

Local Public Agency Manual for the Development of Projects



This manual is produced by the New Hampshire Department of Transportation to communicate all program processes and requirements to NHDOT's LPA program recipients. This manual is an update to and replacement of the following documents:

- *TE & CMAQ Program Manual for the Development of Projects*
May 2001
- *Safe Routes to School Project Administration Guide*
September 2010
- *NHDOT Process for Municipally Managed Federal Aid Surface Transportation Program Projects*
January 2007

NHDOT recognizes that this LPA Manual will need to be revisited as users gain experience with it and as rules and procedures change. NHDOT is committed to periodically revising this manual. Local sponsors and other interested members of the public are invited to submit comments regarding this manual to:

LPA Manual Comments
c/o NHDOT Bureau of Planning & Community Assistance
7 Hazen Drive
Concord, NH 03302-0483

Or via email at:

Bureau46@dot.state.nh.us

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Introduction

The New Hampshire Department of Transportation (NHDOT) is a federal funds recipient through the Federal Highway Administration (FHWA). NHDOT makes a portion of the funding available to municipalities and other project sponsors (local project sponsors or sub-recipients) to develop, improve, and enhance New Hampshire's transportation network. Projects that receive such funds are referred to as Local Public Agency (LPA) projects. The funds are made available for a variety of projects. These projects include, but are not limited to, the following types:

- Critical highway safety improvements
- Highway and bridge improvements
- Intersection improvements
- Provision of facilities for bicyclists and pedestrians
- Congestion-related improvements
- Public transit enhancements
- Provision of safety and educational activities for bicyclists and pedestrians
- Scenic or historic highway programs (including the provision of tourist and welcome center facilities) (Formerly eligible under programs that are discontinued and closing out.)
- Rehabilitation of historic transportation buildings, structures or facilities (including historic railroad facilities and canals) (formerly eligible under programs that are discontinued and closing out.)
- Preservation of abandoned railway corridors (including the conversion for use as bicycle paths and pedestrian facilities)
- Improvements to air quality

LPA projects are managed and match-funded (as necessary) to implement eligible projects at the local level. The NHDOT views the LPA process as an opportunity to provide the benefits of ensuring that the local project sponsor develops a project meeting its needs, within budget, and on schedule. The NHDOT desires projects to be successful and the NHDOT has developed this manual to aid in the achievement of that goal.

That stated, it is important for project sponsors to understand that these federal funds carry many requirements that may not be familiar to many project sponsors. It is also important to understand which parties are involved and what roles they play in the LPA process. These roles and requirements are generally summarized on the next page.

Legal and Regulatory Authority

Federal-aid funds shall not participate in any cost that is not incurred in conformity with applicable Federal and State Law, the regulations in 23 Code of Federal Regulations (*CFR*) and 49 CFR, and policies and procedures established by FHWA and NHDOT, including costs incurred prior to FHWA authorization.

As specified in 23 CFR 630.112(a), when NHDOT authorizes a project, NHDOT "agrees to comply with the applicable terms and conditions set forth in Title 23, United States Code (*USC*), the NHDOT Local Public Agency Project Manual

regulations issued pursuant thereto, the policies and procedures promulgated by the FHWA relative to the designated project covered by the agreement, and all other applicable Federal laws and regulations".

Laws and regulations related to the oversight of LPA-administered projects include:

- 23 U.S.C. § 106(g)(4)(A)(i) and \.ill (as amended by SAFETEA-LU Section 1904)
- 2 CFR 200
 - Subpart A – Acronyms and Definitions
 - Subpart B – General Provisions
 - Subpart C – Pre-federal Award Requirements and Contents of Federal Awards
 - Subpart D – Post-Federal Award Requirements
 - Subpart E – Cost Principals
 - Subpart F – Audit Requirements
- 49 CFR Part 18 in general and specifically:
 - 49 CFR 18.3 1-2
- 49 CFR 18.26(b)(1) and (2)
- 49 CFR 18.37(a)(1) and (2)
- 49 CFR 18.40(a)
- This list may change occasionally

In short, the NHDOT is responsible for ensuring that sub-recipients (project sponsors) of Federal funds have adequate delivery systems for projects and sufficient accounting controls to properly manage such Federal funds. FHWA, NHDOT, and/or any authorized representatives have the right of access to review/audit any LPA records (*invoices, project records, etc.*) at any stage of the project.

Roles and Responsibilities

NHDOT

NHDOT is responsible for establishing State policy, developing procedures, and providing oversight of the project sponsors on behalf of FHWA regarding their LPA projects. NHDOT will also provide project coordination, quality assurance, and adequate supervision of the program for reimbursing project sponsors for all facets of LPA projects including:

- | | |
|-------------------------|---|
| • Planning | • Right-of-Way acquisition |
| • Project development | • Construction of transportation facilities |
| • Environmental studies | • Procurement of services |
| • Design | |

NHDOT is also responsible for updating the LPA Manual for LPA projects.

FHWA

Although NHDOT has been delegated many of the federal responsibilities for oversight of the NHDOT LPA Program, the FHWA retains the authority and responsibility for implementing and monitoring Federal laws, regulations, and executive orders affecting the LPA program and

projects. As a result, both FHWA and NHDOT will conduct process reviews either jointly or independently to ensure compliance with applicable laws and regulations.

FHWA New Hampshire Division personnel provide guidance and other technical assistance on topics associated with the development and implementation of Federal-aid programs or projects including planning, finance, preliminary engineering, environmental reviews, real property acquisition and management, bridge expertise, roadway safety, traffic operations, , design, construction, asset management, and civil rights.

Project Sponsor

The project sponsor is responsible for:

- Project selection
- Planning
- Programming
- Environmental investigation
- Design
- Right-of-Way acquisition
- Construction, including inspection oversight and necessary project documentation
- Submitting reimbursement requests
- Maintenance and operation of the project

The project sponsor must ensure that its staff members, consultants, and contractors comply with the applicable State and Federal laws, regulations, and procedures in developing and constructing an LPA project. The project sponsor must provide a qualified, full-time public employee to be in responsible charge for the project. This individual will be referred to throughout the manual as the Person in Responsible Charge (*PRC*). Throughout this manual, the term project sponsor will refer to the PRC, project sponsor staff, and any sub-consultants.

Manual Organization

- Section 2: General descriptions of the programs administered according to this manual, eligibility criteria, discussion of the application processes, and program contacts.
- Section 3: Overview of the scope and schedule of the LPA project development process.
- Section 4: General points related to the management of LPA projects and program contacts.
- Section 5: Overview and information regarding the project sponsor/consultant certification program, process, requirements, and potential consequences of lapsed certification.
- Section 6: Detailed information on getting a project started.
- Section 7: Discussion of the steps in the project process.
- Section 8: Important information regarding your LPA project's budget.

- Section 9: Details on the Statewide Transportation Improvement Program (STIP) and how this process impacts your project.
- Section 10: The Project Agreement – understanding what is encompassed in this document and what it means for your project development process.
- Section 11: Details regarding “single audit reports”, what the reporting requirements are for LPA projects, and who to contact with questions.
- Section 12: Details on how to get reimbursed for eligible LPA project costs.
- Section 13: Everything you need to know about the qualification-based selection process – the mandated process to use in obtaining engineering or architectural services on LPA projects.
- Section 14: An explanation and accounting of what needs to be part of your consultant contracts.
- Section 15: Everything you need to know about the LPA project design process.
- Section 16: A listing/discussion of the standards that LPA projects will be measured against.
- Section 17: A step-by-step guide through the National Historic Preservation Act process for LPA projects.
- Section 18: An accounting of the types and recommended frequency of public involvement opportunities for LPA projects.
- Section 19: This section provides details on dealing with rights-of-way (ROW) on LPA projects.
- Section 20: If you are considering a project that will be dealing with utilities, this section has the information you will need.
- Section 21: An overview of the permits typically required for LPA projects.
- Section 22: This section provides information on the Federal labor compliance regulations that are in effect on LPA projects.
- Section 23: NHDOT adopted a new work zone and traffic control policy – the details of which are discussed in this section.
- Section 24: Identifies what to do if you are considering a proprietary product or using your own employees to perform paid work on an LPA project.

- Section 25: Plans, Specification and Engineer's Estimate (PS&E) details may be found in this section (this is the task that precedes bidding for construction).
- Section 26: All of the requirements, processes, and procedures involved in putting your construction project out to bid.
- Section 27: All of the requirements, processes, and procedures involved in constructing your project correctly and according to State and Federal regulations may be found in this section.
- Section 28: Not constructing anything on your project? This is the section you will want to review.
- Section 29: What your LPA maintenance responsibilities will be following construction are detailed here.
- Section 30: This section addresses why and what happens if your project is cancelled.
- Section 31: Once your LPA project is complete, the project closeout process begins, and the details may be found in this section. Section 31 also details what is involved in obtaining your final reimbursement on your LPA project.
- Section 32: The administration of planning projects and studies is addressed in this section.
- Appendices: Nearly every section will have examples or additional information that will be available in the appendices.

Other important details and the manual update process

The project sponsor should remember that this manual, while providing a great deal of information regarding the processes and requirements of projects funded through these Federal-aid programs, is not intended to be the sole source of information available. Close coordination and communication with your NHDOT project manager will be critical to the smooth implementation and success of the project.

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Since Federal-aid funding programs and eligibility requirements frequently change, the LPA manual will be subject to frequent updates. When changes are necessary, NHDOT will notify project sponsors and provide the updated pages on the NHDOT website <http://www.nh.gov/dot/business/municipalities.htm>.

Comments and suggestions for improvement of the manual are always welcome.

Comments should be directed to:

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John O. Morton Building, 7 Hazen Drive
P.O. Box 483
Concord, NH 03302-0483

NHDOT's LPA Funding Programs

The information provided in this manual applies to the management of the following current Federally- funded transportation programs:

- Congestion Mitigation & Air Quality (CMAQ)
- Transportation Alternatives Program (TAP)(TAP under MAP-21, and continued as a Transportation Alternative (TA) set-aside under the FAST ACT Surface Transportation Block Grant (STBG) Program
- Highway Safety Improvement (HSIP)
- Municipal Off-system Bridge Replacement and Rehabilitation (MOBRR)
- Emergency Relief (ER)

This section also includes information on funding programs discontinued under MAP-21, but which still have active projects in the LPA programs that are completing – including:

- Transportation Enhancement (TE)
- Safe Routes to School (SRTS)
- Scenic Byways (SB)
- National Historic Covered Bridge Preservation Program (NHCBP)

It is also important to note that at the writing of Version 3 of this manual, the Fixing America's Surface Transportation (FAST) Act was signed into law in December 2015. This new federal transportation authorization includes many changes to transportation funding appropriations and programs. As rules are adopted at the federal and state levels in response to this legislation, this manual will be revised in response.

This section has been provided to give an overview of each program's:

- Background and historic funding level
- Eligibility criteria
- Application cycle and process

Detailed program inquiries or requests for additional details regarding these programs should be directed to the program contacts identified herein.

Congestion Mitigation & Air Quality (CMAQ) Program

Background and historic funding level

The State of New Hampshire has been administering the Congestion Mitigation & Air Quality (CMAQ) Program since 1994. The focus of the CMAQ Program is to improve air quality and reduce congestion issues throughout the state. This program generally receives approximately \$10 million each year. Projects are eligible to receive no more than 80% of the project costs from the program. CMAQ funding is received in two general pots as defined by FHWA through the annual

apportionments. The flexible pot can be used statewide, and the mandatory pot must be spent in either the CO maintenance areas (City of Manchester and City of Nashua) or those former nonattainment and maintenance areas where the ozone standard has been revoked.

In FY 2016 all CMAQ funds received in NH are considered "flexible" per FHWA notices.

Eligibility criteria

In order to determine CMAQ Program eligibility, applicants need to answer "yes" to the following questions:

1) Will the proposed project offer air quality benefits?

Regardless of whether NH receives "flexible" or "mandatory" use CMAQ funds, it is the Department's position at this time that all projects will still require a positive air quality benefit.

2) Does the proposed project meet one of the 16 eligible project categories?

The project must fall under one of the following eligible categories:

- Traffic Control Measures (TCM)
- Extreme Low-Temperature Cold Start Programs
- Alternative Fuels and Vehicles
- Congestion Reduction and Traffic Flow Improvements
- Transit Improvements
- Bicycle and Pedestrian Facilities and Improvements
- Travel Demand Management
- Public Education and Outreach Activities
- Transportation Management Associations
- Carpooling and Vanpooling Programs
- Freight/Intermodal
- Diesel Engine Retrofits and Other Advanced Technologies
- Idle Reduction
- Training
- Inspection/Maintenance Programs
- Experimental Pilot Projects

Additional information regarding project eligibility may also be found on-line in the Federal Highway Administration's (FHWA) CMAQ Program Guidance located at:

http://www.fhwa.dot.gov/environment/air_quality/cmaq/

Application cycle and process

The most recent CMAQ round was in 2011. Since then, the Department has focused on completing projects that were selected in previous rounds but were not constructed. The Department has moved all the old projects forward and they are all scheduled to be constructed before 2018. A new round is being discussed at this time with the Department and CMAQ Advisory Committee.

A CMAQ application process begins with an announcement that the application period has opened, the distribution of the application, and guidance and solicitation for Letters of Interest

(LOI). The announcement is made to all nine RPCs through their transportation/public involvement committees (TACs/TTACs), through a press release to the NH media outlets by N

NHDOT, and with a posting on the NHDOT website located at:

<http://www.nh.gov/dot/org/projectdevelopment/planning/tecmag/index.htm>

The LOI solicitation period typically lasts three weeks. The LOI assists the NHDOT with several aspects of the application process including:

- Identification of potential applicants to ensure communications regarding the application process and questions regarding particular projects are aimed at appropriate parties.
- Approximate amount of program funds that will be requested during the application process to allow for appropriate decisions regarding funding.
- Coordination of pre-application workshops.

The LOI's are submitted to both the NHDOT program manager as well as the transportation planner at the appropriate regional planning commission. A sample LOI is found in Appendix 2 of this manual, and a list of RPC contacts are found at the end of this section.

After the LOI submittal, the process moves to the pre-application workshops. These workshops provide details to prospective applicants regarding the current application process, details regarding funding and number of applications, review of the evaluation criteria, information regarding the project development process, and an opportunity for applicants to ask questions of NHDOT staff.

The application period is about two to three months during which applications are refined and developed. During this period, a cooperative panel consisting of personnel from NHDOT, FHWA, and NHDES reviews the air quality analysis developed for each individual project. This allows for corrections as appropriate prior to the application due date. More information regarding the air quality analysis documentation required in the application cycle can be found in Appendix 3.

Projects are ranked at the regional level by regional planning commissions and scored by the Department. These scores develop a ranking which is provided to the CMAQ Advisory Committee for their review and consideration as part of the effort involved in making funding recommendations to the NHDOT commissioner, who makes the final award determination. The CMAQ Advisory Committee is chaired by the Department's Director of Project Development and is comprised of representatives of all nine regional planning commissions, NH Department of Environmental Services, Federal Highway Administration, and the Bureau of Rail & Transit.

For additional information on the CMAQ Program, contact:

Thomas Jameson, PE

CMAQ Program Manager

Phone: (603)271-3462 (*Direct*)

Phone: (603)271-3344 (*Planning & Community Assistance Main Number*)

Email: Tom.Jameson@dot.nh.gov

Transportation Alternatives Program (TAP)

Background and funding level

The Transportation Alternatives Program (TAP) provides funding under MAP-21 for alternative transportation programs and projects including on-and-off road pedestrian and bicycle facilities, infrastructure projects for improving non-driver access to public transportation and enhanced mobility, community improvement activities, and environmental mitigation; recreational trail program projects; and safe routes to school projects.

The FAST ACT replaced the MAP-21 TAP with a set-aside of Surface Transportation Block Grant (STBG) Program funding for the Transportation Alternatives (referred to as TA set-aside). These TA set-aside funds include all previous projects and activities that were previously eligible under MAP-21 TAP so it will continue to be referred to as the TAP.

Each project is eligible to receive no more than 80% of the project costs in federal funds, with the remaining 20% as matching funds by the applicant.

Based on experience from the Transportation Enhancement Program (TE) and the Safe Routes to School Program (SRTS), a high and low limit for project funding was set. The minimum amount in the most recent round was set at \$400,000 (\$320,000 fed.) and a maximum amount was set at \$1,000,000 (\$800,000 fed.)

Eligibility criteria

The TAP requires a competitive process to select projects for funding. In 2014, NHDOT created the Transportation Alternatives Program Advisory Committee (TAPAC). This group of stakeholders developed criteria that were used to evaluate TAP projects. Six criteria were developed and are as follows:

- Safety
- Potential for success
- Socioeconomic benefits
- RPC/MPO ranking
- Multi-modal connections
- Project connectivity

Application cycle and process

An application process was developed based on the above criteria and distributed to all potential applicants. The TAP application and grant award process is currently held on a 2 –year cycle. NHDOT selects an independent scoring committee with one member of the TAPAC and they used Decision Lens software to score and rank the projects. The Regional Planning Commissions (RPC) are given the applications for their regions for them to score and rank. Those rankings are used

for the RPC/MPO ranking criterion. Federal rules identify dedicated population regions that have to be factored into the final selection. The four categories are as follows:

- Population >200,000
- Population 5,000 to 200,000
- Population <5,000
- Flex (can be used anywhere in state)

The final project selections made sure all population categories were accounted for. As projects begin, funds from the specific population categories will be used first and if additional obligations are needed will be taken from the Flex category.

