fee simple, temporary, and permanent easements).
- Relocation of all persons and businesses that were required to move or move personal property from the project right of way have been provided relocation assistance.
- Demolition of all structures and/or improvements, including encroachments, which have been removed from the project right of way before construction commencement or will be demolished during the construction contract.
- Asbestos abatement of buildings and/or structures, including those to be removed by the construction contractor or will be included in the construction contract.

LAs shall comply with the [FDOT Right of Way Procedures Manual](#) (Topic No. 575-000-000) when acquiring right of way for all Federal-aid projects, and also under the conditions set forth in **Sections 5.1 and 5.2 of the FDOT ROW Procedures Manual**. The FDOT District Right of Way Manager (DRWM) may approve substitute procedures or forms proposed by the LA, provided the substitute procedures or forms comply with State and Federal laws and regulations.

19.1.1 Basis of State Requirements

Various laws and rules in the State of Florida govern acquisition and use of public rights of way. Most notably, **s. 336.02 F.S.** allows Counties to create and amend maps of reservation for any transportation facility or corridor within the County's jurisdiction. The maps include existing and proposed rights of way to accommodate future widening of existing roads or new roads. LAs are granted the power of eminent domain by **s. 73.013 F.S.** Eminent domain may be used to provide "common carrier systems" including roads or rights of way open for public transportation and the provision of transportation related services. While **s. 255.22 F.S.** requires LAs to utilize the property conveyed for a specific purpose within 60 months or return the property.

Authority of the Department to enter into contracts pursuant to **s. 287.055 F.S.** for right of way services on transportation facilities and corridors is provided by **s. 337.107 F.S.** The LA must consult with its legal counsel to determine its authority and contracting obligations for right of way transactions whether or not the transactions are funded by the Department.

19.1.2 Basis of Federal Requirements

Pursuant to Federal regulations, the Department is responsible for ensuring that all right of way needed for FAHP projects is acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Act). The Department shall provide coordination and oversight necessary to ensure that right of way is acquired in accordance with the Uniform Act and other applicable laws and regulations as implemented by the ***FDOT Right of Way Procedures Manual (Topic No. 575-000-000)***.

It is imperative that a LA comply with the Uniform Act for all right of way activities if FAHP funds may be sought as a future funding source for any project phase. Non-compliant right of way activities precludes the LA from FA eligibility for future phases of work. Remediation for non-compliant right of way activities may be possible but are more costly and less timely than following the Uniform Act initially.

19.2 RIGHT OF WAY ACTIVITIES WITHOUT DEPARTMENT OVERSIGHT

LAs are cautioned that any right of way activities undertaken for unfunded phases of projects without direct oversight by the District Right of Way Offices may jeopardize future funding for all phases of the project. This is common on projects where the Department is funding the construction phase of work, but none of the phases of work leading up to construction. Department policy regarding right of way contributions to meet project matching shares for subsequent phases of work are found in the ***Right of Way Manual, Guidance Document 10***.

Federal regulations require strict compliance with Uniform Act requirements for all right of way acquired for a FAHP project. This is true regardless of whether the LA anticipated Federal funding at the time of acquisition. Failure to comply with the Uniform Act (as implemented by the ***FDOT Right of Way Procedures Manual***) may result in FHWA withholding all Federal funds from the project or require the LA to conduct and pay for expensive and time-consuming right of way remediation to bring the previous activities into compliance with the Uniform Act (as implemented by the ***FDOT Right of Way Procedures Manual***). Right of way remediation will be considered on a case-by-case basis by FHWA and the Department.

19.3 RIGHT OF WAY ACQUISITION

LAs performing right of way activities must work under direct oversight of the District Right of Way Office. For each right of way project, the District Right of Way Manager shall

determine the level of oversight required based on the LA's ability to conduct the necessary right of way activities. The District Right of Way Manager shall assess the LA's capability based on the LA's organization, staffing, staff experience, and the specific details of the right of way project, such as the number and complexity of parcels, relocations, and demolitions. Right of way acquisition is excluded from LAP Certification pursuant to **Chapter 7**.

Where a LA does not have adequately trained staff to acquire the needed right of way, the District Right of Way Manager may require the LA to hire a qualified right of way consultant. The District Right of Way Manager shall determine who will oversee the consultants' work and to what extent. Oversight may be accomplished by the LA, by the District Right of Way Office, or may be shared between the LA and the Department.

The Department may enter into agreement with the LA to acquire right of way on their behalf per **s. 336.467, F.S.** if the District Right of Way Manager decides that acquisition by the Department is in the best interest of all parties.

19.4 RIGHT OF WAY CERTIFICATION

The District Right of Way Manager must certify that all right of way activities are completed in conformity with the Uniform Act or other applicable laws and regulations and the **FDOT Right of Way Procedures Manual**, and right of way is available for construction for:

- all FAHP projects and
- state funded projects identified in **Guidance Document 5** of the **FDOT Right of Way Procedures Manual**.

The District Right of Way Manager shall determine the extent of documentation required from the LA to ensure right of way activities have been completed in conformity with the Uniform Act and other applicable laws and regulations.

The LA must submit [LAP Certification \(Form No. 575-095-05\)](#) to the District LP Administrator for each LAP project or other FAHP project as required. The District may require a similar certification for State funded grant projects, signed by the LA's responsible party and/or attorney stating all state and local laws were complied with.

19.5 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Section 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the Federal award. Federal award date under Department

process is considered the Federal Authorization date. **Table 1** contains the minimum financial and program monitoring requirements as determined by risk that must be incorporated into each monitoring plan. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

TABLE 1: Minimum Monitoring Requirements for Federal-Aid Projects		
MONITORING REQUIREMENT	REQUIREMENT DESCRIPTION AND ACTIVITIES	MINIMUM FREQUENCY BASED ON RISK LEVEL
Project Plans Review	The Department requires the LA submit the project plans to the District for review.	All project plans must be reviewed at 60% plans. For higher risk projects, the District will increase frequency based on scope.
Right of Way Certification	The Department requires the LA submit the LAP Certification Form No. 575-095-05 for each FAHP project that requires a certification for federal authorization. The form would also be included in the close out package for a phase 48 FAHP project.	All projects that require right of way certification for Federal authorization or close out.
Temporary Easement Expiration Dates	Temporary easements must have expiration or valid dates when the local may enter and when they must vacate the easement. Dates must be noted in the project file.	As applicable, LA's must provide the District with a list of temporary easement expiration dates. District will review time extension requests for consistency with temporary easement periods.

19.6 RESOURCES

[FDOT Right of Way Procedures Manual](#), Topic No. 575-000-000

[LAP Certification Form No. 575-095-05](#)

CHAPTER 20 PLANS, SPECIFICATIONS, AND ESTIMATES

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20.1 OVERVIEW

The final engineering design process produces the contract PS&E package. These documents contain all the construction details, contract provisions, permits, agreements, and certifications required to advertise, award, and administer a construction contract. A Florida Licensed Professional must prepare, sign, and seal the final PS&E according to **Florida Statutes and Rules**, including but not limited to, **Chapter 471, F.S.**, **Chapter 481 Part II, F.S.**, and [Rules 61G10 and 61G15, F.A.C.](#).

The LA and the District are responsible for the completeness of the contract plans package and the Contract File Index of documentation [**23 C.F.R. 635.309(a)**]. If the project is a PODI or another category of FHWA oversight, FHWA may review and approve the PS&E before authorizing Federal funds (per the project-specific oversight plan). For transportation projects on, under, or over Department-owned right of way, Florida law, **s. 334.175 (2), F.S.** requires the Department to review the project's design plans for compliance with Department design standards. In its sole discretion, the Department may reject designs which do not meet Department standards. The Department may also, in its sole discretion, allocate Department-managed resources, including structures engineers and/or project managers to projects involving complex design structures and other design structures not commonly used by the Department. In addition, all complex bridges and bridge types not commonly used by the Department constructed via the LAP delivery method will be monitored and inspected by Department personnel.

As discussed in **Chapter 17** of the **LPM**, the application of appropriate design criteria is dependent upon the LAP Project Classification, which are determined by three primary factors: 1) highway system location, 2) total project cost, and 3) bridge/structures scope components. In this **Chapter**, we will further define how the LAP Project Classifications, A, B, C, and D, also determine construction specifications, including materials testing requirements.

20.2 CONTRACT PLANS

For LA ad-and-award projects, the LA is responsible for the requirements for plan sheet size, guidelines for preparing contract plans, and review of the PS&E package. See **Chapter 17** for additional information on design criteria, standards, and minimum requirements. A record set of plans shall carry the seal, date, and signature of a licensed Professional consistent with Florida Statutes and Rules.

20.3 SPECIFICATIONS

The specifications section of the PS&E includes all the general directions, provisions, and requirements for the construction of the project. These requirements state the minimum standards of performance for materials and workmanship executed under the contract. The specifications will also outline how the in-place work performance will be measured for subsequent payment.

20.3.1 Specifications for Local Agencies

LAs develop and prepare construction specifications, as required by the LAP project classification.

