128 Federal-Aid Project Certification

128.1 General

The Florida Department of Transportation (FDOT) has a ***Stewardship and Oversight Agreement*** with the Federal Highway Administration (FHWA) setting forth the respective roles, responsibilities, and accountability of FDOT and FHWA in the administration of Federal-aid highway funds. See ***FHWA-FDOT Stewardship and Oversight Agreement, Topic No. 700-000-005*** and ***Title 23 United States Code 106 (23 USC 106)***. Under this agreement, FHWA grants to FDOT general responsibilities and approvals for design, plans, specifications, estimates, contract awards, contract administration, and project inspections on Federal-aid highway projects except for those projects FHWA and FDOT used the risk-based approach to select as projects of Division Interest" (PoDI), and as discussed in ***FDM 128.2***. For those projects that FDOT has oversight responsibility, FDOT will act on FHWA's behalf by complying with all applicable FHWA policies, regulations, ***Title 23 USC***, and ***non-Title 23 USC*** requirements. Notwithstanding this, FHWA may become involved with any Federal-aid project and retains overall responsibility for all aspects of Federal-aid programs. As such, FHWA has full access to and the legal authority to review any aspect or record of any Federal-aid project at any time. In accordance with ***Title 2 Code of Federal Regulations Part 200*** (***2 CFR Part 200***), records will be retained for a minimum of three years or until litigation, claims or audit findings initiated before the three-year period have been resolved.

Modification for Non-Conventional Projects:
Delete the second sentence of the above paragraph and replace with the following: See ***FHWA-FDOT Stewardship and Oversight Agreement, Topic No. 700-000-005, Title 23 United States Code 106 (23 USC 106),*** and ***Title 23 Code of Federal Regulations 636 (23 CFR 636)***.

128.2 Selection of Federal-Aid Projects

In accordance with the Stewardship and Oversight Agreement, annually in July, FHWA and FDOT will use risk-based approach to negotiate which new projects will be selected as Projects of Division Interest (PoDI). The FHWA Transportation Engineer will coordinate the project selection with their assigned FDOT District Office. Ideally, the projects will be selected from projects listed in the Statewide Transportation Improvement Program (STIP) to be approved by FHWA the following October 1st, and will include projects selected from all four years of the STIP. The projects selected should be on the Federal-aid system to primarily include the Interstate and National Highway System (NHS) routes, but non-NHS projects can be selected. The projects should be selected considering the factors below:

(1) All major projects as defined by FHWA's major project criteria (cost ≥ $500 million)

(2) Controversial and Congressional interest Projects

(3) Demonstration (demo) and pilot projects

(4) Interstate projects:

  (a) With Design Exceptions to the 10 controlling criteria

  (b) For new or modified access points

  (c) For major reconstruction and widening

(5) Projects utilizing innovative contracting methods; e.g., design build, public-private partnerships.

(6) Special Experimental Projects (SEP):

  (a) Projects requiring SEP-14 approval for alternative contracting methods

  (b) Projects requiring SEP-15 approval for public-private partnerships

(7) Unusually complex or controversial projects

(8) Major unique and/or unusual structures

(9) A priority focus for projects on the NHS

(10) A desire to have a mix in project size and scope

All federally funded projects must comply with applicable ***non-Title 23 U.S.C.*** requirements which include, but are not limited to:

(1) National Environmental Policy Act (NEPA) of 1969 pursuant to 40 C.F.R. Parts 1500 - 1508, 23 C.F.R. Section 771 and Section 6002 of SAFETEA-LU

(2) Section 4 (f) of the DOT Act of 1966

(3) Clean Air Act Amendments of 1990

(4) Civil Rights Act of 1964

(5) Civil Rights approvals

(6) Disadvantaged Business Enterprise Program (DBE)

(7) Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970

(8) Hardship acquisition and protecting buying

(9) Americans with Disabilities Act/Section 504 Rehabilitation Act of 1973

(10) Davis-Bacon wage rates

(11) Waiver for Buy America requirements

(12) SEP-14/SEP15 contracting methods

(13) Executive Orders

(14) FHWA Guidance and technical advisories

(15) Addition/modification of access points to the Interstate (Interchange, locked gate access points, median crossovers for construction)

(16) Project by project obligation of federal funds

(17) Modifications to Federal-aid project agreements

(18) Final Vouchers

128.3 FDOT Responsibilities

The final design documents, reports and plans for projects not selected as PoDI will be developed in accordance with all applicable Department manuals, guidelines and procedures, and in compliance with all applicable Federal Statutes, Regulations, Executive Orders, and FHWA Directives and Standards. The Department is responsible for assuring that all appropriate criteria have been adhered to, and for documenting its findings in lieu of FHWA reviews. Several of the major areas and the method to be used by the Department to document the acceptability of various final design activities in place of an FHWA review and approval are:

(1) Typical Section Package:

The typical section package should be prepared as described in ***FDM 120.2.3*** and ***120.3.2***. Concurrence by the District Design Engineer documents the acceptability of the package. Concurrence from the District Structures Design Engineer may also be required on unusual bridge typical sections.

(2) Pavement Design Package:

The pavement design is developed and approved by the responsible professional engineer in accordance with Department pavement design procedures. Concurrence from the District Design Engineer is required to document the acceptability of the package in lieu of FHWA review and concurrence.