Note: The population categories are based on a census model provided by FHWA. They are not based on the actual population of the individual town or city.

Thomas Jameson, PE

TAP Program Manager

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Surface Transportation Program (STP)

Municipalities have the opportunity to undertake some types of transportation improvement projects funded under the Surface Transportation Program (STP) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and the Transportation Equity Act for the 21st Century (TEA 21-1998). The total project costs are typically paid with 80% federal funds and 20% matching funds provided by the Municipality.

In order to qualify a project must be on a highway that is of a functional class that is eligible for Federal aid. The Federal Aid Route map at the following link:

http://www.nh.gov/dot/org/projectdevelopment/planning/gis-data-catalog/documents/state_fc.pdf.

Qualifying projects are mainly comprised of those projects that have been proposed at the community level, recommended to meet local and regional needs, are enrolled in the State 10-Year Transportation Improvement Program and included in an approved 4-year Statewide Transportation Program (STIP). In an effort to provide more local control in the decision-making process during project development, as well as expedite these projects to completion, communities are encouraged to undertake the management of their projects. Typical projects include the reconstruction of Class IV highways (state numbered routes) within the compact of municipalities.

For additional Information on the Federal Surface Transportation Program contact:

Charles "C.R." Willeke, PE

Project Manager

Phone: (603) 271-3344 (*Planning & Community Assistance Main Number*)

Email: Charles.Willeke@dot.nh.gov

Municipal Off-system Bridge Replacement and Rehabilitation Program (MOBRR)

Federal aid is available for municipal bridges through a program called Municipal Off-system Bridge Replacement and Rehabilitation (MOBRR). The program typically provides 80% federal funds and requires a 20% local match. In order to qualify for federal aid, the existing bridge must meet the federal definition of a bridge; i.e. 20 feet or greater in length.

Typically, larger municipal bridge projects that meet the requirements are funded through MOBRR. The MOBRR program manager determines if municipal bridge aid projects are going to be funded through the State Aid Bridge Program or MOBRR. A project funded all or partially with federal MOBRR funds must meet all federal requirements.

For additional information on the federal aid bridge program, contact:

Charles "C. R." Willeke, PE

Project Manger

Phone: (603) 271-3344 (*Planning & Community Assistance Main Number*)

Email: Charles.Willeke@dot.nh.gov

Highway Safety Improvement Program (HSIP)

This program was established with the purpose of funding an effort to achieve a significant reduction in traffic fatalities and serious injuries on all public roads. NHDOT has a Strategic Highway Safety Plan (SHSP) in place as required as a basis for the program. NHDOT annually analyzes crash data and identifies locations with crash levels exceeding what would be expected on similar roads based on crash history and other factors. Locations can be either on the state-owned highway system or locally-owned system. When a location is identified on a local network, NHDOT contacts the municipality to see if there is interest in participating in a municipally-managed HSIP project to improve safety at the identified location.

Projects are funded with 90% federal funds and require a 10% local match. Typically, the HSIP projects on locally –owned transportation systems are locally-managed and would need to follow the requirements in this manual.

For additional information on the Highway Safety Improvement Program, contact:

Robert Hudson, PE

Community Assistance Engineer

Phone: (603) 271-7866 (*Direct*)

Phone: (603)271-3344 (*Planning & Community Assistance Main Number*)

Email: Robert.Hudson@dot.nh.gov

Federal Emergency Relief (ER) Program

The US Congress authorized a special program from the Highway Trust Fund for the repair or reconstruction of Federal-aid eligible highways and roads on Federal lands which have suffered serious damage as a result of natural disasters or catastrophic failures from an external cause. A Presidential declaration or a gubernatorial request is needed for eligibility. Also required is a subsequent finding by FHWA that: 1) a natural disaster or catastrophic failure has occurred; 2) damage is eligible for ER assistance and results in a disastrous impact on transportation services; and 3) are unusually high expenses to the highway agency. It should be noted that FEMA will not provide assistance for repairing damage on roads that are eligible for FHWA federal aid. Additionally, claims for repairs of undocumented damage or unsubstantiated repairs will not be considered for reimbursement. A map is available that shows federal aid eligible roads.

Once a finding is made by the FHWA NH Division as to whether a specific disaster qualifies for the ER program, NHDOT will contact all applicable municipalities. A field review of all damaged roadway facilities by FHWA and NHDOT is required to substantiate the documented damage and emergency repairs which may have been completed. Claims for repairs of undocumented damage or unsubstantiated repairs will not be considered for reimbursement. NHDOT will notify the municipality once an ER funding eligibility determination has been made for the individual damaged sites reviewed. That determination will establish if the eligible emergency repairs that are made within 180 days will be reimbursed with 100% federal funds – as they are considered emergency repairs to restore essential traffic, to minimize the extent of damage or to protect remaining facilities. Those repairs made after 180 days are reimbursed with 80% federal funds as these projects are considered permanent repairs and are funded as part of the typical federal aid process. Repairs made after 180 days and/or that go beyond the three objectives of Emergency Repairs are considered permanent repairs and must follow the regular Federal-aid process.

Guidelines for the FHWA ER Program are available in the FHWA Emergency Relief Manual, which may be found online via the following link:

<http://www.fhwa.dot.gov/reports/erm/er.pdf>

For additional information on the FHWA Emergency Relief (ER) program contact:

Municipal Highways Engineer

Bureau of Planning and Community Assistance

Phone: (603)271-3344 (*Planning & Community Assistance Main Number*)

Email:

Notes:

- 1) There are other federal aid programs that are occasionally used to fund locally administered projects. The requirements of the LPA Manual apply to all other federally funded locally managed projects and programs. Occasionally programs have requirements unique to that program that do not apply to all other programs. Contact the Bureau of Planning and Community Assistance with questions regarding the funding programs.

- 2) The requirements of the LPA Manual do not apply to projects that are only funded through the State Aid Bridge Program or the State Aid Highway Program. These programs have separate program guidelines found at the NHDOT website. If a project includes both state aid and federal aid, the requirements of the LPA Manual do apply.

Programs Discontinued under MAP-21

Transportation Enhancement (TE) Program

Background and historic funding level

The State of New Hampshire has administered the Transportation Enhancement (TE) Program since 1994. The TE Program was focused on providing funds to projects that enhanced the surface transportation system. This program had generally awarded about \$6 million dollars in project funding on a statewide basis every two years, with each project eligible for no more than 80% of the project's cost in program funding.

Eligibility criteria

In determining if a potential project was eligible, project applicants needed to determine if:

- 1) The project qualified under at least one of the 12 designated TE activities.
The 12 activities included:
 - Provision of facilities for pedestrians and bicycles
 - Acquisition of scenic easements and scenic or historic sites (including historic battlefields)
 - Certain types of environmental mitigation
 - Preservation of abandoned railway corridors
 - Landscaping and other scenic beautification
 - Provision of safety and educational activities for bicyclists and pedestrians
 - Control and removal of outdoor advertising
 - Archaeological planning and research
 - Environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity
 - Establishment of transportation museums

A complete list of previously eligible activities may be found on-line at the National Transportation Enhancements Clearinghouse website located at: <http://www.enhancements.org/>

- 2) The project must have related to surface transportation.

Surface transportation refers to all modes of transportation, including marine travel. As guidance, the following factors might be considered in judging a project's relationship to a surface mode of transportation:

- The project's proximity to a highway or a pedestrian/bicycle corridor

- Whether the project enhances the aesthetic, cultural, or historic aspects of the travel experience
- Whether the project serves a current or past transportation purpose

For additional information on the TE Program, contact:

Thomas Jameson, PE

TE Program Manager

Phone: (603)271-3462 (*Direct*)

Phone: (603)271-3344 (*Planning & Community Assistance Main Number*)

Email: Tom.Jameson@dot.nh.gov

Safe Routes to School (SRTS) Program

Background and historic funding level

Safe Routes to School (SRTS) is a nationwide effort encouraging children in kindergarten through eighth grade, including those with disabilities, to safely walk and/or ride bicycles between home and school. New Hampshire has been allocated just over \$8 million since 2006, most of which has been used to reimburse 100% of local expenses for infrastructure and non-infrastructure projects.

All of the state's funds were awarded through six cycles of general grants as well as travel plan and startup awards made off-cycle. The department is carefully monitoring local projects, and funds for new non-infrastructure projects can become available if sponsors are not able to carry out their plans or if projects are completed below budget.

NHDOT has supported community efforts by offering three choices of reimbursement funding,:

1. **Startup grants** of less than \$5,000 to assist communities with initial planning and non-infrastructure programs.
2. **Travel plan grants** of up to \$15,000 per school for more detailed planning.
3. **General grants** for comprehensive infrastructure and/or non-infrastructure programs. SRTS infrastructure projects are eligible for awards under the Transportation Alternatives Program (TAP).

"Infrastructure" refers to the physical improvements that will enable safe walking and bicycle riding. These improvements include sidewalks, bicycle lanes and bicycle routes, off-road paths, and traffic-calming items such as signs, painted crosswalks, and other pavement markings.

"Non-infrastructure" programs include evaluation, encouragement, education, and enforcement.

Eligibility Criteria

To be eligible for reimbursement funding through SRTS, programs and projects must demonstrate that they are designed *specifically* to encourage and enable students in kindergarten through 8th grade to safely walk or ride bicycles between home and school.

Additionally, the SRTS Program places a strong emphasis on how a program or project responds to the "5 E's". The 5 E's are:

- *Evaluation*: evidence of comprehensive SRTS "travel" or "action" plans, surveys, and site visits to assess barriers to safe walking and biking.
- *Education*: classroom or extra-curricular activities addressing safe bicycling and walking practices.
- *Encouragement*: promotion of walking and biking through community and school events.
- *Enforcement*: identification by local officials of potentially dangerous driving habits, crime, and bullying on streets near schools.
- *Engineering*: physical changes such as construction of and repairs to sidewalks and bike routes, signs and traffic signals, and pavement marking.

Application cycle and process

NHDOT has expedited the planning process that can lead to comprehensive community programs. NHDOT and regional planning commissions (RPC's) now accept applications for startup and comprehensive travel plan grants whenever a community is ready to move ahead. This "rolling application cycle" allows grants to be awarded on a first-come, first-served when funding is available.

Potential applicants must meet with the coordinator for a mandatory pre-application workshop. These workshops provide details to prospective applicants regarding the current application process, details regarding funding and number of applications, review of the evaluation criteria, information regarding the project development process, and an opportunity for applicants to ask questions of NHDOT staff.

For both planning and general grants through the SRTS Program, applications are submitted to both NHDOT and RPCs for an assessment of eligibility and quality of applications and determination of eligibility

For additional information on the SRTS Program, contact:

John W. Corrigan

NH SRTS Program Coordinator

Phone: (603) 271-1980 (*Direct*)

Phone: (603)271-3344 (*Planning & Community Assistance Main Number*)

Email: John.Corrigan@dot.nh.gov

Scenic Byways Program

Background and historic funding level

The New Hampshire Scenic and Cultural Byways Program was established in 1992 under RSA 238:19, "... to provide the opportunity for residents and visitors to travel a system of byways which feature the scenic and cultural qualities of the state within the existing highway system, promote retention of rural and urban scenic byways, support the cultural, recreational and historic attributes along these byways, and expose the unique elements of the state's beauty, culture and history."

New Hampshire's Scenic and Cultural Byways Program is one of many now in place nationwide. These statewide programs are tied directly to the National Scenic Byways Program (NSBP) – from which opportunities for Federal grant funds were available on a competitive basis.

Within the US Department of Transportation, the Federal Highways Administration (FHWA) has lead responsibility for the NSBP. The NSBP was a discretionary grants program that provides merit-based funding by byway-related projects each year. The US Secretary of Transportation recognizes certain roads as America's Byways®, National Scenic Byways, or All-American Roads based on their intrinsic qualities. FHWA promotes the collection as America's Byways.

Approximately \$43 million in Federal grant funds were available nationally on an annual basis. NH byways had been recipients of approximately \$500,000 in grant awards per year for the past few years with the maximum Federal share of 80%.

Eligibility criteria

The eight categories of eligible of project activities are:

- | | |
|--|-----------------------------|
| 1) State and Indian Tribe Scenic Byway | 5) Access to Recreation |
| 2) Corridor Management Plan | 6) Resource Protection |
| 3) Safety Improvements | 7) Interpretive Information |
| 4) Byway Facilities | 8) Marketing |

Additionally, proposed projects submitted for consideration should benefit the byway traveler's experience, whether it will help manage the intrinsic qualities that support the byway's designation, shape the byway's story, interpret the story for visitors, or improve visitor facilities along the byway.

Additional information on the National Scenic Byways Program may be found at the following website: <http://bywaysonline.org>.

For additional Information on the Scenic Byways Program, contact:

William Rose

NH Scenic Byways Program Manager

Phone: (603) 271-3344 (*Planning & Community Assistance Main Number*)

Email: William.Rose@dot.nh.gov

National Historic Covered Bridge Preservation Program

The National Historic Covered Bridge Preservation (NHCBP) program supported the rehabilitation, repair, and/or preservation of historic covered bridges. Projects received funding through a competitive application process administered by FHWA. The individual program was ended under MAP-21. These projects may be considered un the new STBGP, formerly TAP.

Charles "C. R." Willeke, PE

NHCBP Program Manger

Phone: (603) 271-3344 (*Planning & Community Assistance Main Number*)

Email: Charles.Willeke@dot.nh.gov

Regional Planning Commissions

New Hampshire is divided into nine distinct regional planning areas, each served by a regional planning commission made up of and governed by constituent communities. These RPCs have a role to play in the long range planning of the region's transportation system and as such may be a valuable asset to planning for and implementing the variety of projects funded through the LPA programs. Sponsors should contact their respective regional planning commission to discuss the application process and coordinate regional planning activities. The regional planning commissions are:

NORTH COUNTRY COUNCIL

Dr. Barbara Robinson, Executive Director
Mt Eustis Commons Suite 246
Littleton, NH 03561
Tel: 444-6303 **Fax:** 444-7588
e-mail: nccinc@nccouncil.org

LAKES REGION PLANNING COMMISSION

Jeff Hayes, Executive Director
Humiston Building
103 Main Street, Suite 3
Meredith, NH 03253-9287
Tel: 279-8171 **Fax:** 279-0200
e-mail: lrpc@lakesrpc.org

UPPER VALLEY-LAKE SUNAPEE REGIONAL PLANNING COMMISSION

Steve Schneider, Executive Director
10 Water Street
Lebanon, NH 03766
Tel: 448-1680 **Fax:** 448-0170
e-mail: sschneider@uvlsrpc.org

SOUTHWEST REGION PLANNING COMMISSION

Timothy Murphy, Executive Director
37 Ashuelot Street
Keene, NH 03431
Tel: 357-0557 **Fax:** 357-7440
e-mail: tmurphy@swrpc.org

CENTRAL NH REGIONAL PLANNING COMMISSION

Mike Tardiff, Executive Director
 28 Commercial Street
 Concord, NH 03301
Tel: 226-6020 **Fax:** 226-6023
 e-mail: mtardiff@cnhrpc.org

SOUTHERN NH PLANNING COMMISSION

Sylvia Von Aulock, Executive Director
 438 Dubuque Street
 Manchester, NH 03102-3546
Tel: 669-4664 **Fax:** 669-4350
 e-mail: dpreece@snhpc.org