- Class A and B projects, and the structures component(s) of Class C projects require use of the ***FDOT Standard Specifications for Road and Bridge Construction***. ***FDOT Standard Specifications*** are required for use on all SHS and NHS projects, and are recommended for use on all FAHP projects.

FDOT Standard Specifications are reviewed and approved bi-annually by the FHWA, Florida Division Office which designates its application for NHS projects per **23 C.F.R. 637.201-205**. NHS projects must meet FHWA's quality assurance criteria as defined in CFR. Since the State's process is the only process "approved" by FHWA, all NHS projects must use the FDOT's approved design criteria, specifications, and quality assurance program (***CPAM***).

FDOT Standard Specifications and modifications that change the ***Standard Specifications*** such as Special Provisions and Supplemental Specifications are available as electronic data files through the State Program Management Office, [Specs on the Web](#) application. Modifications to specifications are further defined in **Section 20.3.3**.

- For the Class C non-structural components and Class D construction projects, LAs may use the ***LAP Big Three*** specifications (concrete, asphalt, earthwork). The ***LAP Big Three*** specifications are made available to LAs via [Specs on the Web](#).
- For the Class C non-structural components and Class D construction projects, LAs may also develop their own construction specifications for use on LAP projects, subject to the approval of the Districts Specifications Engineers. Contact the District LP Administrator for additional information on LA specifications for use on Class D projects.

20.3.2 Federal and State Requirements General to Specifications Development

The following items highlight important aspects of specifications development. Each item listed is supported by either a Federal or State requirement.

- All nonstandard pay items shall be covered in the special provisions.
- As defined in **Chapter 12**, include a Value Engineering incentive clause in the specifications. This clause encourages the contractor to propose changes in contract requirements to accomplish the project's functional requirements at less cost.
- A schedule of liquidated damages shall be included in the specifications.
- Traffic control design must comply with the **MUTCD**. Therefore, the requirements shall not be reduced by Special Provisions. A Special Provision may be prepared outlining traffic control requirements and including any pay items.
- Devices used on SHS and NHS in the State of Florida need to comply with the Department's [APL](#). If the device is not part of the APL, then the applicant must use the New Product Application Submittal. (**316.0745, F.S.**)
- Proprietary specifications of national, regional, or local trade associations should not be included in specifications.
- Specifications should be formulated to allow full opportunity for competition among equivalent materials, equipment, and methods. References in specifications and on plans to single trade-name materials, sole-source processes, or if a project calls for a proprietary product, the Department's **FDM 110.4.1** must be followed.
- Projects that are on the NHS are limited to warranty provisions for specific products or features and shall be approved by FHWA. Items of maintenance, including warranty bonds are not eligible for Federal-aid participation on all projects. Warranties off the NHS may not place an undue burden on the contractor and may not be substituted for adequate project inspections.
- **Form FHWA-1273**. Each set of specifications shall include **Form FHWA-1273, Required Contract Provisions, Federal-Aid Construction**.
- Commitments. When applicable, the LA must have a commitment file containing a summary of commitments made during the development of the project. The file must be reviewed to ensure that the commitments are incorporated in the PS&E. These commitments typically involve right of way or environmental considerations. If or when project commitments are identified for a LAP project by either the LA, the District (i.e. project manager, Environmental Management Office), or the Department, **FDOT Form No. 650-000-01 PCR** must be generated per the process identified in the **Chapter 18** and provided to the LA and/or District LP Administrator

for the project file. The PCR must be included in the LA's construction and CEI contracts if commitments have been identified prior to advertisement.

20.3.3 Modifications to Specifications

Project specific Modified Special Provisions that revise implemented specifications to address project specific needs may be required:

- For the control of work, measurement, payment, and materials of features on a project not covered by the Standard Specifications or other general contract provisions.
- Where the FDOT Specifications are being amended or for a deviation from FDOT Specifications with regard to materials, construction details, measurement, and payment.

Technical Special Provisions address project specific needs and are used to specify something technical in nature not covered by the approved standard specifications. They are included as an attachment to the Specification Package. A Professional Engineer must also prepare, sign, and seal the Technical Special Provisions.

20.4 ESTIMATES

The LA includes the engineer's estimate in the PS&E and prepares it using the pay items list and quantities as shown in the plans. Estimates of project costs are required under **216.3475, F.S.** and **2 C.F.R. 200.110**. The engineer's estimate must be one of the last activities performed, as each component set of construction plans is reviewed along with the applicable specifications to develop the project estimate. The pay item list is compiled to cover all proposed contract work. LA staff or consultants may develop project estimates utilizing the Department's Long-Range Estimating (LRE) tool. Access information is found here:

<https://www.fdot.gov/programmanagement/Estimates/LRE/Default.shtm>.

Multi-funded projects must identify quantities proportionate to the fund participation. In addition, participating (Federal funds) and non-participating (State/Local funds) may be split on each pay item with a running total of participating and non-participating funds. The Project Total is located on the last sheet of the Estimate and has a separate total for participating and non-participating costs.

20.5 FEDERAL CONSTRUCTION CONTRACTING REQUIREMENTS

In order to receive Federal authorization for project construction phases, the PS&E package must be reviewed and approved by the Department and the **Local Agency Program Checklist for Construction Contracts Form No. 525-010-44** must be submitted to the Federal-Aid Office with the authorization request from the District LP Administrator. The Department cannot submit the authorization request unless the LA verifies that it has coordinated all potential permits and cleared or coordinated railroad, utilities, and right of way within the project limits (**23 C.F.R. 635.307-309**).

FHWA posts a matrix of contract provisions relevant to both Federally funded construction and service contracts located here:

<http://www.fhwa.dot.gov/construction/contracts/provisions.cfm>.

See **Chapter 22 Local Advertising and Award Procedures** and **Chapter 23 Construction Administration** for additional explanations, processes and requirements related to the advertisement, award, and administration of LAP construction contracts.

20.6 RESOURCES

[FDOT Standard Specifications](#)

[FDOT Florida Greenbook](#) or the Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (Topic No. 625-000-015)

[FDOT Design Manual](#) (Topic No. 625-000-007; Topic No. 625-000-008)

[FDOT PD&E Manual Chapter 22](#)

[FDOT Procedure No. 650-000-003 Project Commitment Tracking](#)

[FDOT Standard Plans](#) (Topic No. 625-010-003)

[MUTCD](#) or the Manual on Uniform Traffic Control Devices

[APL](#) or the FDOT Approved Products List

[LAP Big Three Specifications](#)

[LAP Construction Checklist](#) (Topic No. 525-010-44)

Project Commitments Record (PCR) FDOT Form No. 650-000-01(form may only be

generated by FDOT staff)

[FHWA Form-1273](#)

[FHWA Construction Contracting Provisions Matrix](#)

Chapter 21

CONSTRUCTION ADMINISTRATION FOR LOCAL PROJECTS

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21.1 OVERVIEW

Section 302 of Title 23 U.S.C. requires that adequate construction personnel are provided to ensure that quality highways are constructed under the FAHP. Project staffing levels should be based on the project's complexity, work types, urgency, and location.

The Department may delegate the construction administration of Federal-aid projects to the LA, under **23 C.F.R. 1.11 (b)**, per the conditions of the **FHWA/FDOT Stewardship and Oversight Agreement**, and if the following conditions have been met:

- All Federal requirements including those in **23 CFR 635 Subpart A** must be met on work performed under a LA awarded contract.
- Force account work must be in full compliance with **23 CFR 635 Subpart B. (Chapter 22)**
- The LA must be adequately staffed and suitably equipped to undertake satisfactory completion of the work. (**Chapter 7**)
- The LA must provide a full-time employee of the agency to be in “responsible charge” of the Federal-aid project. (**Chapter 7**)

The State is not relieved of its responsibilities under Federal law and regulations if it delegates Federal-aid project delivery to LAs. The Department performs oversight and monitoring of the LAs per the processes identified in the **LPM** to ensure its responsibilities are met. Federal-aid projects are also subject to EEOC reviews by FDOT and shall be administered in accordance with the [FDOT Contract Compliance Manual \(Topic No. 275-020-005\)](#).

21.1.1 Construction Administration Activities

Construction administration includes the following activities required to oversee the construction of a Federal-aid project:

- construction project inspection,
- project administration and recordkeeping,
- materials acceptance testing and verification, and
- Federal contract compliance.

The LA may perform one or all of these components using their staff (**Chapter 7**), or the LA may award a professional services consultant contract for one or all of these components (**Chapter 14**). The LA is responsible for the documentation and completion of all construction administration activities whether or not consultant support is acquired for the LAP project. Consultant qualifications are identified in **Chapter 14**.

21.1.2 LAP Project Classification

As discussed in **Chapters 17 and 20**, the application of the appropriate design criteria and construction specifications is dependent upon the LAP Project Classification. This section further defines how the LAP projects classifications - A, B, C, and D - also determine construction administration requirements, including materials acceptance sampling and testing. All LAP projects, regardless of classification, are subject to performance of Federal contract compliance as identified in the **FDOT Contract Compliance Manual**.

Construction administration requirements for LAs are determined by LAP project classification.