(3) Bridge Hydraulics Report:

The hydraulics report is developed and approved by the responsible professional engineer in accordance with appropriate design standards. Concurrence from the District Drainage Engineer is required to document the acceptability of the package in lieu of FHWA review and concurrence.

(4) Bridge Development Report:

The bridge development report is developed and approved by the responsible professional engineer in accordance with appropriate design standards. Concurrence from the District Design, Structures Design, or Project Management Engineer is required to document the acceptability of the report in lieu of FHWA review and concurrence.

Modification for Non-Conventional Projects:
Delete item (4).

(5) Design Plans Phase Reviews:

Plan reviews should be conducted as described in ***FDM 120***. Concurrence in the resolution of phase review comments from the District Design, Structures Design, or Project Management Engineer is required to document the acceptability of the reviews in lieu of FHWA review and concurrence. (See ***Form 128-A, in FDM 103***)

Modification for Non-Conventional Projects:
Delete the above paragraph and replace with the following: Plan reviews will be conducted as described in ***FDM 301***. (See ***Form 128-B***, in ***FDM 103***)

(6) Design Exceptions:

Design Exceptions on projects not selected as PoDI require approval and concurrence as described in ***FDM 122***.

(7) Special Provisions:

Special provisions, which include project specific and technical special provisions, will be developed and approved by the responsible professional engineer. Concurrence from the District Specifications Engineer is required to document the acceptability of the special provisions in lieu of FHWA review and concurrence. (See ***Form 128-C***, in ***FDM 103***)

(8) Plans, Specifications, and Estimates:

The Plans, Specifications, and Estimates (PS&E) Package and contract file will be emailed to Central Office Final Plans section as described in ***FDM 131***. The District Director of Transportation Development will certify that the design and PS&E Package has been prepared according to the appropriate certification procedures. The date of this certification will be noted on the Transmittal of PS&E Package. The Transmittal will also identify the individuals that reviewed the Plans Package, Specification Package, and Authorization Estimate, and the dates of their respective reviews. The Department's official estimate will be approved by the District Estimates Engineer.

Modification for Non-Conventional Projects:
Delete Item 8.

(9) Authorization to Advertise:

The PS&E Package must be approved by the Specifications and Estimates Office prior to requesting FHWA authorization for construction to advertise. The Contract File Package (consisting of the documents listed on the Contract File Index completed by the district), FHWA Summary Sheet, Cost Estimate, Right of Way Certification. Utility Certification, Environmental Certification and Railroad Certification Agreement (if applicable), along with confirmation of the PS&E approval will be reviewed by the appropriate district and central offices and by the Federal Aid Management Office prior to submittal of the federal authorization request.

Modification for Non-Conventional Projects:
Delete Item 9 and replace with the following: (9) Use of Federal Funds on Design-Build Projects The District Design-Build team approves the Design Criteria Package before the release of the ***Final Request for Proposal*** to the Design-Build Firms. The Design-Build authorization request should be processed immediately upon notice of receipt of package approval. Upon receipt of the approved FHWA authorization, District Federal-Aid Coordinators should notify the District Design-Build firm so that the RFPs and Design Criteria packages can be distributed. See ***Chapter 7.1*** of the ***Design Build Procurement and Administration*** procedure.

(10) Revisions:

Revisions to the PS&E Package will be processed as described in ***FDM 132***. Concurrence from the District Design, Structures Design, or Project Management Engineer is required to document the acceptability of the revision in lieu of FHWA review and concurrence.

Modification for Non-Conventional Projects:
Delete Item 10.

In special cases where programs or projects are developed in the Central Office, an appropriate Central Office Manager will provide any necessary concurrences in lieu of a District Manager.

Modification for Non-Conventional Projects:
Delete the above paragraph.

(11) Environmental Review

Pursuant to ***Title 23 U.S.C., Chapter 3, Section 327 and the Memorandum of Understanding (MOU)*** executed on December 14, 2016, the Department had assumed FHWA's responsibilities under the National Environmental Policy Act (NEPA) for highway projects on the State Highway System (SHS) and Local Agency Program (LAP) projects off the SHS. Based on this MOU, the Department responsibilities include environmental review, interagency consultation, and other activities pertaining to the review or approval of NEPA actions. The Department is the Lead Federal Agency for highway projects, and approval authority is held by the State Office of Environmental Management. (OEM).

128.4 Certification Documentation and Reviews

FHWA will perform periodic reviews of projects developed under the Stewardship and Oversight Agreement and may have access to review project phases and records at any time. Adequate documentation throughout the design phase is critical. All approvals and concurrences outlined in the previous section must be sufficiently documented. A complete, well-organized design project file should be able to support a compliance review. All correspondence and documents must include the Federal-aid project number. The Quality Assurance procedures described in ***FDM 125*** will be used by the Central Office to monitor district compliance with the certification requirements.

Modification for Non-Conventional Projects:
Delete the last sentence in the above paragraph.

128.5 Certification Statement

A Federal-aid project certification statement by the District Director of Transportation Development for each project is no longer required; however, Districts are responsible for ensuring that all Federal-aid requirements are met as described in this chapter.