NASHUA REGIONAL PLANNING COMMISSION

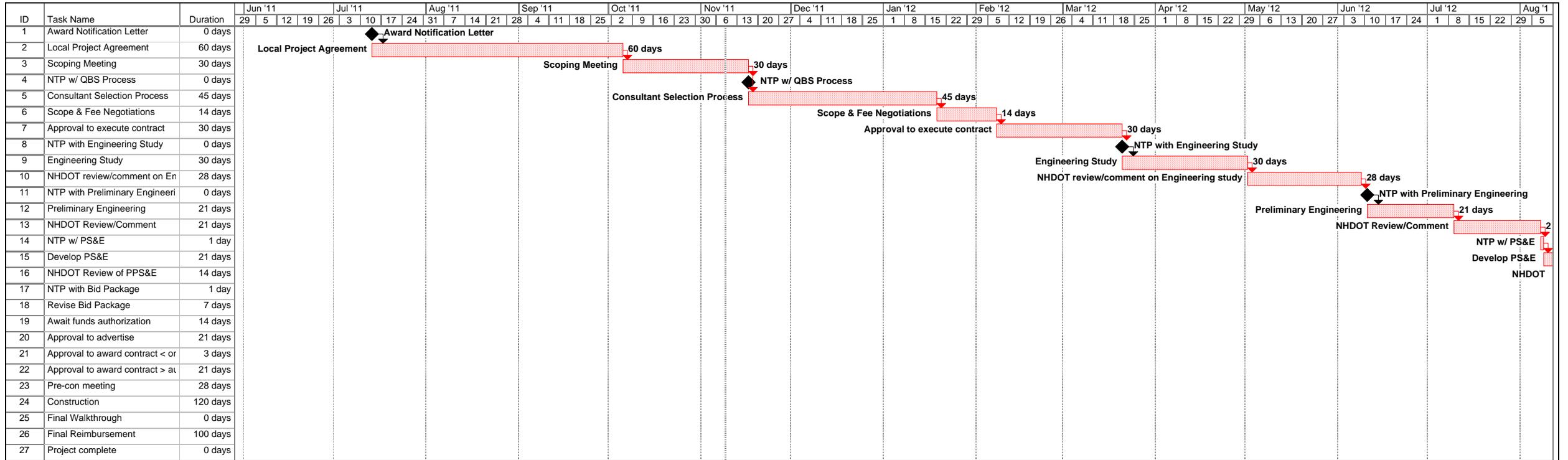
Tim Roache, Executive Director
 9 Executive Park Drive, Suite 201
 Merrimack, NH 03054
Tel: 424-2240 **Fax:** 424-2230
 e-mail: timr@nashuarpc.org

ROCKINGHAM PLANNING COMMISSION

Cliff Sinnott, Executive Director
 156 Water Street
 Exeter, NH 03833
Tel: 778-0885 **Fax:** 778-9183
 e-mail: csinnott@rpc-nh.org

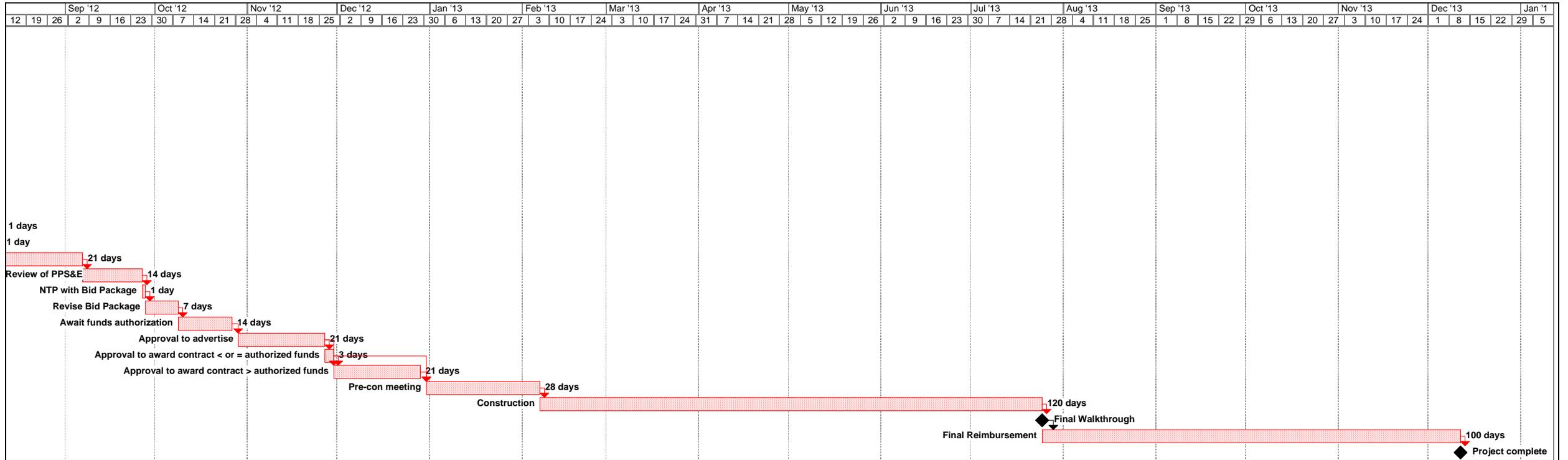
STRAFFORD REGIONAL PLANNING COMMISSION

Cynthia Copeland, Executive Director
 Rochester Community Center
 150 Wakefield Street, Suite 12
 Rochester, NH 03867
Tel: 994-3500 **Fax:** 994-3504
 e-mail: src@strafford.org



Project: LPAGantt
Date: Wed 11/9/11

| | | | | | | | | | |
|---------------|--|----------------|--|-------------------------|--|-----------------|--|------------------|--|
| Task | | Milestone | | Rolled Up Critical Task | | Split | | Group By Summary | |
| Critical Task | | Summary | | Rolled Up Milestone | | External Tasks | | | |
| Progress | | Rolled Up Task | | Rolled Up Progress | | Project Summary | | | |



Project: LPAGantt
Date: Wed 11/9/11

| | | | | | | | | | |
|---------------|--|----------------|--|-------------------------|--|-----------------|--|------------------|--|
| Task | | Milestone | | Rolled Up Critical Task | | Split | | Group By Summary | |
| Critical Task | | Summary | | Rolled Up Milestone | | External Tasks | | | |
| Progress | | Rolled Up Task | | Rolled Up Progress | | Project Summary | | | |

Project Management

NHDOT has developed the Local Public Agency (LPA) process to provide project sponsors the opportunity to manage and construct a local transportation project with federal funds. We believe the LPA process provides the benefits of ensuring that the local project sponsor develops a project meeting their needs, within their budget, and on their schedule. We want the projects to be successful and have developed this manual and accompanying selection processes to aid in the achievement of that goal.

NHDOT has taken this approach for several reasons, including:

- Identification of one local point of contact with decision-making authority to streamline the project implementation process
- Increasing the role and control of the local project sponsor to lead the decision-making process
- Enabling the local project sponsor to implement the project with a timeline that meets its needs. Each sponsor will establish a timeline for its project. NHDOT will work to accommodate the sponsor's schedule and assist the sponsor in securing the appropriate approvals throughout the process. More details regarding the project schedule may be found in Section 7.

Changes in federal oversight of these funding programs have made it clear that the project sponsors must be knowledgeable and in charge of the management and implementation of their projects. NHDOT's role continues to involve assisting sponsors to ensure that all appropriate federal and state regulations are met so that project funding is not jeopardized. To that end, NHDOT has implemented a process for training and certifying individuals and consultants in the appropriate manner and methods by which projects in these programs are to be administered (see Section 5 for more information). This new process utilizes the instruction and guidance contained within this manual, the new certification and training requirements, and the assigned NHDOT project manager to ensure compliance with applicable state and federal rules.

Transit and rail-type projects will likely be transferred to the Federal Transit Administration (FTA) for oversight. In these cases, the project sponsor will need to manage the project following the procedures and guidelines of the FTA. The NHDOT Bureau of Rail and Transit will provide assistance upon request.

Should you have questions about the process for project administration, please contact the following:

For TAP, and CMAQ Projects:

Thomas Jameson, PE

TAP and CMAQ Program Manager

Email: Tom.Jameson@dot.nh.gov

Phone: (603) 271-3462 (*Direct*)

Phone: (603)271-3344 (*Planning & Community Assistance Main Number*)

For Safe Routes to School Projects:

John Corrigan

NH Safe Routes to School Coordinator

Email: John.Corrigan@dot.nh.gov

Phone: (603) 271-1980 (*Direct*)

Phone: (603)271-3344 (*Planning & Community Assistance Main Number*)

For Rail and Transit Projects:

Patrick Herlihy

Administrator, NHDOT Bureau of Rail & Transit

Email: Patrick.Herlihy@dot.nh.gov

Phone: (603) 271-2449 (*Direct*)

For Highway Safety Improvement (HSIP) Projects:

Robert Hudson, PE

Community Assistance Engineer

Email: Robert.Hudson@dot.nh.gov

Phone: (603) 271-7866 (*Direct*)

Phone: (603)271-3344 (*Planning & Community Assistance Main Number*)

For Federal Aid Bridge Projects (MOBRR):

Charles "C. R." Willeke, PE

Project Manager

E: Charles.Willeke@dot.nh.gov

P: (603)271-3344 (*Planning & Community Assistance Main Number*)

For Emergency Relief (ER) Projects:

Vacant

Municipal Highways Engineer

Email:

Phone: (603) 271- (*Direct*)

Phone: (603)271-3344 (*Planning & Community Assistance Main Number*)

Certification Process

The purpose of this section is to outline the certification process that will be required for both project sponsors to have federal funding for their projects and the consultants they hire to assist them with the projects. The certification follows attendance at required training provided by NHDOT as detailed below. The intent of the training in conjunction with this manual is for the project sponsors and their consultants to have full understanding of the requirements that go with the federal funding.

Attendance at both parts of the training (see below) will be required for the local person with decision-making authority who is the point of contact and in responsible charge of the project (“the Sponsor”) and the consultants engaged to assist them in developing and constructing the projects.

For projects that include construction the training will consist of two components totaling 1½ days. For projects that do not include construction, the training will consist of Part 1 only:

Part 1: Federally-funded Local Program Administration Workshop

The certification training is a full day of training on LPA topics and follows the implementation of a project from grant award through design and construction to project closeout using the information found in the LPA Manual. The NHDOT Bureau of Planning and Community Assistance will offer this workshop at least twice annually.

Part 2: Federal Contract Labor and Equal Employment Opportunity (EEO) Compliance

Part 2 consists of ½ day of Federal Labor Compliance training that covers in detail the federal requirements for contract labor and EEO requirements, Davis-Bacon, and Disadvantaged Business Enterprise (DBE) provisions of federal contracts. This workshop will be offered at least twice annually by the Office of Federal Compliance (OFC) specifically for the LPA sponsors and their consultants and offered at other times targeted to contractors.

Training requirements for projects with a design and/ or a construction phase:

- The Sponsor shall be required to attend Part 1 and 2 in order for the Sponsor to be certified and eligible to receive the federal funds for an infrastructure project that includes construction.
- The consultant staff that will be in responsible charge of design and construction shall be required to attend Part 1 and 2 in order to work on the project. This includes consultant staff that will be the on-site contract administrator during the construction phase if that person is different than the PE (professional engineer) in responsible charge of construction.

- The contractor who is the lowest responsive responsible bidder shall be required to attend Part 2 or an equivalent session offered by OFC .

Training requirements for a project without a construction phase:

- The Sponsor and any consultant shall be required to attend Part 1 only.

Certification

Attendance at the required LPA training shall result in a certification that is valid for three years following the completion of the training. The OFC training results in a 2 year certification. Both sponsors and consultants holding a valid 3 year LPA training certificate will be allowed to work on projects from Engineering Study to the end of the design process. If the project includes construction, then the Sponsor and consultant will be required to have a valid OFC training certificate in order to gain notice-to-proceed with advertising for bids. NHDOT reserves the right to require attendance at an additional training session targeted at informing the Sponsors and consultants of updates to the requirements during the period of certification.

If NHDOT determines that any individual Sponsor or consultant has shown a lack of understanding or compliance with the requirements of the Local Program Administration (LPA) process, then the certification shall be suspended and the person shall be required to attend the training again.

Potential reasons to be required to attend include, but are not limited to:

- Multiple unacceptable submissions that require re-submission of items including but not limited to: design documents, plans, and estimates, consultant scope and fee, change orders, reimbursement requests, QBS summaries, and construction contract award recommendations.
- Proceeding without authorization by NHDOT.
- Failure to provide timely information requested by NHDOT to determine compliance with program requirements, timeliness to be determined by NHDOT.
- Failure to submit invoices in a timely manner.
- Lack of project documentation/records to support federal participation.

If the person who attended the training as a representative of the Sponsor or consultant leaves the employment by that group, then the Sponsor or consultant will be required to have a replacement attend the training.

If a Sponsor or consultant for the project is **out of compliance** with the certification requirements, federal funds will not be authorized for subsequent phases of the project.

NHDOT will maintain and make public the records of individuals meeting the requirements of training certification on the NHDOT website. If an individual changes employment, they are responsible for notifying NHDOT of the change.

Costs associated with attending the training are not eligible for reimbursement through a project.

Individuals who previously attended the *Municipal Managed Federally Funded Program Workshop* or *Office of Federal Compliance training* will need to meet the current certification requirements as the previous training will not be counted.

For programs that include an application process, the applicants shall be required to attend an additional mandatory pre-application workshop given by NHDOT Bureau of Planning and Community Assistance. This training cannot be taken in lieu of the Part 1 and 2 workshops described above. Likewise, LPA certification does not relieve an applicant from attending a pre-application workshop.

Questions?

Should you have any questions regarding the certification and training processes outlined here, please contact:

Assigned Community Assistance Project Manager

Or:

Dawn Pulica

Program Assistant II

Phone: 603.271.8205

Email: Dawn.Pulica@dot.nh.gov

Project Initiation and Project Scoping Meeting

Following notification of project selection, a NHDOT program manager will contact the Project Sponsor to discuss when funding will be available and the steps necessary to commence the project.

Process Following Notification of Project Selection

- NHDOT seeks Governor and Council (G&C) approval to enter into an agreement with the Project Sponsor. This can take a few months to accomplish.
- The Project Sponsor and NHDOT execute a Local Project Agreement for the specific project.
- A Project Scoping Meeting is scheduled.
- Authorization of funds for the project is obtained from FHWA.
- Notice-to-proceed with the appropriate phase of the project from the NHDOT Project Manager will follow and project eligible activities for that phase may begin.

The Local Project Agreement

The NHDOT project manager will prepare a Local Project Agreement that sets the terms for the funds awarded the project, the federal funds awarded as well as the amount of the local match (if any), and the responsibilities of the Project Sponsor and NHDOT. This agreement needs to be executed by both parties and approved by Governor and Executive Council before the project can proceed (see Section 10 – Local Project Agreement for more information).

Project Scoping Meeting

Before any notice-to-proceed on any project elements are issued the NHDOT project manager will contact the Sponsor to set up a meeting to confirm the scope of the project, the preliminary project budget, and discuss the project development process and next steps for the project. They will determine whether local forces or consultants will perform the environmental studies and/or design work. A project schedule will also be discussed during the scoping meeting.

Authorization of Funding

Before any costs that will be submitted for reimbursement are incurred, NHDOT needs to get federal funds authorized for each phase of work needed to complete the project. These phases typically include planning (P), preliminary engineering (PE), right-of-way (ROW), and construction (CON) (including construction engineering (CE)). Requirements for each phase of work are detailed in this manual. See Table of Contents.

It is important to note that any costs incurred prior execution of the LPA Project Agreement, authorization of funds by the NHDOT project Manager and notice-to-proceed cannot be reimbursed.

NHDOT strongly suggests that the Project Sponsor maintain on-going communication with the NHDOT project manager to keep us apprised of project activities and schedule. NHDOT will work with the Project Sponsor to ensure that the project meets all program requirements as well as the goals of the community.

The Project Schedule

Each project's schedule is different – whether compared to other projects in the same funding program or projects in different funding programs. The details that follow are based on what average construction and non-construction projects will experience under established program rules. The type and complexity of individual projects could influence the ultimate project schedule for each individual project. The steps listed below will be helpful in outlining the project schedule each Project Sponsor is required to develop according to the Local Project Agreement. Additional details regarding the steps in a project are outlined in the flowchart included in Section 3 and in other applicable sections of the manual as referenced below. Should you have any program specific questions, please refer to the program contacts located in Section 2 of this manual.

For Construction Projects

Award Notification Letter

This step of the project represents official notice from NHDOT to Sponsors that the proposed project application has been selected for funding. This notice will include details as to the approved project scope, the amount of funds awarded, and other details regarding the fiscal year funds have been programmed at NHDOT and an indication of next steps.

The notification will also include the contact information for the Sponsor's project contact at NHDOT. An example of the typical award notification letter may be found in appendix 1.

LPA Project Agreement

The next step in the project process is the LPA Project Agreement. This element of the project is dealt with in detail in Section 10 of this manual. The LPA Project Agreement sets the terms for the funds awarded, the amount of local match required (if any) as well as federal funds awarded and the project limits of the project.

Estimated Time: 2-6 months after receipt of Notice of Award letter

Scoping Meeting

The Sponsor is required to attend a meeting with the assigned NHDOT project manager to discuss the project scope and budget. The meeting must occur before issuance of any notice-to-proceed (NTP) for any project phase. This meeting also presents an opportunity to discuss any questions regarding the approved project.

This requirement is identified in article III.E. of the Agreement, which states:

That the PROJECT SPONSOR will attend a meeting with the DEPARTMENT's representative after signing this AGREEMENT to discuss the Project's scope, budget and schedule. The PROJECT SPONSOR will subsequently provide a schedule showing project milestones with dates. Failure to meet these dates could delay funding for construction.

For more information on the project scoping meeting, please see section 6 of this manual.

Estimated time: Within one month of execution of the Agreement

Notice to Proceed with QBS Process

The first notice-to-proceed (NTP) that is issued for a project will be for the start of the Qualifications Based Selection (QBS) process. This allows for the solicitation for qualifications to be considered potentially eligible for reimbursement – provided those expenses have been previously approved by NHDOT. The approval occurs after the project schedule and budget are fleshed out in the project-scoping meeting. For more information on the QBS process and when its use is required, please refer to section 13 of this manual.