Class A and B projects, and the structures component(s) of Class C projects require:

- Construction administration in accordance with the **FDOT CPAM (Topic No. 700-000-000)** and **FHWA CACCM**.
- Materials inspection in accordance with the **FDOT Sampling Testing and Reporting Guide by Material Description** and the **FDOT Materials Manual (Topic No. 675-000-000)**. All materials testing data is entered into the **FDOT MAC** system. **FDOT Standard Specifications for Road and Bridge Construction** (including all modifications such as supplemental and special provisions) must be applied consistent with the requirements of **Chapter 20**.

For Class C non-structural components and Class D construction projects:

- Construction administration pursuant to the **LPM**, the **FHWA CACCM**, and the LA's identified process as approved via LAP Certification (**Chapter 7**).
- Materials acceptance sampling and testing in accordance with the project specifications and the LA's identified process as approved via LAP Certification. All materials acceptance sampling and testing data must be documented and retained per Federal and State requirements.

In the event a LAP Class C or Class D project intersects with the SHS or NHS, contact your District LP Administrator for design criteria, specifications, and construction administration guidance.

21.2 PRECONSTRUCTION CONFERENCE

As soon as practicable after a contract is executed; the LA Project Engineer shall arrange a conference with the contractor. The LA shall notify:

- Prime contractor

- Subcontractors
- Prime and Subcontractor EEO personnel
- RCS
- FDOT District LP Administrator or designee
- FDOT Resident Compliance Specialist (District oversight)
- FDOT District Materials Office
- FDOT District Operations Center
- USDOT Office of Inspector General* representatives
- USDOL* representatives
- emergency services providers
- transit providers
- utilities providers, and
- other interested and involved parties.

USDOT and USDOL contact information is provided in **Section 21.13 of this **Chapter**.*

The District LP Administrator ensures Department staff are notified. For projects that are FHWA PODI or located on the SHS or NHS, the meeting shall be coordinated a minimum of 14 days in advance in order to accommodate mandatory attending personnel schedules.

The purpose of the conference is to discuss the project plans and specifications, any unusual conditions, Federal or State requirements, EEO requirements, training (if applicable), environmental commitments, and any other items that will result in a better understanding among the involved parties. In addition, the contractor will discuss the schedule of operation, type and adequacy of equipment, sources of labor and labor requirements, maintenance of traffic, and precautions for the safety of employees and the public. Links to a sample agenda and other resources are found in **Section 21.13**.

For additional information on EEO requirements, including reporting DBE commitments prior to the pre-construction meeting date, see **Chapters 10 and 11**, the **FDOT CCM**, and the **CPAM**.

21.2.1 Federal Subcontracting Requirements

FHWA requires that all executed subcontracts at any tier be in writing, as per **23 CFR 635.116(b)**. This includes contracts between the prime contractor and its subcontractors, and contracts between subcontractors and their agents. Each of these subcontracts also must physically contain the following documents; they cannot be incorporated by reference.

- [FHWA Form No. 1273, Required Contract Provisions Federal Aid Construction Contracts](#), and
- The minimum wage rates for the contract as required by **Title 29 Code of Federal Regulations (Davis-Bacon Wage Rates)**. How to determine the applicable wage rate decision is discussed in **Chapter 15**.

The applicable requirements of FHWA **Form 1273** must be incorporated by reference for work done under purchase orders and rental agreements. In addition, FHWA **Form 1273** requires the contractor to perform “*not less than thirty (30) percent of the total original contract price*” on the NHS.

21.2.2 Utilities Coordination

Utility relocation and coordination schedules should be identified at the preconstruction conferences as required. Utility relocation is generally not eligible for reimbursement by the Department. All utility reimbursements shall be approved by the Department’s Office of General Counsel during the project development stages and no later than prior to construction authorization. See **Chapter 6**.

21.2.3 Construction Permits and Lane Closures

The LAP Agreement serves as the LA’s permit to construct on the Department’s right of way; therefore, the LA and its contractor may, but are not required to, obtain a **General Use Permit** from FDOT to perform any LAP project on Department’s rights of way. LAs must coordinate with the District Permit Engineer and Traffic Operations Office to obtain required lane closure plans regardless of whether a General Use Permit is issued. In the event modifications or changes are required for any Department issued permit or lane closure plan, the LA must timely notify the District’s Traffic Operations Office at the earliest opportunity. The LA shall also ensure compliance with the **CPAM, Section 9.1.8** regarding actions for maintenance of traffic and safety concerns. The LA shall require their contractors and CEI(s) to take emergency steps to close any public road whenever there is a risk to life, health, and safety of the traveling public. The safety of the traveling public is the Department’s first priority for the LA. If lane or road closures are required by the LA to ensure the life, health, and safety of the traveling public, the LA must notify the District Construction Engineer and District Traffic Operations Engineer immediately once the traveling public are not at imminent risk. The Department expects professional engineering judgment be applied in all aspects of locally delivered projects. Defect management and supervision of LAP project structures components must be proactively managed, monitored, and inspected by Department prequalified structures engineer(s). The District Construction Engineer must be notified immediately of defect monitoring that occurs in LAP project construction, whether or not the defects are considered an imminent risk to life, health, or safety of the traveling public. When defects, including but not limited

to, structural cracks, are initially detected during bridge construction, the engineer of record, construction engineering inspector, design-build firm, or LA that owns or is responsible for the bridge construction has the authority to immediately close the bridge to construction personnel and close the road underneath.

Permits required from other agencies (as identified in the construction bid package) that are necessary to commence construction shall be on hand at the meeting for review.

Note: permit fees are generally not eligible for reimbursement by the Department. Coordination of eligible costs shall be completed prior to construction authorization.

21.2.4 Pre-Construction Meeting Minutes

Pre-construction Meeting Minutes shall be produced and transmitted to each agency, organization, and firm that has involvement or interest in the project. Pre-construction Meeting Minutes shall be uploaded to **GAP**.

21.3 CONSTRUCTION INSPECTION REQUIREMENTS

Congress requires that FHWA ensure that each FAHP construction project is designed and constructed in a way that ensures the maximum public benefit (**23 USC 109, 23 USC 114, 23 CFR 635.105, 23 CFR 637 Subpart B**). From FHWA's perspective, the inspection of on-going construction projects is essential to determining whether the project is being constructed in conformance with the approved PS&E package, thereby maintaining its eligibility for Federal-aid participation. Construction inspection activities cover both the quality assurance and the project documentation. The project record keeping system must provide for the reconstruction of the chain of events that occurs on a project. Assurance that the project is completed in close conformance with the approved contract documents, including plans and specifications is only accomplished by an appropriate level of on-site inspection and project management during all phases of the project.

FHWA provides detailed guidance and a list of references in the [FHWA CACCM](#) (2014), **Section 10. Post-award procedures, part d. Inspection (pg 144)**.

In addition to any Florida DFS contracting requirements, **LAP Memorandum: 03-11** addresses minimum requirements for periodic reviews and documentation for LAP projects, as outlined in **Table 1** on the next page. LAs are responsible for addressing any findings in a timely manner.

TABLE 1: FDOT Minimum Construction Inspection Frequency	
PROJECT TYPE	INSPECTION FREQUENCY
LAP Class A, B, C	<ul style="list-style-type: none"> • Initial Inspection (less than 10% complete) • Quarterly interim inspections • Final Inspection
LAP Class D with construction value < \$500,000	<ul style="list-style-type: none"> • Final Inspection
LAP Class D with construction value > \$500,000	<ul style="list-style-type: none"> • Initial Inspection (less than 25% complete) • Final Inspection
LAP Class D within travel way with construction value > \$500,000	<ul style="list-style-type: none"> • Initial Inspection (less than 25% complete) • One interim inspection near midpoint • Final Inspection

A consultant providing CEI support does not preclude the LA from performing jobsite inspections nor does it alleviate the LA from monitoring the contractor and the consultants hired to deliver the LAP project. The LA must have a full-time employee in responsible charge of the project at all times.

21.4 PROGRESS ESTIMATES AND PAYMENTS

The FHWA may only participate in the actual, allowable, and allocable costs of a project. The LA will make progress payments to the contractor based on accurate measurements of work performed so that the contractor can be fairly compensated and to ensure public funds will not be expended on work that has not been completed. Every progress payment request shall be prepared by determining the total amount of each item of work, including lump sum items, accomplished up to the date of the request. The LA Project Engineer must document the quantities shown on each monthly progress payment request.

Compensation for materials shall be based on measurable quantities. Delivery tickets for asphalt concrete, Portland cement concrete, or other batched or truck weighed material must be used to document the delivery of the material. These receipt tickets become a part of the final records and shall be maintained in the LA project files and made available for review upon request. Stockpiled materials (**23 CFR 635** and **CPAM 9-5.5.1**), when allowed under the contract, may be included in the progress payment when:

- Material is stored such that the quality, security, and inventory can be maintained;
- Material is supported by a paid invoice or receipt for delivery from the contractor;
- Material is approved as meeting applicable project specifications;
- Material was not stockpiled prior to the contract award; and
- Material quantity does not exceed the estimated total quantity required to complete the project.