Estimated time: Within one month of Scoping Meeting

Consultant Selection Process

The Sponsor will conduct the reviews of the submitted statements of qualification by the local selection committee, host interviews as appropriate, score the qualifications of interested firms, and identify the preferred firm. For more information on the selection process, please refer to section 13 of this manual.

Estimated time: 4-6 weeks from Scoping Meeting

Approval of QBS Process and NTP with Scope and Fee Negotiations

A summary of the QBS process used by the Sponsor, along with identification of the ranking criteria and a request to begin negotiations on a scope and fee with the preferred firm are submitted to NHDOT for review and approval. An example of the standard scope and fee submittal is included in appendix 2.

Estimated time: 2 weeks from selection of preferred consulting firm

Approval to Execute Contract

Once the Sponsor and a consultant have arrived at agreement on a project scope and fee, a copy of the proposed contract is sent to the NHDOT project manager for review and approval. The length of this step could be greater or lesser depending upon how closely the negotiated contract is to the budget discussed at the Scoping Meeting, and whether the proposed scope and fees are justified by the Independent Government Estimate (IGE) process (detailed in Section 14 of this manual). If costs exceed available funds, then additional delays may be expected.

Estimated time: 3-4 weeks from certification of QBS and approval to negotiate

NTP with Engineering Study

Approval of the proposed engineering contract will be accompanied by a NTP for the first step of project design, the Engineering Study.

Estimated time: Upon approval of contract (see above)

NTP with Preliminary Plans

The Engineering Study for the project will be submitted to the NHDOT project manager for review. NHDOT identifies 2-4 weeks as the standard review period; however, sponsors may expect additional time for discussions regarding any issues raised by the proposals presented in the

Engineering Study. With approval of the Engineering Study will be an NTAP for Preliminary Plans, the second step of design.

Estimated time: 2-4 weeks from receipt of Engineering Study.

NTP with Plans, Specifications and Estimate

Following review and approval of the preliminary plan phase of the project – subject to the previously identified typical 2-4 week review period – NHDOT will issue a NTP with the development of the plans, specifications and estimate (PS&E) package for a project. For more information on the PS&E package, please refer to Section 25 of this manual.

Estimated time: 2-4 weeks from receipt of preliminary design plans

NTP with Final Plans and Bid Package

This third step of the project design involves the development of final plans and a project estimate, along with a bid package.

Estimated time: 2-4 weeks from receipt of preliminary plans, specifications and engineering (PS&E) package

NTP with Bidding

Upon approval of the PS&E and authorization of funds for construction requested as part of the PS&E submittal, approval will be granted to begin advertising for bids on the project. **PLEASE NOTE:** 1.) The minimum **required** bid period is 21 days. Sponsors should plan accordingly. 2.) All efforts associated with the bid process are considered to be part of the PE phase of the project.

Estimated time: 3-4 weeks from PS&E package submittal

Approval to Award Construction Contract

The project sponsor will need to submit a letter requesting to award to the lowest responsible, responsive bidder. The letter will summarize their bid review and analysis and include an itemized tabulation of all bids and the engineer's estimate.

If the requested amount of the construction contract is equal to or less than the amount of the construction phase funds approved in the PS&E phase of the project, the approval from NHDOT is received more quickly. If substantial changes need to be made to the project or the funds approved in the PS&E phase, the process will take longer due to federal funding authorization requirements from FHWA. For more information regarding the bidding of projects, please refer to Section 26 of this manual.

Estimated time: 3 days-3 weeks from receipt of request to award and bid tabulation

Pre-Construction Meeting

Once the advertising period is over, bids have been reviewed, the lowest responsive bidder has been identified, the bid tabulation has been prepared, and NHDOT has approved the proposed contract, a pre-construction meeting should occur with all pertinent parties – including NHDOT to

discuss the project and requirements of federal funds. For more information on the pre-construction meeting see Section 27 of this manual.

Estimated time: 4 weeks from receipt of approval to award

Final Reimbursement and Project Closeout

At project close, all NHDOT forms and the final reimbursement request will be submitted and paid. NHDOT final project closeout then begins. See Section 31 for more details.

Estimated time: 3 - 6 months from construction completion

Non- Construction Projects

The following information addresses the general process for those LPA projects that do not include a construction component. For additional information regarding projects that do not involve construction, please refer to section 28 of this manual.

Award Notification letter

This step of the project represents official notice from the NHDOT to Project Sponsors that the proposed project application has been selected for funding. This notice will include details as to the approved project scope, the amount of funds awarded, and other details regarding the year funds have been programmed at NHDOT and an indication of next steps.

The notification will also include the contact information for the Sponsor's project contact at NHDOT.

LPA Project Agreement

The next step in the project process is the LPA Project Agreement. This element of the project is dealt with in detail in Section 10. The Agreement sets the terms for the funds awarded, the amounts of local match required (if any) as well as federal funds awarded and the limits governing the implementation of the project.

Estimated Time: 1-2 months after receipt of Notice of Award letter

Scoping Meeting

The Sponsor is required to attend a meeting with the assigned NHDOT project manager to discuss the project scope and budget. The meeting must occur before issuance of any notice to proceed (NTP) for any project phase. This meeting also presents an opportunity to discuss any questions regarding the approved project.

This requirement is identified in article III-E of the LPA Agreement, which states:

That the PROJECT SPONSOR will attend a meeting with the DEPARTMENT's representative after signing this AGREEMENT to discuss the Project's scope, budget and schedule. The PROJECT SPONSOR will subsequently provide a schedule showing project milestones with dates. Failure to meet these dates could delay funding for construction.

Estimated time: Within one month of execution of the Agreement

NTP with Approved Project Scope

Once agreement has been reached regarding the project scope, eligible expenses, and an approved project schedule, the Sponsor will be furnished with written authorization to proceed with non-infrastructure acquisitions in accordance with the guidelines found in Section 28 of this manual.

Estimated time: Within 2-3 weeks of approved project scope and schedule

Final Reimbursement and Project Closeout

At project close, all NHDOT forms and the final reimbursement request will be submitted and paid. NHDOT final project closeout then begins. See Section 29 for more details.

Estimated time: 3 months from project completion.

The Project Budget

Each Local Public Agency (LPA) project budget will typically be divided into three phases if it is an infrastructure project. The three phases are:

- **Preliminary Engineering**
- **Right-of-Way**
- **Construction**

All elements of an LPA project involving construction or acquisition will be placed into/funded through these phases. However, not all projects will utilize all phases. Some LPA projects that only involve the development of plans or specialized planning studies may be funded under an **Other phase** of funds. These types of projects are discussed in more detail in Section 32 of this manual. Below is a description of each of the 4 typical funding phases and some details on the types of work that each phase might cover.

Other (O):

- Planning projects (those projects not intended to progress to construction)
- Non-infrastructure purchasing/service projects

Preliminary Engineering (PE):

PE funds are used for the development of the project from all of the elements of the design process to bid award. These elements include (but are not necessarily limited to):

- Engineering Study
- Preliminary Plans
- Construction Plans
- Bid Package Development
- Environmental Reviews
- Bid Process & Review
- ROW incidentals – including title research, abstracting, public hearings ROW plans, etc.

NHDOT typically sees PE phase budgets that total roughly 15-22% of the estimated cost of construction.

Right-of-Way (ROW):

ROW funds are used for the acquisition of property or the right of access onto or across property. It is extremely important to keep in mind that work cannot be performed on any private property without the owner's written consent, and that owners are entitled to fair compensation for use of their property. Typical tasks conducted with the use of ROW funds include:

- Property Valuation
- Relocation Assistance
- Documentation
- Acquisitions - easements or fee

Project sponsors should note that no funds for ROW acquisition are authorized until the environmental review process (NEPA(National Environmental Policy Act of 1969)) has been completed.

It is also important to note – though ROW is addressed in more detail in Section 19 – that all aspects of ROW acquisition including taking, temporary or permanent access or easements, and property management are subject to the federal regulations commonly referred to as the Uniform Act. Failure to adhere to the requirements of this statute can negate project federal-aid participation.

Construction (CON):

- Project Construction
- Materials Testing
- Construction Administration
- Transit Capital
- Transit Operating Funds

Project sponsors should note that once construction phase funding is authorized, no additional PE funds may be authorized for a project.

It is important to note that all LPA projects utilizing federal funds and administered through NHDOT will involve apportioning funds across/within the three (PE, ROW, CON) project phases. However, as previously noted, not all projects will require funding for all three phases.

Setting the Project Budget

The individual project budget will be divided appropriately between the phases. The discussion regarding how much and in which fiscal year(s) will be part of the project scoping meeting that is held in the period immediately after the execution of the Local Project Agreement.

Sponsors need to remember to stay in constant contact with the NHDOT project manager assigned to the project in order to minimize the disruptions that can occur when proper financial planning is lacking. Failure of the Sponsor to adhere to the project budget by phase may result in significant delays due to the STIP processes that may be required to ensure that funds are available in the appropriate phase and fiscal year. For more information about the STIP, please refer to section 9 of this manual.

Failure to adhere to the approved budget and obtain the required pre-approvals of additional changes could result in the costs being considered as non-participating and not eligible for reimbursement.

Statewide Transportation Improvement Program (STIP)

Understanding the STIP Process

What is the STIP?

The STIP is the four-year State project listing for federally-funded projects - a federal requirement under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) as signed into law in 2005. SAFETEA-LU built upon previous legislation, outlining and expanding funding categories as well as the associated requirements of the Federal-aid program for transportation. Those requirements, as codified in Title 23 Part 135 and 49 Part 5305 of the United States Code (USC), stipulate that each state will develop a continuing, cooperative, and comprehensive statewide multimodal transportation planning process, including the development of a statewide transportation improvement program (STIP). In New Hampshire, the STIP is updated every two years and is developed through a coordinated statewide and metropolitan planning process.

The STIP Financial Plan is prepared to satisfy the requirements of 23 CFR §450.216 and to provide information to the public. According to federal regulations, the STIP shall include projects, or identified phases of projects, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. Additionally, in the first two years of the STIP, funds for projects located in the non-attainment or air-quality maintenance areas of NH must be committed or available. The STIP ensures that funding is available for all projects within it through a variety of resources, including, but not limited to, federal aid with appropriate match amounts, state resources from the Highway Trust Fund, and those provided in the budget of the State of NH, turnpike revenue, and local and private revenue.

Why is the STIP important to my project?

The short answer is that in order for funds to be spent and work effort authorized, there must be funds showing as programmed for the particular phase to be engaged in the proper amount and in the correct fiscal year in the STIP. This can be a routine and easy step in the development of a project or it may be a lengthy investment of time to allow the process to move forward. The determining factor delineating whether it is the former or latter is how aware sponsors and NHDOT project managers are of the process – and making sure to stay ahead of the curve.

The Amendment Process

How long will a STIP change take?

How much time a change to the STIP takes depends on the type of change requested and where the request for the change falls within the STIP schedule. There are three decision thresholds that dictate what type of change is required, they are:

1. Amendment
2. Administrative Modification: Major
3. Administrative Modification: Minor

What follows is additional information regarding each of the three thresholds, along with the process and amount of time required to address each type of change.

Project Cost Change

| Total Cost of Project within approved STIP Years | Full Amendment | Administrative Modification | |
|--|----------------|------------------------------------|-----------------------|
| | | Major | Minor |
| <i>Action Needed if the Change in Cost from the amount approved in the most current STIP is:</i> | | | |
| < \$1 Million | >75% | Up to 75% (\$750k limit) | <10% |
| \$1 Million to \$5 Million | >30% | Up to 30% (\$750k limit) | <8% (\$200k limit) |
| > \$5 Million to \$10 Million | >20% | Up to 20% (\$1.5 million limit) | <5% (\$300k limit) |
| > \$10 Million to \$50 Million | >10% | Up to 10% (\$3.5 million limit) | <4% (\$400k limit) |
| Over \$50 Million | >5% | Up to 5% (\$5 million limit) | <1% (\$500k limit) |

Amendments

- Any change to a project that impacts the regional emissions analysis used for the current Conformity Determination. Primarily affects Non Exempt projects in nonattainment or maintenance areas with year or scope changes.
- Adding or removing a project or phase of a project (unless for illustrative purposes);
- Making a substantive change in the design concept or scope of a project that uses state or federal funds or of any regionally significant projects regardless of the funding source;
- A significant change in the total cost of a project (see chart previous page);
- A change in the fiscal year of any phase of a project or portion of a phase in areas where expedited project selection procedures have not been adopted; no such areas currently exist in NH;
- Officially adding a project that had been included for illustrative purposes.

Amendments and updates are major revisions that are intended to address substantial changes to projects or changes that may affect air quality conformity or financial constraint. The amendment or update process also provides an opportunity to process all other changes that may have been approved since the previous amendment, including administrative modifications, and post authorization revisions. Amendments or updates require, at a minimum, a public comment period, and may require a conformity determination, and subsequent approvals. They may also require an update to the air quality analysis (regional emissions analysis).

As part of the interagency consultation process, for each amendment the group will recommend a length for the public comment period between 10 and 30 days. For the Update that is processed on a two-year cycle concurrent with New Hampshire's 10 Year Plan update cycle, the public comment period will be 30 days at a minimum. For amendments, the recommendation will be based on various factors including the magnitude of the changes being proposed, the relative sensitivity of the projects included, and any factors that require timely actions, e.g. emergencies, federal lapses, etc. In MPO areas each MPO will implement the comment period and in rural areas the NHDOT shall.

The public comment period must be completed, and any comments received must be responded to before the MPO or State adopts the TIP/STIP amendment. The timeframe to adopt an amendment is 2-3 months after review through Interagency Consultation. To the extent possible, amendments to the STIP will be processed on a quarterly basis. Authorization requests in the FHWA Fiscal Management Information System (FMIS) for changes included in amendments or updates will document the date of Federal agency STIP amendment or STIP update approval in the FMIS STIP Reference field.

When TIP/STIP amendments involve revisions to projects that are grouped by function, work type, and/or geographic area, consistent with requirements listed in 23 CFR 450.324 (f) and 23 CFR 450.216 (j), NHDOT will in a timely manner, provide the appropriate RPC/MPO with the individual project-specific changes in their respective regions that are included in such revisions. Upon request, NHDOT will also provide project-specific listings by RPC/MPO for grouped projects that are included with STIP Updates.

Metropolitan Areas

Project changes in an MPO area must comply with the provisions of 23 CFR 450.326 pertaining to TIP revisions. Regardless of whether the project change is initiated by the MPO or the NHDOT, the MPO board must adopt the change to their approved TIP. There must be a public participation process, consistent with the respective MPO public participation plan. Upon formal endorsement of the amendment or update at a public MPO meeting, the MPO shall provide a copy of the amendment or update to the State (NHDOT and NHDES), FHWA, FTA, and EPA. In non-attainment or maintenance areas, any amendment or update to the TIP that modifies a non-exempt project or projects must be accompanied by a corresponding conformity determination by the MPO. That conformity determination, depending upon the discussions through interagency consultation, may or

may not require a new air quality analysis. The MPO shall also process their Long Range/Metropolitan Transportation Plan (MTP) Amendments or Updates concurrently with their TIP Amendments or Updates as necessary to maintain consistency between the documents. The MPO will follow their public participation procedures for amending or updating their MTP.

The State shall incorporate the amendment or update into the STIP and submit the amended or updated STIP to FHWA/FTA for approval. The NHDOT must demonstrate that the STIP remains financially constrained. Each amendment shall be dated and sequentially numbered. The FHWA/FTA shall approve or disapprove the STIP amendment or update in whole or may choose to exclude specific projects from the approval. The state will forward copies of the approval to the affected MPOs. The MPO will, in turn, notify the affected Transit Operator(s), if transit projects are involved.

Non-Metropolitan Areas

The NHDOT will notify the non-MPO area RPCs of the project changes and hold a public comment period. The Director of Project Development for NHDOT will have approval authority for rural area amendments or updates to the STIP. After the comment period closes, the NHDOT forwards the amendment or update, along with any comments received, to FHWA/FTA for approval. Based on comments from the planning commissions or the public, additional consideration will be given to the proposed changes. The State will notify affected transit operators if transit projects are involved.

Administrative Modification: Major

- Minor changes in the total cost of a project (see chart on page 2);
- Minor changes to the scope of work or description of a project that do not affect the regional emissions analysis or otherwise trigger a conformity determination;
- Combining or separating two or more projects that are part of an approved STIP;
- Combining or separating phases within a project that are part of an approved STIP;
- Identifying a specific project that was part of a grouped project and adjusting the grouped project accordingly;
- Changes to the funding category(s) identified in an approved STIP for a project that do not affect financial constraint;
- A change in the fiscal year of any phase or portion of a phase of a project in areas where expedited project selection procedures have been adopted, provided they are advanced or delayed within the STIP years and do not affect the financial constraint of the STIP or trigger a Conformity Determination. Currently, procedures are in effect for the entire State of NH.

Consistent with the definitions outlined in 23 U.S.C. 101(a) and 49 U.S.C. 5302; administrative modifications are minor revisions with the intent of allowing, where suitable, relatively small changes to be made to projects in an expedited fashion. Major administrative modifications can be made based on the thresholds established in the table found on page 2. The major administrative

modification option is available for projects at the discretion of the MPO, or the State in rural areas, which may instead opt for the formal amendment process. Whenever practical, project changes that may qualify for minor administrative modification will be processed as major ones. FHWA may, but is not required to, authorize requests in FMIS up to the project cost change thresholds outlined for major administrative modifications listed in Table II-1. FHWA will consider each request for authorization on a case-by-case basis. Authorization requests in the FMIS for changes included in administrative modifications that have been processed will document the date of processing in the FMIS STIP Reference field.

A list of all the projects that are potentially eligible for major administrative modifications will be reviewed through the interagency consultation process. Following that review, each of the affected MPOs and rural planning commissions will receive a list of projects with the proposed changes within their jurisdiction. The NHDOT will ensure that all revisions processed as administrative modifications are incorporated in the next amendment or STIP update as necessary, including the financial constraint demonstration. Major administrative modifications should typically take less than 1 month to process.

To ensure consistency with federal regulations regarding air quality conformity, any project that is identified to potentially affect the air quality conformity determination of a non-attainment or maintenance area will be discussed during interagency consultation. If, through consultation, a proposed major administrative modification is identified as having an impact on the air quality conformity determination, that revision will be escalated to an Amendment.

Metropolitan Areas

Each MPO has the option to create and adopt, as part of their prospectus, procedures to process major administrative modifications. Included as major administrative modifications, the MPO also has the option to include expedited project selection procedures. The person or committee designated as having approval authority, or the MPO policy committee, will review the list of projects and issue a letter stating concurrence or disapproval of the proposed changes. The MPO will notify the FHWA/FTA of the approval of major administrative modifications. The FHWA/FTA shall place these adjustment letters on file with the STIP and the State shall update the STIP to include these modifications periodically as full amendments or STIP updates are processed. If the person or board designated as having approval authority elects not to approve an administrative modification, that change could still be pursued through the full amendment process. FHWA/FTA will review modifications and will accept or not accept them; however, no formal approval will be required. If FHWA/FTA does not accept a major administrative modification, this will be noted in the federal approval action for the subsequent amendment, and any additional authorization of federal funds may be withheld by FHWA/FTA at their discretion until such subsequent amendment is provided federal approval.

Non-Metropolitan Areas

The NHDOT establishes procedures to act on project changes as major administrative modifications, including expedited project selection procedures, for the non-MPO areas of the State. These procedures have been developed through consultation with the regional planning commissions and federal agencies.

Project changes within the thresholds outlined in the table on page 2 of this document may be processed as major administrative modifications, provided:

- The NHDOT shall notify the affected RPCs in writing of the need for the proposed changes. This notice shall include an explanation of the purpose and need of the change and will be discussed through the interagency consultation process;
- for any project changes which will impact the timeline or amount of local matching funds, the NHDOT, in consultation with the RPC, shall determine that the funds will be available after contacting the governing body;
- Written concurrence with the proposed change in project implementation is issued by the Director of Project Development of the NHDOT or their designee.
- The NHDOT will notify the FHWA/FTA of the approval of major administrative modifications. The FHWA/FTA shall place these adjustment letters on file with the STIP and the State shall update the STIP to include these modifications periodically as full amendments or STIP updates are processed.
- FHWA/FTA will review modifications and will accept or not accept them; however, no formal approval will be required. If FHWA/FTA does not accept a major administrative modification, this will be noted in the federal approval action for the subsequent amendment, and any additional authorization of federal funds may be withheld by FHWA/FTA at their discretion until such subsequent amendment is provided federal approval.

Administrative Modification: Minor

- Minor changes to the total cost of a project (see table on page 2);
- Typographical corrections to project information.

Technical corrections and minor cost adjustments will be treated as minor administrative modifications only when timeliness is critical. In all other cases, the changes will be processed as major administrative modifications. These types of changes will be reported in the STIP as future amendments or STIP updates are processed and would not require approval. The changes will also be reported as part of the regular interagency consultation process.

For more information on the STIP, please visit the following link:

<http://www.nh.gov/dot/org/projectdevelopment/planning/stip/documents/NHSTIPAmendmentProcess.pdf>

The LPA Project Agreement

Following the notice-of-award (see Section 6), the Project Sponsor and NHDOT will execute an LPA Project Agreement for the specific program's project. The agreement defines each party's responsibilities and financial commitments. The program's share is defined in the agreement and usually requires a local match, which was pre-determined during the application process.

The agreement is executed prior to proceeding with the project (a sample may be found in appendix 3). The final signed agreement is a formal legal document; however, the project dollar amounts and project scope could change with NHDOT and Federal Highway Administration (FHWA) authorization.

Please note that the timing between the project award notification and receipt of the agreement from NHDOT could be several months. NHDOT strongly suggests that the Sponsor maintain on-going communication to keep apprised of the project status. NHDOT will work with the Sponsor to ensure that the project meets all program requirements as well as the goals of the community.

Steps of the Process Following Initial Transmittal of Agreement

- NHDOT prepares the LPA Project Agreement and forwards it to the project sponsor.
- The project sponsor executes and returns all originals back to NHDOT.
- NHDOT obtains its required signature, dates the agreement, and forwards an original back to the Sponsor with a checklist for tracking the project's progress. This can take a few weeks to accomplish.
- A Project Scoping Meeting is scheduled.
- NHDOT obtains authorization of funds for the project from FHWA.
- Notice-to-proceed with the project or a portion of the project will generally follow.

Possible Exceptions to the Above Process

- Non-Infrastructure Agreements (do not need G&C approval if less than \$10,000)

Please note: **Any expenditure prior to NHDOT's notice to proceed for a specific phase cannot be reimbursed.**

The sample agreement found in appendix 3 should be reviewed in its entirety. Significant sections of particular note to the Sponsor include sections:

- I-C** Maintenance of the project during and after construction, as well as sidewalk maintenance
- I-D** Submitting monthly progress reports and invoices for reimbursement of NHDOT share
- I-E** Maintaining financial records for three years after project closeout
- I-H** Reimbursing NHDOT and/or FHWA for all funds if found in default
- III-D** Schedule for project start and completion

Single Audit Report Requirements

The Federal Highways Administration (FHWA) refers to all project sponsors receiving federal funds through NH Department of Transportation (NHDOT) as “sub-recipients”. For each fiscal year that federal funds are expended while under agreement with NHDOT, the sub-recipient must submit the results of its certified audit regarding those federal funds.

NHDOT Bureau of Planning and Community Assistance sends a “Request for Audit Reports” to sub-recipients (see Appendix 4 for sample) for all active Local Public Agency (LPA) projects receiving federal funds through NHDOT. Single audit reports are required when the total federal expenditures from all sources of federal funds by a sub-recipient are \$750,000 or greater in a single fiscal year. These single audit reports are required to be prepared in accordance with the Office of Management and Budget (OMB) Supercircular 2 CFR Part 200, Subpart F – Audit Requirements.

Auditors engaged to perform financial audits should be licensed certified public accountants (CPAs) or persons working for a licensed certified public accounting firm or a government auditing organization. Single audit reports must include a Schedule of Expenditures of Federal Awards and a Schedule of Findings and Questioned Costs (see Appendix 4 for samples). The schedule includes a list of individual Federal programs by Federal agency, the name of the pass-through entity and identifying number assigned by the pass-through entity, the total federal expenditures for each individual Federal program, and the Catalog of Federal Domestic Assistance (CFDA) numbers (numbers assigned to federal funding programs). **The CFDA number for NHDOT’s FHWA funding programs is 20.205.**

The total Federal expenditures for all programs as discussed above are located at the end of the schedule. All single audit reports include a Schedule of Findings and Questioned Costs, which provide an overview of the audit results and findings that summarize the auditor’s findings and questioned costs relating to the financial statements, and findings and questioned costs for Federal awards.

If the sub-recipient expends **less than** \$750,000 from all sources of Federal funds in a single sub-recipient’s fiscal year, the sub-recipient must submit a letter to NHDOT Bureau of Planning and Community Assistance stating that an audit report in accordance with OMB Supercircular 2 CFR 200 was not required (see Appendix 4 for sample). Sub-recipients must also submit the audited Annual Financial Report for each fiscal year that Federal expenditures are incurred. The above-requested materials only need to be provided once for each sub-recipient’s fiscal year, and not for each project.

The following is a summary of the responsibilities of NHDOT as the pass-through entity:

- Send out request for certified audit reports as described above.
- Maintain a file of single audit reports, annual financial reports, and correspondence received from sub-recipients.
- Evaluate single audit reports and send a copy of the single audit report to FHWA.

- For single audit reports with findings, the NHDOT Bureau of Finance & Contracts conducts additional investigations and coordination with the sub-recipient.
- The sub-recipient must provide access to the records and financial statements as necessary.
- NHDOT Bureau of Finance & Contracts issues a management decision on audit findings within six months after receipt of the sub-recipient's audit report to ensure that the sub-recipient takes appropriate and timely corrective action. NHDOT is only responsible for preparing and issuing a management decision for findings related to the Federal program with CFDA 20.205.

It is also important to note that the results of the management decision may affect the ability of the sub-recipient to implement ongoing and future projects.

Reimbursement of Project Costs

All eligible costs incurred in completing approved project work shall be submitted by the Project Sponsor to the NHDOT project manager for reimbursement. After the Project Sponsor has paid approved eligible costs, a request for reimbursement of the program's share must be submitted with the documentation described in this section. The program's share is defined in the local project agreement (see Section 10) and usually requires a local match. The local match portion, pre-determined during the application process, is deducted (unreimbursed) in the reimbursement request (see Appendix 5 for sample).

This section defines eligible costs, submission requirements for the typical types of reimbursement requests, and the miscellaneous requirements for reimbursement requests.

Eligible costs

Eligible costs are those specifically associated with the implementation of the project, outlined in the program's application, and deemed eligible as per the federal program requirements. The Sponsor must receive notice-to-proceed for each phase from the NHDOT project manager before any expenditure during that phase becomes eligible for reimbursement. The notice-to-proceed is limited to the specific, pre-approved phase of the project, providing for monthly invoice submissions. **Any expenditure made by the Sponsor prior to the notice to proceed from NHDOT cannot be reimbursed.**

Eligible costs can include money spent for planning, design engineering, environmental impact analysis and permits, right-of-way easements or acquisitions, construction engineering/administration, construction, and certain non-infrastructure expenditures. Costs incurred in the production of contract plans and proposals, advertising for bids, and property rights-of-way (including appraisals, land damages, deed preparation, and recording fees) qualify for reimbursement, pending NHDOT approval.

NOTE: Future maintenance costs are NOT eligible.

Submission requirements for Consultant invoices (engineering design for PE and CE)

For cost-plus-fixed-fee contracts

- Cover letter from Sponsor that includes the following information:
 - Invoice number with billing period for work performed
 - Certification Statement that the sponsor has reviewed the invoice and it accurately reflects the services performed
 - Amount of reimbursement request
- Proof of payment. This can include a copy of the issued check, credit card receipt, employee payroll register, or computerized report
- Project Status Report with tasks completed for billing period, tasks scheduled for completion, action items, project status, and schedule summary

- Billing Task Summary that lists major tasks for prime consultant and all sub-consultants, contract amount, amount billed to date, amount of prior invoices, amount of current invoice, percent complete for each task and percentage complete for project
- Backup information for all expenses, i.e. number of miles at federally approved mileage rate, etc. with receipts as required
- Certification Statement that the consultant has reviewed the invoice and it accurately reflects the services performed
- Invoice summary spreadsheet that lists all of the subtasks that coincide with the executed contract, direct labor rates and labor classifications, overhead rate, profit, expenses, and invoice total
- Copies of consultant invoice with billing period, employee names, direct labor rates, hours billed, and direct labor costs
- Financial Summary (See Appendix 18 for sample)

NOTE: Budgeted funds not used for specific tasks cannot be unilaterally applied to new work or changes by the project sponsor. Unexpended balances must revert to the program unless approved by change order and within scope of the consultant's contract. Changes involving more funds must be authorized by FHWA prior to expenditure.

For firm-fixed price (lump sum contracts)

- Cover letter from Sponsor that includes the following information:
 - Invoice number with billing period for work performed
 - Certification Statement that the sponsor has reviewed the invoice and it accurately reflects the services performed
 - Amount of reimbursement request
- Proof of payment. This can include a copy of the issued check, credit card receipt, employee payroll register, or computerized report
- Project Status Report with tasks completed for billing period, tasks scheduled for completion, action items, project status, and schedule summary
- Billing Task Summary that lists major tasks for prime consultant and all sub-consultants, contract amount, amount billed to date, amount of prior invoices, amount of current invoice, percent complete for each task and percentage complete for project
- Backup information for all expenses, i.e. number of miles at federally approved mileage rate, receipts as required
- Certification Statement that the consultant has reviewed the invoice and it accurately reflects the services performed
- Financial Summary (See Appendix 18 for sample)

Submission requirements for Contractor construction invoices

- Cover letter from Sponsor that includes the following information:
 - Invoice number with billing period for work performed

- Certification Statement that the sponsor has reviewed the invoice and it accurately reflects the services performed
- Amount of reimbursement request
- Proof of payment. This can include a copy of the issued check, credit card receipt, employee payroll register, or computerized report
- Cover letter from Consultant that includes the following information:
 - Description of construction work completed for billing period. Refer to bid items as much as possible.
 - Percentage complete for construction to date
 - Certification Statement that the consultant has reviewed the invoice and it accurately reflects the work performed
 - Status on the Engineer's Estimate of Balances and Excesses (B & E) as related to contractor work done to date. Attach the appropriate B & E completed.
- Summary sheet prepared by Contractor or Consultant that shows information from the based on bid tabulation compared to the actual quantities constructed and the actual costs incurred. Typically this is a spreadsheet with project name and number, contractor, consultant, and construction period of work performed, that lists the following:
 - Bid tabulation - Item Numbers, item description, quantity, unit, unit price, unit cost
 - Actual quantities - quantity completed for construction period, quantity to date
 - Actual costs – cost completed for construction period, cost completed to date
 - Non-Participating Costs
- Financial Summary (See Appendix 18 for sample)

NOTE: The Project Sponsor may not delete major items of approved work and reapply the funds for other purposes. Any deleted work must be documented by a change order and funds must be credited back to NHDOT.

Miscellaneous requirements

Calculation of profit

For consultant invoices for cost-plus-fixed-fee and lump sum contracts, profit must be calculated based on the percentage of work completed to date. For example, if the Billing Task Summary shows 42% complete for the project to date, the cumulative billed profit should be 42% of the total profit from the executed contract. The profit for a current invoice would be calculated as follows:

Profit current invoice = cumulative profit current invoice – cumulative profit previous invoice

This type of calculation of profit should be included in each invoice submission.

Indirect Cost Rates and Direct Labor Rates

Indirect Cost Rates and Direct Labor Rates submitted with consultant invoices for cost-plus fixed-fee contracts must match those rates from the executed consultant contract. If the consultant chooses to revise these rates, a contract amendment is required for NHDOT review and approval prior to work being done in order to be eligible for reimbursement.

Soft Match

Soft match is not allowed on LPA projects.

Monthly Project Status Reports

Monthly project status reports must be submitted to the NHDOT project manager (see Appendix 5 for sample).

Final Reimbursement

Before Final Reimbursement can be processed; all necessary project closeout documentation must be completed (see Section 31 for project closeout details).

Consultant Selection by Qualification Based Selection (QBS)

Qualified engineers, architects, or land surveyors must be selected and their fees negotiated through the Qualifications Based Selection (QBS) process.

QBS is a required two-step process (selection and negotiation) that enables the Sponsor to obtain professional services at a fair and reasonable cost. State and federal law requires use of QBS even for those projects where the Sponsor pays for consultant services and does not seek reimbursement of federal funds. This section is intended to provide Sponsors with brief background information on the QBS approach to consultant selection. Additional information on the NHDOT Consultant Selection process can be found at:

<https://www.nh.gov/dot/org/projectdevelopment/highwaydesign/consultants/consultant-manual.htm>

In summary, the selection of a consultant is based only on the qualifications for the specific project. The **selection** of a consultant **cannot** be based on consideration of costs. Costs are not considered until they are negotiated during the second step of the process, the scope of work and fee proposal phase.

Regulations Governing the QBS process:

Federal: Selection of a consultant to provide engineering, surveying, or architectural services must comply with Part 172 of Title 23 of the U.S. Code of Federal Regulations and title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541–544) (Brook’s Act).

NH Statute: RSA 21-I:22, “Selection of Engineers, Architects, and Surveyors.”