Progress payment requests shall be prepared and submitted per the contract terms, including any retainage withholding. Both **23 CFR 635.122** and [218.735 F.S. Local Government Prompt Payment Act](#) provide Federal and State requirements for developing contract terms for progress payments. In addition, **49 CFR 26.29** and **Section 218.735 F.S.** provide for the prompt payment of subcontractors. The LAP Agreement requires the LA to submit an invoice and a progress report to the Department at least **quarterly** to demonstrate project activity to both FHWA and the Florida DFS. Lack of invoicing to the Department may result in the removal of Federal-aid funding per **Chapter 6**.

The LA shall properly separate Federal-aid non-participating items and/or quantities from Federal-aid participating items and/or quantities when preparing an invoice to the Department. Some guidelines for determining Federal-aid participation of cost and time increases or decreases are contained in **CPAM, Section 7.3.11** and **Chapter 6**. Federal-aid participation in all contract changes to SHS and NHS projects shall be determined as required by **Federal Aid Policy Guide 23 CFR 635.120**.

21.4.1 Withholding Payment

The LA Project Engineer may withhold progress payments in the following cases when:

- Work is done contrary to or in disregard of the instructions of the LA Project Engineer;
- Work is not performed in accordance with the lines, cross-section stakes, and grades shown on the plans or given by the LA Project Engineer;
- Any deviation is made from the plans and specifications without prior authorization; or
- The contractor or subcontractor fails to submit the required EEO submittals per **FHWA 1273** and the **FDOT Contract Compliance Manual**, including but not limited to the **Certification Disbursement of Previous Periodic Payment to Subcontractors (FDOT Form No. 700-010-38)**.
- Other causes stated in the contract specifications.

21.5 CONTRACT CHANGES

Contract changes include supplemental agreements, time extensions, and extra work orders. A contract change may involve any or all of the following:

- Plan changes or revisions
- Specifications changes
- Change in cost (+/-)
- Change in time (+/-)

A LA must develop and incorporate a written policy into the contract outlining the conditions under which a contract change is allowed per **23 CFR 635.120**. Within the policy, the LA shall identify that approval of all contract changes, either verbal or written, are documented prior to the contractor beginning work.

No work shall be performed prior to approval, except in the case of emergencies. All contract changes must have written approval from the Department to be eligible for Federal-aid participation. Verbal approval must be followed by submission of the corresponding written contract change within ten (10) calendar days. On all projects except those designated as a PODI by FHWA, and in which FHWA has retained contract changes oversight, the District Construction Engineer or designee shall determine the Federal-aid participation in accordance with the guidelines shown in **CPAM, Section 7.3.11.1**.

For FHWA PODI projects, it is essential that the LA consults with the District LP Administrator to obtain pre-approval from the FHWA DTE and a determination as to Federal-aid participating or Federal-aid non-participating for the contract modifications, in accordance with **CPAM, Section 7.3.11.2**.

21.5.1 Review of Supporting Documentation/Justification

It is important to distinguish between actual changes to the contract work and normal overruns and underruns that may occur. Whenever a change in the contract is required, the LA shall prepare a contract change document and submit it to District LP Administrator for review and approval by the District's functional area expert. The submittal shall include the justification and explanation in sufficient detail so that everyone involved will understand the need for the change. A detailed engineering justification of the cost associated with the change shall be included with the explanation. Associated changes to the contract time also require justification. All contract changes must be numbered in sequence.

Major changes are defined in **23 C.F.R. 635.102** as those that “*significantly affect the cost of the project to the Federal government or alter the termini, character or scope of work*”.

Contract changes for LAP projects are reviewed by FHWA and the Department in relation to the four (4) basic components identified in the **FHWA CACCM**:

- 1) Federal-aid eligibility
- 2) Impact on “*original scope of work*”
- 3) Basis of payment
- 4) Time adjustments

The Department also references the ***CPAM, Chapter 7:***

- Revisions of geometric design (main roadway, ramps, frontage roads, or crossroads) including any project and construction limit extensions.
- Revisions of pavement structural sections.
- Revisions in conflict with standards.
- Revisions, addition, deletions, or relocations of structures.
- Any changes in the plan access control/management.
- Any changes that alter specifications, special provisions, or other contract requirements, including previously approved provisions.
- Any changes in material type or quality.
- The grant of any additional contract time in a Supplemental Agreement.
- Any time extensions.
- Any contract adjustments made by the LA Project Engineer when acceptable prices for a significant change cannot be obtained through negotiations.
- Contract claim settlements.
- Supplemental Agreements and Unilateral Payments that total \$50,000 or more, or five (5) percent or more of the original total contract amount, whichever is less.
- Substantial overruns and underruns.

21.5.2 Federal-Aid Eligibility

Federal-aid contract changes that have not been approved by District LP Administrator (in consultation with the functional area expert) are not eligible for Federal-aid reimbursement regardless of dollar value.

The following contract changes shall be Federal-aid non-participating:

- Spare parts turned over to the maintaining agency and not incorporated into the construction.
- Material or equipment called for in the plans but not used in the construction.
- Closed drainage systems structures that are not justified in the environmental process.
- Fishing piers.
- Drainage items, including water retention ponds that are not supported through the environmental process.
- Storm and sanitary sewer work and other drainage or utility work that are not a result or purpose of the road and bridge work.
- Premium costs due to design or CEI errors or omissions.
- Sole source items unless specifically approved by the FHWA prior to project authorization.

- Construction changes for items that were set up as alternate bid items.
- Repairing items that had not been properly maintained (cleaning pipe, etc.)
- Additional contract time and/or costs for utility or right of way delays beyond what was identified in the contract documents.
- Additional contract time and/or costs to attain greater vertical or horizontal bridge clearance than deemed necessary to fulfill the intent of the original project documents.
- Additional contract time and/or costs due to arbitrary one foot or less backwater criteria in construction or reconstruction of Interstate Highway Bridges.
- MOT items for Federal-aid non-participating time extensions.
- Work resulting from insufficient subsoil investigation.
- Claim Settlement Costs not approved by the FHWA Transportation Engineer.

21.5.3 Impacts to Original Scope of Work

When changes in the work will alter the scope of an approved project, the District LP Administrator's (in consultation with the functional area expert) approval is required in advance of the effective date. In addition, changes to the scope such as project limits or altered work types require the execution of a **LAP Supplemental Agreement (Form No. 525-010-32)** by both the LA and the Department prior to reimbursement, and also requires FMIS approval from FHWA.

21.5.4 Basis of Payment

Regulations require analysis and documentation of the costs for each contract change independent of the contractor's price proposal. Documentation may include wage rates and work hour estimates, price quotes or invoices specific to pay items, etc. When an estimated cost is increased beyond that authorized in the LAP Agreement, Federal-aid participation is subject to the requirements identified in **Chapters 5 & 6** of the **LPM** including the availability of Federal-aid funds as determined by the District LP Administrator, the execution of a LAP Supplemental Agreement, and the modification of the Federal Authorization as required.

21.5.5 Time Extensions

Each contract change shall provide the time needed to accomplish the work, or a reduction in contract time if work is reduced. FHWA distinguishes changes that may also require time extensions as those where the "*proposed work affects a controlling operation*". **FHWA's CACCM** and **FDOT Standard Specifications for Road and Bridge Construction** list typical events that require time extensions and also typical events that are not eligible for participation in time extensions. Some examples of these events are listed here.

Typical participating events:

- Labor strikes
- Public protests of the project
- General riots
- Declaration of war
- “Acts of God”
- Area-wide shortages in required materials
- State of Emergency declarations by the Governor or President

Typical Non-Participating events:

- Maintenance shutdowns
- Breakdowns
- Suspensions or stop work orders due to safety, permit, or pollution violations
- Shutdowns due to construction accidents
- Material delays not caused by shortages or strikes
- Inclement weather*
- Conflicts due to utilities, railroad, or right of way clearances

**The LA contract shall identify conditions under which time extensions for weather delays, holidays, and non-working days (i.e., weekends) are granted. If the contractor is prevented from working at least 50 percent of the normal work day on pre-determined controlling work items as documented by the LA’s Project Engineer’s daily inspection logs, then the contractor is eligible for the additional day(s).*

Time extensions that modify the original project schedule require the District LP Administrator to prepare and submit through the FDOT Federal Aid Office a Federal Authorization Modification for FHWA approval. Refer to the [FDOT Federal Aid Technical Bulletin 15-01 “FHWA Implementation of 2 C.F.R. Part 200 \(the Supercircular\)”](#) for additional guidance.

If a LA grants additional contract time, but the Department and/or FHWA determine that these days are Federal-aid non-participating, then project overrun costs shall not be covered as part of the LAP Agreement total participating amount in the LA contract. Calculated non-participating costs include items such as CEI and MOT.

21.6 MATERIAL ACCEPTANCE

Acceptance samples and tests are used to determine the quality and acceptability of the material of the project. The LA will use these results to determine compliance with the

contract documents and specifications. LA staff (LA's CEI included), or a private testing facility employed by the LA will perform the acceptance sampling and testing on the job site or at the appropriate location as determined by the contract documents. As indicated in **Section 21.1.2**, the LA will accept materials in accordance with the contract documents for the project, which are determined by the LAP Project Classification as defined in **Chapter 20**.