Both the state & federal regulations require that the selection process be guided by identification of the most qualified firms first, with negotiations on scope of work and fee proposals coming later in the process. Consultant services, other than engineers, architects, and land surveyors, are obtained using pre-qualified, low bid procedures. The procedures and the final agreement are to be reviewed and a written notice-to-proceed **must** be issued by the NHDOT project manager prior to any agreement for services being executed. Failure to obtain written notice-to-proceed will result in all costs related to the agreement for services being identified as ineligible for federal funds reimbursement.

The Federal Highways Administration (FHWA) issued a memorandum dated July 20, 2011, entitled “INFORMATION: Updated Engineering and Design Related Services Guidance”. The memorandum refers to a document entitled “Procurement, Management, and Administration of Engineering and Design Related Services – Questions and Answers”. The purpose of this document is to clarify the statutory and regulatory requirements and the policies of FHWA associated with the use of consultant services in the delivery of FAHP-funded projects. Below is the link to this document:

<http://www.fhwa.dot.gov/programadmin/consultant.cfm>

Also refer to Appendix 9 for a copy of above referenced document; however, since this document is subject to change, the latest version should always be obtained from the link above.

Consultant Selection Process:

The Sponsor must obtain consultant services through an advertised competitive process. Engineering, architectural, and surveying consultants to be considered for selection must demonstrate experience in the discipline required (bridge design, roadway design, bicycle and pedestrian facility design, historic preservation, landscaping, environmental mitigation, etc.) and have a Licensed Professional Engineer or Architect registered in the State of New Hampshire on the proposed project's team.

Please note: The consulting firm selected by the Sponsor **must** have an LPA certified project manager in order to be hired by the Sponsor. Consulting firms that do not meet this requirement will not be eligible to work on LPA projects. **Remember:** Only individuals are certified, not the company.

Following issuance of a notice to proceed (NTP) with the QBS process from NHDOT, Sponsors will follow the typical process outlined below:

1. The Sponsor prepares the preliminary scope of services, describing the project to be built or problem to be solved and formulates a schedule of activities. The scope of services requested is based on the Sponsor's funding application. The scope becomes part of the Request for Qualifications (RFQ). The RFQ should clearly describe the process and the criteria upon which ranking and selection will be based.

NOTE: The selection process cannot limit the solicitation of consultants with any wording that gives preference or restricts respondents based on previous local project experience, location of a consultant's office, or working location within the state. Sponsors should contact their NHDOT project manager with any questions for clarification.

While not required, Sponsors are **encouraged** to submit draft RFQs to NHDOT for review and comment. The typical advertising period runs a minimum of three (3) weeks.

2. Sponsor advertises through a legal notice in media with wide circulation such as the following:
 - Newspapers
 - Trade publications,
 - Electronic media
 - Direct invitations to qualified firms.

Responding firms must submit letters of qualifications, as well as any supporting experience documents, in a format provided by the Sponsor. Sponsor must provide copies of the posted notices by date of publication as part of the submission to NHDOT for approval to negotiate with the selected firm.

3. Sponsor reviews letters of qualifications, checks references, ranks firms and may select three (3) to five (5) firms for interviews, though interviews are not required. All other firms are notified in writing of the selections. Pre-interview site visits may be arranged with the selected firms to be interviewed to provide the opportunity for a better understanding of the project requirements.
4. **Note:** RSA 21-i: 22 requires there be a minimum of three firms be ranked by the selection process.
5. If desired by the Sponsor, interviews may be conducted. It is important that the same questions be asked of each firm during the interview. In fact, it is suggested that qualification criteria and a description of the interview process be made available to each firm prior to being interviewed.
6. Following the interviews, the Sponsor ranks each firm in accordance with a predetermined ranking system. All interviewed firms are notified of the results.
7. The results: The Sponsor's Person in Responsible Charge (PRC) submits a letter on Sponsor's letterhead to NHDOT requesting approval to enter into negotiation with the highest ranked firm, which includes a summary of the QBS process to the NHDOT Project Manager including:
 1. Copy of the advertisement and dates published;
 2. List of responding firms;
 3. Identification of evaluation criteria used to rank interested firms;
 4. List of consultant scores by ranking (highest first); and
 5. Request to enter into negotiations with the preferred firm.
8. The NHDOT will review the QBS information submitted by the Sponsor. After review and approval of QBS process, the NHDOT will issue a notice to proceed to begin the Scope and Fee process discussed in Section 14. As noted in Section 14, it is important that the Sponsor not discuss fee with the consultant until an Independent Government Estimate (IGE) is completed by the Sponsor. Also noted in Section 14, if no agreement can be reached with the most qualified consultant, the Sponsor will request approval from NHDOT to begin the scope of work and fee proposal phase anew with the next most qualified consultant, as determined through the previously approved selection process.

Alternative QBS Processes

if a Sponsor has a consulting firm on call under an existing agreement that included the discipline and scope of service encompassing the envisioned task, the Sponsor could utilize the services of the consultant already under agreement, provided the QBS process can be documented and approved by NHDOT 's project manager.

1. Procurement of Services thru Indefinite Delivery Indefinite Quantity (IDIQ) Agreements.
If a Sponsor has other design needs and chooses to seek firms with capabilities that encompass the needs of more than one project, the Sponsor can use the QBS process to

find interested firms with all of the disciplines needed for these projects. These types of agreements are known as “on call” or “IDIQ” methods of securing design services.

- a. The QBS process may be utilized for RFQ’s describing an “on call” or IDIQ type of need. These types of services are commonly used when a Sponsor acknowledges the potential need for consulting services for various works within the Sponsor’s jurisdiction. Typically the need would be for pedestrian infrastructure, road designs, drainage, construction monitoring, sewer or water system repair or expansion, or similar tasks. These needs would have an indefinite quantity as to the scope and an indefinite schedule, but would be defined by task as long as the task falls within the time period of the IDIQ Agreement. The specific need or task is usually more fully described when the work order or task order is written under the IDIQ or “on call” agreement.
 - b. The time period for this IDIQ or “on-call” agreement is not defined by each task, but by an overall duration of time as identified in the original RfP/RfQ and in the agreement. It is important to note that IDIQ contracts cannot be amended in regards to extension of time or increase in overall cost.
 - c. Example: A sponsor has need of a new sidewalk and has obtained a commitment of funding through a Federal program and if the Sponsor has an existing IDIQ or “on-call” type of agreement and has followed the QBS process when executing the agreement, and if the needed disciplines were included in the description of needs, this agreement could be utilized by writing a new task order. The new task order would describe a scope of work, and then the Sponsor would obtain a blank IGE matrix for the scope with blank hours and set agreement rates from the consultant. The Sponsor would then complete the IGE to establish the basis for negotiations with the consultant for the Task Order fee. Once negotiations are concluded, the Sponsor would submit the proposed Task Order for NHDOT review and approval.
2. In-House Design
- a. Some Sponsors have in house design staff with a Professional Engineer licensed in the State of New Hampshire and qualified by discipline to perform the needed design services for a specific LPA project. The qualifications of in-house staff will need to be reviewed and approved by the NHDOT Project Manager prior to proceeding to the generation of a Scope and Fee to do the task design work.
 - b. NHDOT may approve the reimbursement for the use in-house staff members. The Sponsor may be reimbursed for staff personnel costs for design work provided the Scope and Budget are approved by the NHDOT Project Manager – following the IGE/negotiation process.

Your NHDOT Project Manager can answer any questions you may have regarding consultant selection. There is also information including sample forms, sample letters, and checklists on Qualification-Based Consultant Selection available on New Hampshire Qualification Based

Coalition's website at www.NHQBS.org. This information is shown in Appendix 8 and is current as of the printing of this manual. The website should be used as it is updated regularly.

Contract Requirements for Project Design

Most Local Public Agency (LPA) projects will require the services of an engineer or architect licensed in the State of NH in the applicable branch of engineering. These services are typically provided by an outside consultant contracted to the project sponsor or occasionally through the use of qualified, professional municipal employees, provided the sponsor meets the requirements of “in-house design” (see “Use of Municipal Employees” in this section and in Section 24).

This firm or person should have experience in developing projects and be familiar with state and federal regulations and be willing to gain knowledge about any requirements specifically applicable to Federal-Aid Highway Program (FAHP) projects. The firm or person must also be certified in the LPA process (see Section 5).

The Federal Highways Administration (FHWA) issued a memorandum dated July 20, 2011, entitled “INFORMATION: Updated Engineering and Design Related Services Guidance”. The memorandum refers to a document entitled “Procurement, Management, and Administration of Engineering and Design Related Services – Questions and Answers”. The purpose of this document is to clarify the statutory and regulatory requirements and the policies of FHWA associated with the use of consultant services in the delivery of FAHP-funded projects. Below is the link to this document:

<http://www.fhwa.dot.gov/programadmin/consultant.cfm>

Also refer to Appendix 9 for a copy of above referenced document; however, since this document is subject to change, the latest version should always be obtained from the link above.

Details for LPA projects regarding the required contract requirements for consultants and municipal employees follow.

Consultant Contracts

Following NHDOT review and approval of the QBS process, supported by the appropriate documentation, the NHDOT project Manager will signify approval by issuing a Notice-to-Proceed with negotiation of a scope and fee for design services with the consultant (refer to Appendix 9 for a sample consultant contract). The sponsor shall submit the design contract to the NHDOT project manager for review prior to execution of the contract. The submission must include a contract containing the following information with regard to scope, fee, and terms and conditions, as well as an Independent Government Estimate.

Scope

The scope of work in the consultant contract should match the eligible project scope from the approved program funding application and the LPA Project Agreement. However, there are instances when the application funds approved differ from the funds requested. In these cases, the scope of work in the consultant contract will must be revised to be compatible with the approved funds.

It may be most appropriate in these situations to obtain NHDOT approval of a scope and fee that addresses only the Engineering Study phase of design in order to start the project. The Engineering Study would investigate a reasonable range of alternatives to determine a proposed action for further investigation during NEPA that may be able to be constructed within the available funds. Once the reasonable range of alternatives and/or proposed action is identified through the Engineering Study process, amendments to the initial contract can be prepared and submitted for NHDOT approval for the subsequent Preliminary Engineering Design Phase (Preliminary Design, Final Design, and Bid Phase).

NOTE: Please see Section 30 for information on situations where the project is determined to be not feasible.

Preliminary Engineering Design

Generally, the scope of work for design services should be structured to match the design phases outlined in this manual - Engineering Study, Preliminary Design, Final Design, and Bid Phase (see Section 15). Each design phase shall include a timeline with anticipated beginning and end dates and detailed individual tasks to provide a clear scope of work. Typically, the scope and fee for construction engineering is not defined and negotiated until the design is nearing completion and the scope of the project is known. The initial consultant contract shall include scope and fee for engineering services through final design and bid phase but includes only the scope for construction engineering. As described in Section 15, the Engineer's Estimate for Engineering Study, Preliminary Design, and Final Design will include the anticipated fee for construction engineering for budgeting purposes.

Construction Engineering

A separate contract amendment or task order will be required to provide the fee for construction engineering and any scope revisions to the original contract with regard to construction engineering. The cost breakdown below also must be used for construction engineering. This contract amendment will need to be submitted close to the submission of the final plans *but no later than* eight weeks prior to the bid advertisement date to allow adequate time for NHDOT to prepare and process an internal project estimate and to obtain FHWA approval. Also refer to Section 27 for a detailed scope of work for construction engineering.

Engineering Cost Breakdown (Fee)

The engineering cost breakdown, or fee, shall coincide with the tasks listed in the scope of work and shall also be structured to include the information listed below. Typically, contracts are either cost-plus-fixed fee or firm-fixed price (also called lump sum) and must specify which type is being used in the contract. However, there are other contract alternatives. The project sponsor shall contact the NHDOT project manager if other contract alternatives are proposed.

A cost-plus-fixed-fee contract is a cost reimbursement contract that provides for payment to the consultant of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of scope changes in the work to be performed under the contract. This contract type permits contracting for efforts that might

otherwise present too great a risk to the consultant, but it provides the consultant only a minimum incentive to control costs.

NOTE: Contract situations where the fixed fee is assessed as a percentage of the consultants cost – as opposed to a percentage of the fixed amount at the contract execution – are specifically prohibited as ‘cost-plus-percentage-of-the-cost’ contracts under 23 CFR 172.5(c).

A firm-fixed/lump sum contract provides for a price that is not subject to any adjustment on the basis of the consultant’s cost experience in performing the contract. This contract type places maximum risk and full responsibility for all costs and resulting profit or loss upon the consultant. It provides maximum incentive for the consultant to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. No contract amendments are allowed for these firm-fixed/lump sum contracts unless significant scope change is needed for the contract.

All sub-consultants need to be included in the cost breakdown. A lump sum cost can be used for sub-consultants up to a maximum of \$10,000. For all consultant contracts and sub-consultant costs over \$10,000, the breakdown below must be used:

- The fee is broken down into Direct Labor, Indirect Cost, Profit, and Expense categories (see Appendix 9 for a sample fee schedule).
- Direct Labor Cost = Direct Labor Rate x Number of Hours. Direct Labor Rate must not exceed \$60/hour for all individuals unless approved by NHDOT. The project sponsor must submit direct labor rates greater than \$60/hour to the NHDOT project manager for review and approval. These cases are rare and are only considered for areas of special expertise. If there is only one employee for a labor classification, then that direct labor rate would be used. For multiple employees with same labor classification, then the average direct labor rate would be calculated and used for that labor classification.
- Indirect Labor Cost = Direct Labor Cost x Approved Indirect Cost Rate. Indirect Cost Rates for all consultants must be approved annually by the NHDOT Auditing Department. Consultants must contact the NHDOT Auditing Department (603-271-1557) for the procedure required to obtain an approved indirect cost rate. For contracts anticipated to extend beyond the life of the NHDOT-approved indirect rate, consultants have the option of fixing the rate for the life of the contract.
- Total Labor Cost = Direct Labor Cost + Indirect Cost Rate
- Profit = 10% maximum x Total Labor Cost for cost-plus-fixed-fee contract
Profit = 15% maximum x Total Labor Cost for lump sum contract
These profit percentages are the maximum allowed. The project sponsor shall negotiate these percentages with the consultant based on the complexity of the project.

The total amount is fixed for the project scope and does not increase if additional work is added within the original scope.

- Expenses (i.e. mileage, printing, etc.) Expenses must not be included in the calculation of profit. The mileage needs to agree with the annual federally-approved mileage rate in effect at the time of the contract. This federal rate is subject to change each year. The federally-approved mileage rate can be obtained at the following link:
<http://www.gsa.gov/portal/content/100715>
- An Employee Roster and Labor Classification Schedule (Schedule) is required for all consultant contracts. This schedule must include employee names, labor classifications (i.e. Project Engineer 1) and direct labor rates for all employees who will work on the project. Any revisions to the Schedule (i.e. new employees added, revisions to direct labor rates, etc.) must be submitted to NHDOT for approval prior to work being performed in order to be eligible for reimbursement.

Scope and Fee Negotiation

After the project sponsor completes the Qualification-Based Selection (QBS) process for consultant selection (see Section 13), the NHDOT project manager issues a letter of approval of the process and a notice to proceed with the scope and fee preparation and negotiation for engineering services. This process is defined as follows:

- Sponsor notifies the consultant to prepare the scope of work for the project in accordance with the requirements of this section.
- Consultant submits the draft scope of work to the sponsor for review
- Sponsor reviews the draft scope of work and provides comments as required, resulting in a finalized scope of work. The sponsor then directs the consultant to prepare the fee for the project in accordance with the requirements of this section.
- Consultant completes the fee and submits the required information to the sponsor to perform an Independent Government Estimate (IGE) to be used for the negotiation of the consultant contract. Refer to the IGE paragraph below for a detailed description of the process. **It is important to note that the project sponsor performs the IGE before receiving the completed fee from the consultant.**
- Sponsor completes the IGE and requests the completed fee from the consultant, compares to the IGE, and negotiates with the consultant as required to obtain a final fee proposal.
- Upon completion of the scope and fee process, the sponsor submits the following supporting documentation to NHDOT project manager for review and approval:
 - Letter to NHDOT requesting approval of the final scope and fee summarizing the scope and fee process. The letter should include a timeline with key dates of action items (draft scope submitted to sponsor, amended scope received, blank matrix received from consultant, completed IGE, draft consultant fee received, meeting with consultant to review fee and IGE, final consultant fee received)
 - Copy of draft scope
 - Copy of final scope
 - Copy of IGE
 - Copy of draft fee from consultant
 - Copy of final consultant fee

- NHDOT project manager reviews information submitted, issues an approval letter for the consultant contract with a Notice-to-Proceed with the next phase of work, which is typically the Engineering Study Phase. Please note that NHDOT needs to obtain FHWA approval of the federal funds before this Notice- to-Proceed can be issued.

Independent Government Estimate (IGE)

The project sponsor is required to perform an IGE for negotiating consultant contracts, contract amendments, and construction change orders. This section outlines the process required for performing an IGE for consultant contracts and contract amendments, but the process can generally be followed for construction change orders. In all cases, the IGE **must** be completed prior to the Sponsor receiving the cost breakdown (fee) from the consultant or contractor, and used for negotiating the final product.

The consultant shall provide the following information to the project sponsor to perform the IGE:

- Final negotiated scope of work for all tasks required, typically a written description of each major task.
- Blank task matrix form. This form is typically a spreadsheet with task descriptions on left side and the various labor classifications along the top.

The sponsor then uses the blank task matrix form to enter estimated man-hours to calculate the IGE. This IGE will serve as a baseline for the sponsor to negotiate with the consultant over direct labor costs, the indirect cost, profit, sub-consultants, and reimbursable expenses. In summary, the blank matrix form should include the following (a sample engineering blank task matrix form for performing the IGE is included in Appendix 9):

- Task descriptions
- Labor classifications and direct labor rates for personnel who will work on project
- Overhead rate approved by NHDOT
- Profit/fixed fee percentage
- Sub-consultants required for project
- Reimbursable expenses anticipated

Upon completion of the IGE, the project sponsor shall obtain from the consultant the completed labor rate estimate form, including man-hours and costs. The sponsor shall negotiate with the consultant as required to obtain a final scope and fee proposal. The sponsor must submit the IGE along with other supporting documentation described above for NHDOT review and approval.

Terms and Conditions

The contract shall include requirements pertaining to indemnification and insurance limits.

The contract shall also include language with regard to ownership of plans and other documentation prepared by the consultant. Documents that have been prepared for federally-funded projects become the property of the **project sponsor, NHDOT, and FHWA**. Below is standard language that goes into NHDOT contracts that can be used as a guide:

All data, plans, drawings, tracings, estimates, specifications, proposals, sketches, diagrams, calculations, reports or other documents collected, prepared, or undertaken either manually or electronically by the CONSULTANT, under the provisions of this AGREEMENT, immediately shall become the property of the SPONSOR, and, when completed, shall bear the CONSULTANT'S endorsement. The CONSULTANT shall surrender to the SPONSOR, upon demand at any time, or submit to its inspection, any data, plan, drawing, tracing, estimate, specification, proposal, sketch, diagram, calculation, report or document which shall have been collected, prepared, or undertaken by the CONSULTANT, pursuant to this AGREEMENT, or shall have been hitherto furnished to the CONSULTANT by the SPONSOR. The CONSULTANT shall have the right, with the written approval of the SPONSOR, to use any of the data prepared by it and hitherto delivered to the SPONSOR at any later stage of the project contemplated by this AGREEMENT.

Contract Amendments

Contract amendments to the original contract may be required for the following reasons:

- The original contract was prepared for only some but not all of the design phases. This assumes that the QBS process was approved for all design phases.
- A change occurred in the scope of work.

An IGE as described above also must be prepared for any/all contract amendments. Contract amendments need to indicate the reason for the change in scope of work and must follow the cost breakdown described previously in this section. Contract amendments need to be submitted and approved by NHDOT and FHWA prior to the work being done. Work done prior to NHDOT/FHWA approval **is not** reimbursable.

NOTE: In those instances where the proposed work to be completed under any proposed amendment was not included as a design phase in the original Request for Proposals/QBS process than the additional services must be obtained via a new QBS process.

Use of Municipal Employees (Force Account)

Typically, engineering services are provided by outside consultants contracted to the project sponsor. However, in rare cases, the sponsor may request the use of project funds to pay its own employees. In this case, the sponsor is not required to prepare a Public Interest Finding but needs to prepare a scope and budget, and submit the information for NHDOT approval and FHWA concurrence before the work is started. The scope and budget has the same requirements described previously under consultant contracts except that profit is not allowed for force account work.

Approval of Contract

Once NHDOT has determined that the contract requirements described herein have been met, the NHDOT project manager will issue an Engineering Scope and Fee Approval letter to the sponsor, as well as a Notice-to-Proceed with the first phase of design identified in the approved contract. The

sponsor shall proceed with the execution of the contract and submit a copy of the executed contract back to NHDOT.

The sponsor shall maintain a copy of the executed contract with all other project records for future audit purposes. For additional information regarding required project record-keeping on LPA projects, please refer to Section 31, Final Reimbursement and Project Closeout for requirements for maintaining project and financial records.

The Design Process

The design of all local program administration (LPA) projects with a construction phase will follow three major steps: Engineering Study, Preliminary Design, and Final Design. Each step is represented by documentation, which must be submitted to NHDOT for review, approval, and notice-to-proceed with the next step of design. These steps are outlined in this section.

Engineering Study

The first step in the design process is for the Project Sponsor (or the Sponsor's consultant) to prepare an Engineering Study that typically includes the following sections and information:

Local Concerns Meeting: The first public meeting for your LPA project is intended to allow members of the public:

- To hear the general overview of the program funding requirements;
- To find out the proposed schedule of the project (as identified from the project scoping meeting detailed in Section 6);
- To obtain an overview of the Sponsor/consultant's understandings of the project area and potential issues to be addressed/overcome;
- To provide comments on the proposed project.

The public information collected during this meeting will be used in the development of the project's Purpose and Need Statement.

Purpose and Need Statement: After the Local Concerns Meeting, the design consultant will prepare a Purpose and Need Statement. The Purpose and Need Statement is the backbone of project development, because the identified alternatives will be measured by their ability to address the project's identified purpose and need and potential impacts to the natural and cultural environment.

A Purpose and Need Statement should be written so that the needs and goals of the project are clearly defined. It shall not describe a solution. Without a well-defined Purpose and Need Statement, it will be difficult to determine a reasonable, prudent, and practicable alternative or range of alternatives and may be impossible to dismiss the alternatives not selected. A Purpose and Need Statement **must** illustrate that corrective effort is *justifiable* and *worth* the expenditure of public funds and *worth the impacts* to the natural and cultural environment.

Existing Conditions: This section shall contain a description of the existing site and project concept to include width and length; type of facility and amenities (i.e. structures, etc.); and general layout, including any significant geometric or topographical conditions. Special attention should be paid to existing drainage systems throughout the project area and how the proposed work may impact it. The Sponsor/consultant is required to take "before" photos for future reference.

Design Criteria: This section shall contain a listing of the relevant design criteria and manuals to be used. Refer to Section 16 for Design Standards.

Preliminary Environmental Reviews and Documentation: All federally-funded LPA projects that are to be advanced to Final Design, ROW and/or Construction must complete environmental reviews to document the probable effects of the project on natural and historic resources, and identify measures to avoid, minimize, or mitigate the effects. This review and documentation shall be conducted in accordance with all pertinent state and federal environmental laws and regulations. Early identification of significant natural and cultural resources is required to identify project constraints and possible avoidance alternatives of impacts. NHDOT recommends early coordination and review with the natural and cultural resource agencies as part of this step. Section 17 of this manual provides more detail regarding this portion of the project's design.

Alternatives Analysis/Proposed Layout: This section shall include a description of the methodology and reasoning used to determine the proposed layout. The narrative shall include facility alignment, widths, lengths, and materials and impacts of the proposed facility to evaluate the potential impacts of the proposed alternatives to environmental and historical resources, utilities, other existing structures, and private property. The narrative should also include identification of construction impacts to traffic and any necessary traffic control plans. This portion of the engineering design will identify a **proposed action** from all other alternatives considered and provide reasons why the other alternatives were not feasible. If costs are a consideration in the evaluation of alternatives, the costs of each alternative shall also be included in the Engineering Study. The proposed action will be the one alternative that best addresses the issues identified in the Purpose and Need Statement and represents the Least Environmentally Damaging Practicable Alternative (LEDPA).

Structure Studies and Recommendations: Structure types studied (for retaining walls, bridges, buildings, etc.) shall be indicated in narrative form and the recommended structure type shown in plan, elevation, and typical section along with the requisite reasoning. The typical section shall portray the components of the structure and materials of construction. The Sponsor's representative or consultant shall require borings for new or replacement structures. The number and content of the boring logs shall be sufficient to present a reasonably accurate picture of subsurface conditions. The study shall also address issues of hydraulics and constructability.

Cost Estimate and Engineer's Estimate: An itemized cost estimate shall be prepared using item number, nomenclature, description, materials, and construction requirements, which are contained in the *Standard Specifications for Road and Bridge Construction*, NHDOT's latest edition (Standard Specifications). The Standard Specifications must be used for item numbers and corresponding specifications (i.e. Division 200 through Division 700) unless the Sponsor wants to use specifications more restrictive. The itemized cost estimate may include a contingency in this Engineering Study. The cost estimate should also include a separate line item for the anticipated fee for construction services for the scope of work prepared in the consultant's contract (see Section 14).

Public Presentation of Proposed Action: This second public meeting will focus on presenting the identified alternatives, the pros and cons of each, and a detailed narrative of why the proposed action best meets the project's purpose and need and makes the most sense for the location context. This meeting may be held as a stand-alone meeting or as part of a regularly scheduled meeting (a board of selectmen meeting for example). Minutes of the meeting must be kept and included in the Engineering Study. Public comments regarding the proposed action should be considered during the development of the Engineering Study recommendations in evaluating what issues or alternatives might be considered further as the project advances to Preliminary Design phase.

Submission Requirements: Submit the Engineering Study requesting NHDOT review and approval by letter on the Sponsor's letterhead. All materials described previously in this section shall be included in the submission. Verify the number of copies required with the NHDOT project manager.

Please see Section 30 for the discussion regarding what happens in those situations where projects are identified as not feasible at the conclusion of the Engineering Study.

Preliminary Design

The Sponsor may proceed with the preliminary design step of the project after receipt of the NHDOT letter for Engineering Study Approval and the Notice-to-Proceed with Preliminary Design. All comments on the Engineering Study shall be incorporated into the Preliminary Design submission. Preliminary design includes developing in more detail the proposed action for the purpose of completing the NEPA process. The submission may include but is not limited to the following information:

Drawings/Plans:

- Location plan
- General plan and profile
- Typical and critical cross-sections
- Cross-section of intersecting facilities
- Cross-section of the bridges and/or structures
- Base plans with existing topographic features, utilities, wetlands, and right-of-way
- Grading, drainage, utilities, and erosion control
- Landscaping
- Signing and striping design and layout
- Detail Sheets

Environmental Documentation: Submit a copy of Environmental classification memorandum for project close to the submission of preliminary plans (see Section 17 for more information regarding the environmental checklists).

NOTE: Any environmental commitments identified as a result of the NEPA process must be included into final design and construction estimates, bidding documents and contracts, as appropriate as FHWA classification of the project is contingent upon their successful implementation.

ADA Compliance: Federal-aid projects must comply with the *Americans with Disabilities Act* (ADA). ADA is a Federal law administered by the US Department of Justice, and all public works projects must comply with the provisions of the law. Refer to Section 16 for Standards and Guidelines for Accessible Design.

Miscellaneous:

- Traffic Studies
- Boring location and logs, if project requires borings
- Hydrologic and hydraulic data
- Documentation of proposed design exception from accepted design standards, if applicable (refer to Section 16 for more information)
- Appropriate environmental/historical documentation (see **Section 17** for more detail)

Cost Estimate and Engineer's Estimate: The itemized cost estimate submitted with the Engineering Study must be updated using the information presented on the Preliminary Plans. The itemized Preliminary Design cost estimate may include a contingency percentage. The amount of the percentage depends on the level of detail provided in the preliminary design phase. The cost estimate should also include an updated anticipated fee for construction services for the scope of work prepared in the consultant's contract.

Submission Requirements: Submit the documentation requesting NHDOT review and approval of preliminary design by letter on the Sponsor's letterhead. All materials described previously in this section shall be included in the submission. The plans shall be submitted on 11" x 17" size sheets. Verify the number of copies required with the NHDOT project manager.

Final Design/Plans, Specifications and Engineer's Estimate (PS&E)

The Sponsor may proceed with the Final Design/PS&E step of the project after receipt of the NHDOT letter for Preliminary Plan Approval and Notice to Proceed with Final Design/PS&E. All comments on the Preliminary Plans shall be incorporated into the Final Design/PS&E submission. In addition, the Sponsor may proceed with Final Design providing that all environmental documentation has been submitted and NHDOT has confirmed that the NEPA process has been completed.

Right-of-Way (ROW) negotiations and acquisitions shall not begin until the Final Design Phase. The submission shall typically include the following:

Drawings/Plans: The plans carried forward in the Preliminary Design step will be finalized and any new plans added as required. The Final/PS&E plans will need to have sufficient information, along with the bid documents, for construction. The submission may include but is not limited to the following information:

- Design speed
- Lane width
- Shoulder width
- Pavement Section
- Horizontal Alignment

- Vertical Alignment
- Grades
- Stopping sight distance
- Cross slope
- Details for drainage catch basins, manholes, headwalls, and culverts
- Notation that traffic control devices are in accordance with MUTCD
- Traffic Management Plan
- Finalization of erosion control plan and details
- Sponsor/Consultant has checked that construction plans agree with pay items in Contract documents and Final Engineer's Estimate
- Sponsor/Consultant has submitted bridge plans to NHDOT for review and all comments were resolved
- Sponsor/Consultant has coordinated utility relocation with appropriate utility companies and finalized utility agreements as required

A municipal engineer's or consultant engineer's licensed professional engineer stamp for the State of New Hampshire shall appear on the plans and contract documents to be advertised. The stamp shall be that of the professional engineer who prepared the plans and contract documents or under whose direct supervisory control they were prepared.

Contract Documents: The Contract Documents typically include the following information:

Bidding and Contract Documents

- Invitation to Bid
- Instruction to Bidders
- Contract Agreement
- Change Order Form
- Application for Payment Form
- Bid Bond
- Bid Form
- Schedule of Prices
- Bid Addendum (if any)
- Performance and Maintenance Bond
- Labor and Materials Bond
- Non-collusive Affidavit
- Notice of Award
- Prosecution of Work
- Wage Rates Federal Aid Projects
- Required Contract Documents Package (from NHDOT website)
- Environmental Commitments
- NHDOT Project Close-Out Forms
- NHDOT Quality Assurance Program for Municipally Managed Federal-aid Projects, which includes the Sample Materials Certification to be signed by Municipal Official and Resident Engineer

- **Use of “Add Alternates”:** The sponsor and the design consultant must review the design consultant’s construction cost estimate, along with the agreed cost of construction

engineering and testing (these items make up the project’s construction phase cost), and determine if sufficient construction phase funding is available to cover the projected costs.

If sufficient funds are in the project construction phase funding, the project can proceed as designed and the use of any “add alternates” is optional.

If insufficient project construction phase funds are in place, the project sponsor has to determine if the sponsor can and will provide *non-participating funds* to fully fund the project, or split the project into defined segments, one of which is to be the base bid contract scope with separate contract scopes for each “add alternate”. The construction contract will then be made up of a base contract and one or more “add alternates”. The sponsor will then need to specify clearly in the bidding documents how the bids will be awarded -- whether by base bid or by base bid plus “add alternates”. If more than one alternate is utilized, the specific order of the alternates to be added is to be established in the bid documents.

NOTE: If add alternates are under consideration for your particular project, the base bid for the project **must** result in construction of the project scope identified in the STIP, and as approved under NEPA. Please discuss the potential use of add alternates with your NHDOT project manager prior to submittal of final plans.

- **Bid Form:** The Bid Form must reflect the hierarchy of the intended bid. The base bid plus any “add alternates” must be reflected in the bid document. The bid document must also reflect the order in which the base bid plus any “add alternates” are to be accumulated in the contract.

The project sponsor and the design consultant should consider the exact items to be included in each “add alternate” and the exact order in which the “add alternates” are to be included in the contract. “Add alternates” can only be added in the order listed in the bid documents.

The sponsor and the design consultant must also determine the basis of the bid: if the lowest bid shall be based on the base bid only or will it be based on the base bid plus all the alternates. These selections must be reflected in all the documents related to the bidding process to provide a consistent flow of information and instruction to all perspectives bidders.

The project sponsor should include language in the bid and contract documents stating that the sponsor has the option of rejecting any and all bids if it is in the sponsor’s best interest.

NOTE: Negotiation during bidding and prior to award is not allowed.

General Provisions

Contract Documents

The Standard Specifications for Road and Bridge Construction, by NHDOT, latest edition must be used for all locally managed projects. The NHDOT Contract and Specifications Engineer should be contacted to obtain all pertinent supplemental specifications to be included in the contract documents prior to bid. Special items unique to the project shall require their own Special Provisions. The Standard Specifications can be found using the following link:

<http://www.nh.gov/dot/business/engineers.htm>

Specifications: The latest edition of NHDOT “*Standard Specifications for Road and Bridge Construction*” must be used for all locally-managed projects. The NHDOT Contract and Specifications Engineer should be contacted to obtain all pertinent supplemental specifications to be included in the contract documents prior to bid. Special items unique to the project shall require their own Special Provisions. The Standard Specifications can be found using the following link:

<http://www.nh.gov/dot/business/engineers.htm>

Supplemental Specifications (to NHDOT Standard Specifications)

Special Attentions (if any)

Special Provisions (if any)

Special Considerations for Contract Documents

- Temporary Traffic Control: Temporary traffic control must be in accordance with the latest edition of the *MUTCD*. A special provision should be included to outline the necessary traffic control requirements and payment items.
- Environmental Commitments
- Proprietary Trade Names: The use of sole source products or proprietary trade names are generally not allowed except under certain circumstances, and **must** be approved by FHWA prior to inclusion in the PS&E. Refer to CFR 635.411 and also Section 24 Public Interest Finding for more information. Specifications should be prepared to ensure competition among equivalent materials, equipment, and methods.
- All Non-Architectural Projects: It may be appropriate to use documents published by the Engineer’s Joint Contract Documents Committee (EJCUD) for various forms required, i.e. Change Order, Application for Payment, etc.
- Architectural Projects: It may be appropriate to use the American of Institute of Architects (AIA) documents for various forms required, i.e. Change Order, Application for Payment, etc.