All materials acceptance sampling and testing data must be documented and retained as required by the terms of the LAP Agreement. LAP projects with classification A, B, or C that require a Final Project Materials Certification Review and Project Materials Certification Letter generated by the Department are required to be entered into the **FDOT MAC** system. Instructions for access and use are found on the State Materials Office website at: <https://mac.fdot.gov/>.

21.6.1 Materials Certification Letter

The intent of the material(s) certification is to assure that the quality of all materials incorporated into the project are in conformance with the contract documents, including the plans and specifications. A copy of this must be sent to the District LP Administrator before the LA's final invoice on the LAP Agreement will be paid. The final materials certification to the Department shall state:

"The results of the tests used in the acceptance program indicate that the materials incorporated in the construction work, and the construction operations that are controlled by sampling and testing, were in conformity with the approved contract documents, including the project plans and specifications. Exceptions, if any, are attached."

The LA is expected to submit a certification statement to the Department for Class A and B contracts (full FDOT Specs) and the Department will in turn issue the Certification Letter. On Class C contracts, the Department issues the Certification Letter for the structures components (constructed per FDOT Specs) and the LA certifies the remaining elements – a dual Certification. Finally, on Class D contracts, the LA issues the Certification Letter for all of the elements of the work.

21.6.2 Additional Requirements for Structural Components

When structural products or components such as precast concrete bridge beams, piles or drainage products or structural steel components such as bridge beams, sign structures, lighting structures, and traffic signal structures are fabricated in a plant remote from the immediate site of the project then acceptance sampling, testing and inspection must be performed in the plant. These services are performed by LA staff (LA's CEI

included) or a private testing facility employed by the agency. Refer to the Department's **Materials Manual (Topic No. 675-000-000)** for additional information.

Additional inspections may be required if the structural component of the project is subject to FDOT Specifications. For example, commercial inspections are required by **Section 105-1.2.3 Notification of Placing Order of FDOT Standard Specifications**. Class D projects (**LPM Chapter 20**) with structural components are not governed by FDOT Specifications and should conform to the approved project specifications.

21.6.3 Materials Quality Assurance Reviews on Local Roadways

For projects off the SHS and NHS, the District Materials Offices will review the LA materials quality assurance programs in conjunction with a LA's LAP Certification (**Chapter 7**). The Materials Office review focuses on the process the LA uses to certify materials on LAP projects and may include a limited review of project data to inform the certification review. **Sample Materials Testing and Acceptance QAR forms are located on the [LAP Website Forms webpage](#).**

21.7 ADMINISTRATIVE SETTLEMENT COSTS

The Federal-aid participation in contractor claims is decided on a case-by-case basis by the Department in coordination with the FHWA Florida Division Office. The LA is required to follow the process identified within the contract documents to handle contractor claims. For projects on the NHS, the State must address a claim's eligibility based on **23 CFR 635.124**, and consider past precedent. For projects off the NHS, the State shall determine Federal-aid participation based on State procedures in compliance with the allowable cost principles of **2 CFR 200 (FDOT Standard Specification 5-12 and CPAM, Chapter 7.5)**.

Federal-aid may participate to the extent that the claim can be supported by the facts and has a basis in the contract and under applicable State law. The basis for adjustment and contractor compensation should be in accord with the prevailing principles of contract law (**23 C.F.R. 635.124 (a)**).

21.8 LIQUIDATED DAMAGES

The liquidated damages (LDs) contract provision provides a mechanism for the LA to recover its costs associated with a contact time overrun by the contractor. For projects on the SHS and NHS, construction contracts are required to incorporate LD provisions per **23 C.F.R. 635.127**, and **FDOT Standard Specification 8-10.2** shall be applied. The LA may calculate and apply their own schedule of damages for LAP Class D projects. To be eligible for use on Federal-aid projects, the rates must comply with **23 C.F.R. 635.127**. Significant guidelines for development include:

- Minimum LD rates must cover the average daily CEI costs attributable to contract time overruns. CEI costs for time overruns are non-participating.
- Costs attributed to project-related delays or inconveniences to the public may be included if the project does not incorporate a time-related incentive/disincentive clause.
- Rates are subject to verification and approval by the Department.
- At least every two (2) years, but not more than once per year, LD rates must be reviewed and adjusted as needed.
- Business impact costs are **not** an acceptable component in the calculation of LDs.

21.9 TERMINATION OF CONTRACT

All Federal-aid projects valued at \$10,000 or more shall contain provisions for:

- Contract termination for cause,
- Contract termination for convenience, and
- Contract termination and/or legal remedies for default.

Generally, when termination for cause or convenience is enacted, the contractor is paid for all completed work and any work needed to preserve and protect the completed work, and for materials stockpiled for the project.

It may or may not be appropriate for a LA to terminate the construction contract for default. The LA contracting process may require that the contract stay active while the Surety's contractor completes remaining work under the contract. Whether the agency terminates a contract in a default situation or leaves the contract active while the Surety completes the work, language documenting how this process will be administered by the agency shall be incorporated into the contract for all projects \$10,000 and above.

Termination for default is used in circumstances that are under the contractor's control. American Association of State Highway and Transportation Officials (AASHTO) has identified the following situations as grounds for default terminations:

- Failure to begin work under the contract within the time specified in the NTP.
- Failure to perform the work with sufficient manpower, equipment, or materials to ensure prompt completion.
- Performance of the work is not in conformance with the contract requirements or refusal to remove/replace rejected materials or unacceptable work.
- Discontinuance of the work or failure to resume work which has been discontinued within a reasonable period of time after notice to resume.
- Committal of any act of bankruptcy or insolvency.

- Failure to comply with contract requirements regarding payment of minimum prevailing wages or EEO.

FDOT Standard Specification 8-9 may be adapted by a LA for use in Federal-aid construction contracts. Generally, use of the Surety contractor (**255.05 F.S.**) to complete construction will ensure the cost of the project remains Federal-aid participating.

The District LP Administrator must provide concurrence to the LA for the termination of a contract with the contractor and the LA intends to seek reimbursement. The District LP Administrator will consult with the Department's executive team and the FHWA DTE on the termination of all LAP construction contracts.

21.10 COMPLETION OF CONSTRUCTION

Upon nearing the end of the contract term and per the project schedule, the LA shall notify the District LP Administrator of all semi-final and final inspections scheduled for completion. The District Operations Center shall also be notified of all semi-final and final inspections. The Department requires a copy of draft/final plans to complete the inspection.

The LA Project Engineer will make a semifinal inspection (per the contract terms) after notice from the contractor of presumptive completion of the entire project. If, at the semifinal inspection, all construction provided for and contemplated by the contract is found completed to the LA Project Engineer's and to the Department's satisfaction, such inspection shall constitute the final inspection, as prescribed below.

If, however, at any semifinal inspection any work is found unsatisfactory in whole or in part, the LA Project Engineer shall give the contractor the necessary instructions detailing the replacement of materials and the performance or re-performance of work that is a necessary prerequisite to final completion and acceptance. The contractor shall comply with and execute the LA Project Engineer's instructions. Upon satisfactory replacement of materials and performance or re-performance of such work, another inspection shall be performed.

Whenever all materials have been furnished, all work has been performed, and the construction contemplated by the contract has been satisfactorily completed, the LA Project Engineer shall give the contractor written notice of final acceptance.

21.10.1 Project Close Out

The LA is responsible for providing the following project-close out information to the District LP Administrator, uploaded to **GAP**, within 120 days of Final Completion (**LAP**

Agreement, Section 5):

- Copy of the LA's written notice of final acceptance to the contractor.
- **Form No. 525-010-42 LAP Final Inspection and Acceptance of Federal-Aid Project**
- **Form No. 525-010-47 LAP Record of Final Plans and Documents**
 - Requires the attachment of all Contract Changes and/or a summary report of overruns and underruns.
- Materials Certification Letter
 - State Materials Office will provide if the project is Class A, B, or C (structures components only).
- Final Invoice
 - Must include the final project time, cost, and final plan quantities.
- Final as-built plans
 - All bridge as-built plans and foundation construction records (pile driving records, shaft top elevations, and borings) shall be submitted to the District Structures Maintenance Engineer for permanent retention.
 - As-built plans for projects located on the NHS or SHS shall be submitted to the District Operations Center.
 - As-built plans for Class D projects shall be available to the Department upon request.
- Schedule of Values is only required for Design-Build and Lump Sum projects.
- **PCR** form, as applicable, showing all commitments were fulfilled.

21.11 FINAL RECORDS RETENTION

The LA Project Engineer must document the work performed on the contract. Documentation consists of field books, inspector's record of field tests, LA Project Engineer's and inspector's diaries, all invoices, weigh bills, truck measurements, quantity tickets, receiving reports, field office ledgers, mass diagrams, cross-sections, computer listings, and work profiles.

Records of costs incurred under the terms of the **LAP Agreement** shall be maintained and made available upon a request to the Department at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the LA's general accounting records and the project records, together with supporting documents and records of the contractor and all subcontractors performing work on the project, and all other records of the contractor and subcontractors considered necessary by the Department for a proper audit of costs (also reference **2 CFR 200**).

If a warranty provision was included in the contract specifications, then records of activities related to monitoring during the warranty period shall also be maintained by the LA. Projects that are to be maintained by the Department after final acceptance, per the executed project **LAP Agreement**, will be monitored by the District Maintenance Offices.

21.12 RESOURCES

[FHWA Contract Administration Core Curriculum Manual](#)

FHWA Technical Advisories related to various topics:
<http://www.fhwa.dot.gov/construction/techadvisories.cfm>

[FDOT Materials Acceptance and Certification system](#)

The following items are available on the [LAP Website Forms Page](#):

- Sample Preconstruction Conference Agenda (also found in **CPAM, Chapter 3**)
- Sample Materials Certification Letter
- Sample Materials QAR checklist
- Sample Daily Log
- Sample Certification of Payment
- Sample Certification of Stockpiled Materials
- Sample Estimate of Contract Time
- Sample QAR Checklist – Developed by District 4 and District 6
- Sample QAR Checklist – Developed by District 4 and District 6 - Geotech
- LAP Supplemental Agreement (Form No. 525-010-32)
- LAP Final Inspection and Acceptance of Federal-Aid Projects – Instructions (Form No. 525-010-42)
- LAP Record of Final Plans and Documents (Form No. 525-010-47)

TABLE 2: USDOT contacts for Pre-construction Meeting Notifications

DISTRICT	CONTACT	EMAIL	OFFICE PHONE
District 1	Santos Ramirez	santos.ramirez.jr@oig.dot.gov	954-382-6650
District 2	Glenda White	glenda.white@oig.dot.gov	904-248-7045
District 3	Todd Bishop	michael.bishop@oig.dot.gov	904-248-7044
District 4	Jorge Tucuyo	jorge.tucuyo@oig.dot.gov	954-382-6649
District 5	Michael Szouchet	michael.szouchet@oig.dot.gov	954-382-5217
District 6	Abe Cruz	abdiel.cruz@oig.dot.gov	954-382-5321
District 7	Vivian Vega	vivian.vega@oig.dot.gov	954-382-6648
All Major Projects (\$500+ million)	ASAIC Tim Arnold	timothy.arnold@oig.dot.gov	954-382-6647

USDOL contacts for Pre-construction Meeting Notifications:

Bob Vaden - Vaden.Robert@dol.gov (Jacksonville area) Districts 2, 3 and 5

Ariel Rivera Maldonado - RiveraMaldonado.Ariel@dol.gov (Miami area) Districts 1, 4, 6

Lourdes Bahr - Bahr.Lourdes@dol.gov (Tampa area) Districts 1, 2, 7

CHAPTER 22

LOCAL AGENCY FORCE ACCOUNT CONSTRUCTION

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22.1 OVERVIEW

The term force account shall mean the direct performance of public construction works by a LA, a railroad, or a public utility company by use of their own labor, services, equipment, materials, and supplies furnished by them and used under the direct control of their employees.

22.1.1 Basis of State Requirements

Per [s. 255.20\(1\) F.S.](#), a LA is required to competitively award public construction works that are estimated to cost more than \$300,000, or more than \$75,000 for electrical work. Further, [s. 255.20 \(2\) F.S.](#) requires: “*The threshold amount of \$300,000 for construction or \$75,000 for electrical work, as specified in subsection (1), must be adjusted by the percentage change in the Engineering News-Record’s Building Cost Index from January 1, 2009, to January 1 of the year in which the project is scheduled to begin*”.

In addition, [336.41 F.S.](#) requires when working on the county road system “construction and reconstruction of roads and bridges... be let to contract to the lowest responsible bidder by competitive bid, except for:

- Construction and maintenance in emergency situations
- Construction and reconstruction having a total cumulative annual value not to exceed 5% of its 80% portion of the constitutional gas tax or \$400,000, whichever is greater
- construction of sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated to have total construction costs less than \$400,000 or as adjusted by the percentage change in the Construction Const Index from January 1, 2008.

It is up to the LA to comply with the Florida Statutes and determine if a project exceeding the thresholds meets one or more of the conditions for an exemption. Florida Statutes list conditions under which an exemption is allowed. One condition for exemption to competitively award projects exists when the governing board of the LA determines it is in the public’s best interest to perform the project using its own services, employees, and equipment. The exemption requires the LA to hold a public hearing in accordance with [255.20\(1\)\(c\)\(9\) F.S.](#)

22.1.2 Basis of Federal Requirements

[23 CFR 635.204-205](#) states the following reasons for use of noncompetitive construction contracting and must be considered by LAs seeking to use the force account method of

delivery for Federal-aid projects:

- When the State DOTs determine it necessary due to an emergency. An emergency shall be deemed to exist when emergency repair work is necessary or when a major element or segment of the highway system has failed and the situation is such that competitive bidding is not possible or is impractical because immediate action is necessary to minimize the extent of the damage, protect remaining facilities, or restore essential travel. (***FHWA Emergency Relief Program*** as described in [23 CFR 668](#) and ***Chapter 13***.)
- When the rights or responsibilities of the community are so affected as to require a special course of action, including situations where there is a lack of competition or there are unreasonable bids.
- When by reason of the inherent nature of the operation, it is deemed cost-effective to do minor adjustments of railroad and utility facilities (major work should be accomplished by competitive bidding).

Per [23 CFR 635 Subpart B](#) and [FHWA Order 5060.1](#) “***FHWA Policy on Agency Force Account Use***”, a LA may deliver a LAP project via force account with an approved cost effectiveness finding. The District LP Administrator must approve the cost-effectiveness finding prior to a LA electing to utilize this delivery method. The purpose of a cost-effectiveness finding is to clearly demonstrate that the proposed deviation is more cost-effective than meeting the competitive bidding requirement. The term cost-effective shall mean the efficient use of labor, equipment, materials and supplies to assure the lowest overall cost.

FHWA Order 5060.1 applies to all Federal-aid highway construction projects that are located within a highway right of way. It does not apply to Federal-aid construction projects located outside a public highway right of way or projects that, by definition in ***23 USC 101(a)(4)***, are not considered to be highway construction projects. Examples provided in the directive include:

- Transportation enhancement projects that are physically located outside the right of way of a public highway (restoration of historic railroad stations, shared use paths, recreational trails, landscaping and scenic beautification, railroad mainline improvements, rail yard improvements, etc.)
- Operational improvements or service-related projects that take place within the right of way of a public highway, but the scope of the contract does not meet the definition of “construction” in ***23 USC 101*** (e.g., service patrols, route diversion and evacuation routing, 911/511 telephone systems, computer-aided dispatch

systems, highway advisory or other radio systems for communicating with vehicles, etc.).

In addition, professional service work types, as discussed in **Chapter 14**, do not require a cost-effectiveness finding.

22.2 PRELIMINARY COST ESTIMATING AND PROGRAMMING A PROJECT

Both Federal and State laws and rules require total costs of a force account project to be estimated prior to undertaking the work. The Department must receive, and review estimated total costs of the project to award Federal or State grant funding and program the project in its Adopted Work Program. LAs must follow the guidance set forth in **Chapter 5**. In addition, force account projects require additional steps when undertaken with Federal and/or State funds. All Department funded projects must comply with **Section 22.2.1** and those projects that receive Federal awards must also comply with **Section 22.2.2**.

22.2.1 State Funded Project Requirements

Chapter 255.20(1)(c)(9) F.S. and **336. 41 F.S.** set forth cost estimating requirements for State (and locally) funded force account construction projects. LAs must fully account for all costs associated with performing and completing the work including:

- Employee compensation and benefits
- Equipment cost and maintenance
- Insurance costs
- Direct costs for materials and supplies
- Factor of 20% for management, overhead, and other indirect costs.

The LA must provide a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimate cost. This information must be available for inspection at the public meeting when the LA requires an exemption under **255.20(1)(c)(9) F.S.** to the threshold for competitive awards.

All statutorily required elements must be included in the cost estimate when the LA applies for funding to the Department and intends to deliver the project via force account. The public meeting, as applicable, may occur after the project application is approved for Department funding, but must occur prior to executing the grant agreement with the LA.

22.2.2 Federal-Aid Project Requirements

A cost-effectiveness finding is required for any proposal to use a non-competitive method of contracting. In general, work to be performed directly by a railroad or utility does not require a cost-effectiveness finding and may be performed under a joint participation agreement with the Department. Railroad and utility owners do not need to be LAP certified. Because the LA will be using its own employees, there are no requirements for Davis-Bacon Wage Rates. The LA estimates (and pays) employees' normal salary or wage.

22.2.3 What Is Required in A Federal-Aid Project Cost-Effectiveness Finding?

- Demonstrated ability of the LA to perform the work. The LA is able to complete the work with the same level of quality as that expected on a competitively let construction contract.
- Availability of equipment.
 - The LA must own (or currently lease) most of the equipment needed to perform the work. The costs associated with equipment leasing should be a minor portion of the overall cost.
 - Rates on publicly owned equipment may be the agreed unit price or actual cost. If the project is to be performed on the basis of actual cost, the estimate should include a schedule of rates, exclusive of profit, to be charged for the use of publicly owned equipment.
- Ability to comply with design, construction, and material quality standards and all Federal-aid requirements.
- Ability to document compliance with quality assurance requirements. Quality assurance procedures for construction identified in [23 CFR 637, Subpart B](#) apply to all NHS projects in full.
- Schedule. The project/contract completion time is to be equal for both LA and contract work estimates in order to provide a fair comparison of prices.
- Cost comparison. See **Section 22.2.2** for additional information.
- Assurances that the project will comply with all applicable Federal-aid requirements, including applicable sections of [FHWA 1273](#) and environmental commitments as detailed in **Chapter 18**.
- Assurances that performance of the project will not hinder the State's DBE goal as discussed in **Chapter 11**. An example of a statement is: *"FDOT requires subrecipients to use its race neutral DBE goal and does not permit contract goals*

on FHWA-assisted projects. Therefore, the [LA] is confident that its force account will have no adverse effect on FDOT's overall DBE goal achievement."

22.2.4 Cost Comparison for Federal-Aid Projects

The cost comparison must contain sufficient information so that the total cost for the agency to perform the work versus the total cost using competitively bid prices may be assessed. The LA's cost estimate includes estimated quantities and prices for material, labor, and equipment. All work items must be included, regardless of federal participation, so that a fair comparison can be made. The estimate may be based on actual cost or unit prices.

Payment of actual costs are reimbursed for labor, materials, and equipment rates. Payment of unit prices are reimbursed for the actual number of units constructed. Unit prices must be developed and agreed upon by the LA and the Department using quantities, man-hours, pay rates, material costs, and equipment rental rates. Stockpiled material(s) must be listed at the same price on the LA's cost inventory.

The LA's total cost estimate must include an adjustment for overhead or indirect cost rates for labor, equipment, and materials. The LA's overhead or indirect cost rates must be developed in compliance with **2 CFR 200** (various parts) and per **Chapter 6** of the **LPM**. The 20% factor required by **255.20(1)(c)(9) F.S.** is not eligible for Federal-aid participation but would include overhead and indirect cost rates that may be eligible when broken out and developed based on established rates per **2 CFR 200**.

22.2.5 Cost Reductions Not Allowed on Federal-Aid Projects

The LA may not reduce the force account estimate by:

- Potential savings resulting from use of less than complete plans,
- potential savings resulting from reduced quality assurance during construction, or
- anticipated savings from reduced construction management and documentation.

22.3 PLANS, SPECIFICATIONS, AND ESTIMATES (PS&E) REQUIREMENTS

The development of a project for construction by LA forces follows the same procedures as for a competitive bid contract in development of the final PS&E package and will be developed in accordance with the **LPM**. The LA must complete the Department's right of way and NEPA certification processes. The LA must also clear railroads, utilities, and

obtain environmental and other permits for the project. All design exceptions, utility exceptions, and design variations must be reviewed by the Department according to the processes outlined in the **Chapter 17**.

The PS&E package must be approved by the District LP Administrator.

For LAP projects, a **LAP Construction Checklist (Form No. 525-010-44)** must be fully executed to receive federal authorization for the project.

22.4 MATERIALS

All material must comply with FHWA's general material requirements in **23 CFR 635, Subpart D**. If LA provided materials are included in the project, the LA must submit justification for their use to the approving authority. The materials must have been produced by LA forces or acquired through competitive bidding. The justification must be adequate to show approving authority that the action is in the best interests of the public. Test reports shall be included with the justification showing that these materials meet the specifications of the project. Approval of LA provided materials may be accomplished by the time the PS&E is approved.

If a LA plans to produce a material such as borrow or aggregate, the sources should be capable of producing the type and quantity required. It is imperative that a materials laboratory tests the material to ensure compliance with specifications. Those LAs without laboratory facilities may submit samples to the Department well in advance of the construction start date to allow time for processing. The necessary advance notification and coordination between the agencies and the Department must be accomplished in order to not severely impact the existing laboratory workload at the Department's facility. Approval of LA provided material sources may be accomplished by the PS&E approval.

The LA must approve the source for each type of material before the delivery is started. The LA is allowed to accept small quantities of materials on the basis of visual inspection and the material supplier's certification. The LA's Project Engineer must reject materials that do not conform to the specifications. Projects located on the SHS must comply with State Materials Office requirements and be reported in MAC.

22.4.1 Federal-Aid Project Requirements

LAP projects that are Class A, B or C must comply with State Materials Office requirements and be reported in MAC. For projects on the NHS, prior FHWA approval is required for material or property purchased from a sole source.

22.5 CONSTRUCTION ADMINISTRATION

The Department is responsible for oversight of all grant funded LA projects. Force account work in no way alleviates the LA from inspection or quality requirements expected on public construction works that are competitively awarded. It is recommended the LA hold a project kick-off or pre-construction meeting and invite District staff. The LA administers construction, provides qualified inspection staff, and the Department performs periodic project reviews. The quality of materials and workmanship on the project must conform to the project plans and specifications. The LAs accept materials and workmanship based on the methods usually and normally used by the LA.

22.5.1 Changes in Work

Whenever a change in the project work is required, the LA's Project Engineer shall submit a written request to the District LP Administrator explaining the change and cost. Changes that alter the beginning/end, character, or scope of an approved project may require additional approvals from the District. Per **Chapter 21.5**, the LA will submit all changes to the District LP Administrator prior to implementing those changes.

22.5.2 Progress Billing

Progress billing must be based on the documented costs of the labor, equipment, and material of the work performed. The LA shall send progress billings, along with the required documentation for progress payment (outlined in **Chapter 6**), to the District LP Administrator per the terms of the grant agreement.

22.5.3 Federal-Aid Project Requirements

Changes on Federal-aid projects are not eligible for reimbursement unless the contract changes are approved by the District LP Administrator. When costs or time increase beyond that authorized in the LAP Agreement and the approved Federal Authorization, federal participation for this increase is subject to:

- (1) the availability of Federal funds verified by the District LP Administrator,
- (2) the execution of a **Supplemental LAP Agreement**, and
- (3) a FHWA approved modification to the Federal Authorization.

Agencies with an approved indirect cost rate per **2 CFR 200** may be reimbursed for both direct and indirect costs. See **Chapter 6** for additional information.

22.5.4 Project Close Out

The LA will carry out the same project close out requirements provided in **Chapter 21**.

The LA's Project Engineer shall request a final inspection from the District LP Administrator within 15 days of completing construction.

State and Federal-aid projects require the following close out documents:

- Final Invoice: submitted within 120 days of construction completion. The invoice includes a comparison of preliminary and final costs for labor, equipment, and material (overruns & underruns).
- Materials Certification: The purpose of the material certification is to assure that the quality of all materials incorporated into the project conforms to the plans and specifications. This ensures a service life equal to the design life. Materials certifications comply with the FDOT **Materials Manual, Volume I, Section 5.2 and Chapter 21**.

State funded projects require:

- Engineer's Certification of Compliance: the form provided as "Exhibit C" of the **State Funded Grant Agreement (Form No. 525-010-60)** is required to certify the project was constructed per the Department approved plans and specifications.

Federal-aid projects require:

- Final Inspection & Acceptance of a [Federal-Aid Project Form 525-010-42](#)
- LAP Record of [Final Plans and Documentation Form No. 525-010-47](#)
- Project Commitments Record, as applicable

22.6 RECORDS RETENTION

The LA shall keep final records for at least 5 years following acceptance of the project per the terms of the grant agreement. The LA's Project Engineer must document the work performed on the project. Documentation includes field books, inspector's record of field tests, materials samples and tests, project engineer's and inspector's diaries, all invoices, weigh bills, truck measurements, quantity tickets, receiving reports, field office ledgers, mass diagrams, cross-sections, computer listings, work profiles, time suspensions, etc.,

when they are a basis of payment for the work performed or the material supplied. Photographs before, during, and after construction are useful, especially if care is taken to show any unusual conditions, equipment, or procedures.

22.7 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Chapter 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the federal award. Federal award date under Department process is considered the Federal Authorization date. **Table 1** contains the minimum monitoring requirements performed by the Department on force account projects. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

Table 1: Minimum Monitoring Requirements for Federal-Aid Projects

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
F.S. Exemption Review	The LA must determine if a project exceeding the threshold(s) meets one or more of the conditions for an exemption allowed under F.S.	For all projects exceeding the threshold(s), the LA provides a certification to the project file that the LA has met the requirements for an exemption.
F.S. Cost Estimate	The LA must provide a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimate cost. All statutorily required elements must be included in the cost estimate when the LA applies for funding to the Department and intends to deliver the project via force account.	For all projects, the District must approve the cost estimate prior to a LA implementing this delivery method.
Cost Effectiveness Finding	LA prepares a Cost Effectiveness Finding document per 23 CFR 635 Subpart B and FHWA Order 5060.1 "FHWA Policy on Agency Force Account Use" and submits to the District LP Administrator for review. The Cost Effectiveness Finding may also include the F.S. cost estimate information or the LA can provide two separate documents.	For all projects, the District LP Administrator must approve the cost-effectiveness finding prior to a LA implementing this delivery method.
Project Plans Review and PS&E Package	The LA must submit project plans to the District for review and acceptance. The LA must develop	All project plans must be reviewed by the

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
Approval	the final PS&E package for approval by the Department.	<p>Department at 60% plans. Additional plan phase reviews will be requested based on project scope, complexity, and risk. Final plans (100%) are approved as a component of the PS&E package approval.</p> <p>PS&E packages for all construction projects must be approved by the District LP Administrator prior to requesting Federal authorization.</p>
LAP Construction Checklist	The LA prepares and submits the LAP Construction Checklist for District approval.	For all LAP projects, a LAP Construction Checklist (Form No. 525-010-44) must be fully executed to receive federal authorization.
Materials Certification	LA must submit materials justification in accordance with 22.4. LA must certify all materials incorporated into the project. LA submits Project Materials Certification Letter (PMCL).	PMCLs are required for all projects. The District LP Administrator and/or the District Materials Office must approve PMCLs for all projects.
Construction Inspection	LA performs construction administration and inspections in compliance with Chapter 21 .	District performs project reviews in accordance with Chapter 21, Table 1 .
Modifications/ Changes in the Work	Changes in work agreed upon between the LA and the Department are documented, justified, and submitted in writing to the grant manager for approval prior to the LA implementing the change. Department contract manager verifies changes comply with Federal and State requirements and the grant agreement.	All changes in work are reviewed and approved prior to implementation by the LA. SAs or time extensions to the Department grant agreement are issued by the District LP Administrator as needed.
Project Close Out	The LA will prepare and submit a project close out package for Department review and	The District LP Administrator reviews

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
	approval. All projects require a complete and correct close out package to process the final invoice for payment.	project close out package and routes final invoice for payment upon approval.

22.8 RESOURCES

[Form No. 525-010-44 LAP Checklist for Construction Contracts](#)

[Form No. 525-010-42 LAP Final Inspection and Acceptance of Federal-Aid Project](#)

[Form No. 525-010-47 LAP Record of Final Plans and Documentation](#)

[Form No. 575-095-05 LAP Right of Way Certification](#)

CHAPTER 23 PROJECT CLOSE OUT PROCEDURES

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23.1 OVERVIEW

Project close-out is also an important Work Program task for the District LP Administrator. After the project is completed, the District LP Administrator must:

- Ensure that the final invoice is paid.
- Contact the District Financial Services Office to close the contract.
- Notify the District Work Program Office that the final invoice has been paid.
- Ensure any remaining funds are unencumbered.
- Forward a copy of the “Local Agency Program Final Inspection and Acceptance of Federal-Aid Project” form for the LA’s file (**Form No. 525-010-42**).

23.2 PROJECT COMPLETION NOTIFICATION

The Department must balance and close the federal project in the fiscal systems of both the Department and FHWA when the job is complete. This is important for several reasons, including, but not limited to, the following:

- The amount of authorized federal funds **may be more** than is needed to cover the total cost of the project. In this case, it is important for the Department to prepare the final modification (decrease) to the federal authorization as soon as possible to release the excess federal funds so they may be used to fund other projects.
- The amount of authorized federal funds **may be less** than is needed to cover the total cost of the project. In this case, it is important for the Department to prepare the final modification (increase) to the federal authorization as soon as possible so that the costs exceeding the authorization can be billed to FHWA for reimbursement to the Department (if the increase is approved).
- The Department should balance and close federal projects for Preliminary Engineering (PE) as soon as possible after final costs are incurred. Federal guidelines call for the Department to close the PE phase before any construction costs are incurred (if the Construction phase is federally funded).
- Even after the LA has paid final costs on a project, it remains open in the fiscal system, and it becomes fiscally “inactive.” FHWA regularly monitors these “projects with no fiscal activity” (starting with no activity for 6 months). The Department must provide repeated written reasons to explain why the project is inactive. Writing these reasons uses staff time and resources in the Central Office and District Offices, especially since there are hundreds of projects in this status.

23.3 RESPONSIBILITIES FOR CLOSING PROJECTS

The task of closing federal projects requires the joint efforts and cooperation of FHWA and several offices within the Department, starting with the District LP Administrator. Simply opening a job to traffic or completing the physical work does **not** mean that the project is complete. The fiscal closing process is the final step in completing a project.

It is the responsibility of each District LP Administrator to inform the appropriate staff in a timely manner that a project is physically complete and the closing process should begin. It is important to remember that every project involves several areas within the Department. These offices must perform their own tasks in a timely manner to ensure a successful team effort in closing these projects.

When a project is physically complete, a number of additional tasks must be completed. These tasks will vary depending upon the type of work performed, such as:

- Final cost estimates must be completed.
- Final acceptances must take place.
- Final invoicing must take place.
- Liquidated damages may need to be assessed.
- Post-audits may be necessary.
- Excess encumbrances must be removed.
- Various funding sources (types of federal funds) must be balanced in agreement with established guidelines, depending upon the age and type of the funding sources.
- Costs must be analyzed and occasionally re-allocated if not reimbursable by FHWA.
- Other required federal records must be provided to FHWA.
- Final federal authorization changes must be prepared, submitted, and approved by FHWA.

The following list shows examples of the many offices and staff within the Department and FHWA that are involved in closing federal projects:

- LP Administrators (or designee)
- Statewide Program Coordinators
- District Work Program staff
- District Federal-Aid Coordinators
- District Construction offices
- District Professional Services offices

- District Financial Services (Fiscal) staff
- District Right of Way staff
- Federal-Aid Programs Office
- Program Development Office
- Procurement Office
- Office of the Comptroller
- Office of the Inspector General
- FHWA area engineers
- FHWA Right of Way staff
- FHWA Financial Management staff

Please refer to ***Federal-Aid Instructions*** for complete instructions and specific steps, documentation requirements, and other data important for closing federally funded projects.

23.4 FINAL PROJECT INSPECTION

After the project is completed, the District LP Administrator will make a final visit to the site to inspect the project. If the project has been satisfactorily completed, the District LP Administrator will complete the “Local Agency Program Final Inspection and Acceptance of the Federal-Aid Project” form (***Form No. 525-010-42***) and send a copy to the District Work Program Office after the final invoice is paid.

23.5 PROCESSING FINAL INVOICE AND UNENCUMBERING UNUSED FUNDS

The LA will submit the final invoice to the District LP Administrator/Project Manager for review and payment. If the final invoice is correct, the District LP Administrator/Project Manager will mark the invoice package “FINAL” and submit it for payment. By marking that it is the final invoice, the Comptroller’s Office should automatically unencumber any remaining funds.

23.6 NOTIFYING FINANCIAL SERVICES AND FEDERAL-AID COORDINATOR TO CLOSE CONTRACT

After the final invoice has been paid, the District LP Administrator will contact the District Financial Services Office and request that the contract be closed. The District Work Program Office will be notified that the final invoice has been paid and will receive a copy of the “Final Inspection & Acceptance of Federal-Aid Project” form for their file.

23.7 RESOURCES

Local Agency Program Final Inspection and Acceptance of Federal-Aid Project (Form 525-010-42)

<https://pdl.fdot.gov/api/form/downloadAttachment/10980794>

CHAPTER 24 MAINTENANCE

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24.1 OVERVIEW

In order to ensure that transportation facilities developed using Federal funds continue to operate safely with no loss of function during their lives, Federal law requires that they be properly maintained for the useful life of the project (**23 CFR 1.27 and 23 USC 116**). Useful life is defined in this context as: to perform normal maintenance operations for the preservation of the entire project, including roadway surface, shoulders, roadsides, structures, and such traffic control devices as are necessary for its safe and efficient use.

When the project is on a local roadway system or “off-system”, the LA and FHWA each have responsibilities in this area: the LA maintains the projects, and FHWA reviews the LA’s maintenance efforts. Off-system projects are defined as projects not located on the SHS, but may include projects located on the NHS.

When the project is on the SHS, the Department will generally maintain any improvements; unless otherwise stipulated in the terms of the LAP Agreement between the Department and the LA. A common example of when the Department would **not** maintain an improvement constructed on the SHS are streetscaping (including landscaping) projects where an agency may install stamped crosswalks and other features that the Department would not typically construct and not be in a position to maintain.

In accordance with **Section 116, Title 23 USC**, the LA agrees in the **LAP Agreement (Form No. 525-010-40)**, **Section 13.13** to maintain the projects completed. In addition, any special considerations by the Department or alternate maintenance requirements shall be designated in **Exhibit A** of the **LAP Agreement**. Maintenance activities and related pay items are not eligible for reimbursement under the FAHP. The agency should budget for future maintenance and operations costs with local funds, including landscaping related costs. Maintenance bonds as a condition of LA construction contracts are not eligible for reimbursement.

The LA will be contacted in the event reports of deficiencies in the maintenance of the local projects are received by the Department.

24.2 BRIDGE INSPECTION AND MAINTENANCE

The Department inspects all bridges in the State of Florida both on-system and off-system. The Department provides each LA with copies of their inspection reports. The LAs maintain these reports to be responsive to Metropolitan Planning Organization (MPO) requests for bridge rehabilitation, replacement, or enhancement designations. When necessary from these inspections and subsequent load ratings, the Department provides

bridge posting information to the local agency owner. The owner must also provide and promptly install the appropriate signage, according to the MUTCD.

24.3 RESOURCES

[LAP Forms Page](#)