NOTE: If your project proposes to use these types of documents, allow for additional review and approval time for NHDOT review of the proposed contracting documents to ensure compliance with the Federal-Aid program regulations.

Final Cost Estimate and Engineer's Estimate: The itemized cost estimate submitted with the Preliminary Design Phase must be updated using the information presented on the Final/PS&E Plans and Contract Documents. The Final/PS&E Estimate must also show all non-participating items clearly. The Sponsor/consultant must review the unit prices and update them as required due to changes within the past three to six months. The itemized cost estimate cannot include a contingency in the Final Design phase. The final cost estimate also needs to include the final fee for construction services for the scope of work prepared in the consultant's contract. This cost estimate and contract amendment for construction services will need to be submitted close to the submission of the Final Plans but no later than eight weeks prior to the bid advertisement date, to allow adequate time for NHDOT to prepare and process and internal project estimate & obtain FHWA approval (See Section 14). No project can advertise for construction nor contract work for force account until the PS & E Estimate has been approved by FHWA.

NOTE: Any force account work must be substantiated by an agreement approved by NHDOT. Work involving the railroads requires NHDOT be a signatory to the contract for reimbursement and follow 23CFR646.216. Additionally, Force Account work done by a public agency is subject to conditions of FHWA Order 5060.1.

Submission Requirements: Submit the documentation requesting NHDOT review and approval of Final/PS&E design by letter on the Sponsor's letterhead. All materials described previously in this section shall be included in the submission. The plans shall be submitted on 11" x 17" size sheets. Verify the number of copies required with the NHDOT project manager.

All materials described previously in this section shall be included in the submission along with the following certifications and statements from the design consultant and project sponsor. Also refer to Section 25 for all items required to complete the PS&E Checklist.

- List of the Design Standards used and any approved exception to those standards
- Right-of-Way Certificate
- Utility and Railroad Certificate
- All Permits and Approvals
- Signed copy of the Significance Determination Memorandum from NHDOT's Traffic Control Committee (TCC). This memorandum is typically prepared by the sponsor/consultant and reviewed by the TCC at a meeting during the Preliminary Design phase of a project.

Design Standards

The design of projects must conform to applicable design standards and guidelines, which generally include, but are not limited to, the following publications:

- 23 CFR 625 Design Standards for Highways
- A Policy on Geometric Design of Highways and Streets (by American Association of State Highway and Transportation Officials – AASHTO), Sixth Edition, dated 2011
- Roadside Design Guide (by AASHTO), 3rd Edition 2006, with updated Chapter 6
- New Hampshire State Trails Plan (by NHDOT), dated July 28, 2004
- Guide for the Development of Bicycle Facilities (by AASHTO), dated 2012, Fourth Edition
- Guide for the Planning, Design, and Operation of Pedestrian Facilities (by AASHTO), dated July, 2004

Standards and Guidelines for Accessible Design:

- ADA Standards for Transportation Facilities. These standards apply to the construction and alteration of transportation facilities covered by the Americans with Disabilities Act (ADA). They became effective November 29, 2006. The Department of Transportation (DOT) adopted these standards.
- Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of- Way dated July 26, 2011. The Architectural and Transportation Barriers Compliance Board is proposing accessibility guidelines for the design, construction, and alteration of pedestrian facilities in the public right-of-way. The guidelines ensure that sidewalks, pedestrian street crossings, pedestrian signals, and other facilities for pedestrian circulation and use constructed or altered in the public right-of-way by state and local governments are readily accessible to and usable by pedestrians with disabilities. When the guidelines are adopted, with or without additions and modifications, as accessibility standards in regulations issued by other federal agencies implementing the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Architectural Barriers Act, compliance with the accessibility standards is mandatory.
- Highway Design Manual (by NHDOT), dated March, 1999
Note: The 1999 Highway Design Manual is currently being updated. Go to the NHDOT website at the following address for chapter rewrites:

<http://www.nh.gov/dot/org/projectdevelopment/highwaydesign/designmanual/index.htm>

- Bridge Design Manual (by NHDOT), dated October 1, 2015
Note: The Bridge Design Manual is currently being updated. Go to the NHDOT website at the following address for chapter rewrites:

<http://www.nh.gov/dot/org/projectdevelopment/bridgedesign/manual.htm>

- Manual on Uniform Traffic Control Devices (by Federal Highway Administration), 2009 Edition with Revisions 1 and 2 dated May, 2012

If a Local Public Agency (LPA) project proposes a design exception from accepted design standards, the project sponsor must document the proposed design exception. The proposal should discuss design standards and document why accepted standards cannot be met. The sponsor must accept responsibility for the liability resulting from not providing the acceptable design standard. NHDOT must approve the proposed design exception prior to Final Plans being produced. FHWA must approve proposed design exceptions if the project is on the National Highway System. The following link will bring you to the NHDOT Bureau of Planning & Community Assistance GIS Data catalog, which provides information on roadway classifications in NH:

<http://www.nh.gov/dot/org/projectdevelopment/planning/gis-data-catalog/index.htm>

Resource Review Process

All Local Public Agency (LPA) projects involving construction must undergo an environmental, historical, cultural, and socio-economic analysis. These reviews are required by the National Environmental Policy Act of 1969 (NEPA), Endangered Species Act (ESA), Clean Water Act (CWA), and National Historic Preservation Act (NHPA).

Construction is broadly defined, and most infrastructure work will require detailed review. Infrastructure projects that do not involve construction, such as putting a sign on an existing pole or placing a portable bicycle rack on school grounds, do not require detailed review.

Review is also required if the action affects land protected under the Land and Water Conservation Funds Act. Review may also be required for some projects involving land issues, such as conservation easements.

Overview

The NEPA process results in project classification, as determined by FHWA:

Class I: Actions that significantly affect the environment require the preparation of an Environmental Impact Statement (EIS)

Class II: Actions that do not individually or cumulatively have a significant environmental effect require the preparation of a Categorical Exclusion (CE) or Programmatic CE

Class III: Actions in which the significance of the environmental impact is not clearly established require the preparation of an Environmental Assessment (EA) to determine the appropriate environmental document required. This may result in a "Finding of No Significant Impact" (FONSI).

An essential document that guides project Sponsors through the process is known as the "Categorical Exclusion Programmatic Determination Checklist" (the Checklist). By following the Checklist, Sponsors will gather required documentation and coordinate with relevant regulatory agencies at the state and federal levels. (See Appendix 10 for the form.)

This manual addresses the process for obtaining the CE required for most locally administered projects. If the information obtained in preparing the Checklist indicates a need for further inquiry and documentation, it is recommended that project sponsors contact the NHDOT Bureau of Environment staff for guidance.

After documentation has been gathered for the Checklist and submitted to NHDOT, the NHDOT BOE conducts a comprehensive and thorough review of the provided documentation.

The BOE makes sure that the probable effects of the project on natural, cultural, and socio-economic resources were considered during the design of the project. The BOE also works with the Sponsor to:

- Identify measures to avoid resources

- Minimize impacts to resources
- Mitigate unavoidable impacts

This review and associated documentation ensure compliance with all applicable state and federal environmental laws, rules and regulations, under the federal NEPA umbrella.

To avoid unnecessary delay, NHDOT strongly recommends that Sponsors initiate the review as early as possible, during the engineering and preliminary engineering study phases.

Having a clear understanding of the resources in the project area will allow for development of a final design that complies with NEPA. The Act requires the selection of the alternative that is the least environmentally-damaging, practicable alternative (LEDPA).

The checklist-driven process ensures that:

- Impacts are avoided to the maximum extent practicable
- Unavoidable impacts are minimized
- Appropriate mitigation is included in the design

Determining “practicability” includes not only the environmental implications of the project, but also safety, cost, and constructability, among other things.

Categorical Exclusion Process

Typical local projects fall under Class II and qualify for what is known as a **Categorical Exclusion (CE)**. Many qualify for an even more abbreviated process known as a **Programmatic Categorical Exclusion (Programmatic CE)**.

Summary of the three steps that must be taken to obtain a Categorical Exclusion:

Note: Detailed instructions for completing the form are included in Appendix 10.

Step 1 - Initial Contact Letters: Send letters to municipal officials as well as to the state and federal agencies with jurisdiction over the resources listed on the first page of the Checklist. Letters should be sent to the following, as appropriate:

| | |
|--|-------------------------------|
| Chair of the Board of Selectmen or mayor | Fire chief |
| Chair of the Planning Board | Emergency management director |
| Town planner | City engineer |
| Conservation Commission | City manager |
| Historical society | Town road agent |
| | Police chief |

Please See Appendix 10 for a list of state and federal contacts.

The letter should include the project name and 5-digit state number, and describe the project limits, needs, and proposed action. The BOE has developed a checklist of questions that will elicit the most appropriate information for design purposes.

Step 2 - On-line Regulatory Reviews: Three Web-based systems can be used when completing the Checklist:

NH Natural Heritage Bureau (NHNHB) https://www2.des.state.nh.us/nhb_datacheck/

US Fish and Wildlife Service (USFWS)

http://www.fws.gov/newengland/EndangeredSpec-Consultation_Project_Review.htm

NH Department of Environmental Services (NHDES) One Stop Environmental Site Information Guide <http://www2.des.state.nh.us/gis/onestop/>

Step 3 - Resource Agency Meetings:

State and federal agencies can, and will need to at times, supplement written correspondence in determining the extent of environmental impacts and identify needed permits and approvals. Regularly scheduled meetings include:

Cultural Resource Agency Coordination Meeting: These meetings determine historical and/or archeological involvement near the project location. Participants include the State Historical Preservation Office (SHPO) and/or US Army Corps of Engineers (ACOE) and Federal Highway Administration (FHWA). Meetings are held at NHDOT on the second Thursday of each month. Sponsors and/or consultants need to prepare a Request for Projects Review (RPR) form and submit it two weeks prior to the scheduled meeting with Cultural Resources (See Appendix 10 for a sample “Cultural Resources Effect Memo” and the RPR form)

Natural Resource Agency Coordination Meeting: Agencies include FHWA, U.S. Environmental Protection Agency (EPA), US Fish and Wildlife Service, ACOE, NH Fish and Game Department, NH Natural Heritage Bureau (NHNHB), NH Department of Environmental Services (NHDES), and the NH Bureau of Emergency Management. The meetings give the agencies an opportunity to review proposed designs, design alternatives, and potential impacts. Mitigation opportunities are reviewed as need. Attendance at these meetings is not mandatory for every project, but encouraged as needed. Presenting the project in advance of applying for any necessary permits/approvals generally streamlines the permitting process by giving the Sponsor a better understanding of potential issues before design is complete, which can save time and money in redesign efforts. (See Appendix 10 for an *Agenda Item Request Form*.)

Step 4: Completing the Checklist: Following the steps outlined above will give the Sponsor the information and documents needed to complete the Checklist. If all of the checkboxes under “No” are marked, the project qualifies for processing as a Programmatic CE.

A “Yes” check will require the preparation of an Individual Categorical Exclusion Application (see below).

The Programmatic CE Checklist is reviewed by BOE and, when determined to be complete, is classified as a Class II, Programmatic CE, by them. An Environmental Commitments Memo (Commitments Memo) is generated and is provided to the NHDOT project manager. The Commitments Memo then becomes part of the Plans, Specifications and Estimate (PS&E) document.

Individual CE’s are reviewed by BOE for thoroughness and then forwarded to FHWA for classification. Upon acceptance by FHWA, they will provide BOE with a concurrence letter; i.e. concurring in the classification. BOE subsequently prepares the Commitments Memo as outlined above.

The Sponsor is encouraged to contact NHDOT Bureau of Environment at 271-3226 for guidance on the development of this documentation.

The application for a **Categorical Exclusion**, available for download from the BOE on-line document library (link below) is submitted directly to BOE:

New Hampshire Department of Transportation
Bureau of Environment
JOM Building- Room 160
PO Box 483 | 7 Hazen Drive
Concord, NH 03302-0483

Phone: (603) 271-3226

Fax: (603) 271-7199

Please notify your NHDOT project manager that the application has been filed.

For more information and guidance, visit:

<http://www.nh.gov/dot/org/projectdevelopment/environment/documents.htm>

Public Involvement

Public involvement is an essential feature in the development of a Local Public Agency (LPA) project. Without public input and public support, there is little chance of a project being implemented successfully. The Project Sponsor is required to involve the public in the planning and design of their project. The Sponsor shall hold publicly noticed meetings during project development to invite participation from the community.

Although the total number of public meetings is left to the Sponsor's judgment, a minimum of two meetings is required. The first is intended to identify local concerns from the public at the outset of the project.

The second is intended to present the results of the engineering study and the recommendations related to whether or not a proposed action has been determined feasible to move forward with preliminary design (see Section 15 of this manual for more details). In most instances, it is beneficial to target each abutting property owner, so they can share any information unique to their property, as well as be aware of the project and its potential impacts.

Additional purposes of public meetings are to inform abutters of potential impacts to their property and to inform the public of potential impacts to the natural and cultural environment. Public involvement should be early and continuous. It is essential to understand the community's values in order to avoid, minimize, and mitigate impacts as well as to narrow the range of alternatives. A well-informed community will help ensure a successful project. The community also should be made aware of the trade-offs and constraints involved in the process, which should encourage public acceptance of the project. A poorly informed community will prevent this public acceptance from occurring. The "public" includes:

- Users of the facility
- Those affected by the project
- Elected officials in the community
- Others interested in the outcome of the project

Public meetings have historically been the primary tool to gather public input, provide information to the public, and establish communication with the public. However, other encouraged forms of public involvement include newsletters, newspaper articles and other media, web sites, and project site visits.

The Department has several programs and documents that support a robust public involvement process. Copies of the current public involvement procedures can be requested from the NHDOT Bureau of Planning and Community Assistance. Links to additional NHDOT public involvement documents, rural local consultation process documents, and the context sensitive solutions process are available at the end of this section of the manual.

The NHDOT project manager and maintenance district engineer (when a project is on a state highway) should be notified of any public meetings. This is necessary to ensure input is provided at appropriate stages of project development.

The Sponsor is also encouraged to invite participation at their meetings from other outside resource agencies and advocacy groups that have local interests in transportation efforts. Such groups would include regional planning commissions, local historical and other neighborhood groups, school districts, environmental groups, business owners, transportation providers, utility owners, etc.

Documentation of public involvement is required through the development of the project. When consultants are leading design efforts on behalf of a Sponsor, public involvement and documentation tasks are often included in their scopes of work. Documentation of public input includes hearing notices; sign-in sheets, and written minutes of public meetings. Sponsors are encouraged to request that meeting attendees self-identify their minority, Limited English Proficiency (LEP) and/or income status. These items can be eligible for reimbursement assuming they have been pre-approved by NHDOT.

If the Sponsor needs to obtain property rights through eminent domain, a formal public hearing process is required in accordance with RSA 498-A. More information on this public hearing process can be found in Section 18 of this manual and from the NHDOT Bureau of Right-of-Way Manual.

NHDOT weblinks:

NHDOT Citizens Guide to Transportation Series: <http://www.nh.gov/dot/business/public.htm>

Ten Year Plan Process: <http://www.nh.gov/dot/org/projectdevelopment/planning/typ/index.htm>

Public Involvement Procedures New Hampshire Transportation Improvement Projects:
<http://www.nh.gov/dot/org/projectdevelopment/planning/documents/publicinvolvementprocess.pdf>

Public Consultation Process for Regional and Local Officials involved with Transportation Efforts in New Hampshire: <http://www.nh.gov/dot/org/projectdevelopment/planning/documents/non-metropolitanconsultation2010final.pdf>

Context Sensitive Solutions Process:
<http://www.nh.gov/dot/org/projectdevelopment/highwaydesign/contextsensitivesolutions/>

NHDOT Bureau of Right-of-Way:
<http://www.nh.gov/dot/org/projectdevelopment/rightofway/documents/rowmanual071411.pdf>

Right-of-Way (ROW)

When LPA projects propose to construct improvements, the sponsor will need to have the legal ability to be on the property that the proposed project construction will be taking place on, as well as a legal Right-of-Way for the project to remain in perpetuity. Any of the costs associated with determining who owns what (and subsequently where the sponsor has the 'right' to be) within the proposed project limits are eligible PE phase expenses and determining the value for those parcels not owned by the sponsor or the most appropriate legal approach to obtaining a Right-of-Way are eligible expenses for projects under the Right-of-Way phase. This section has been developed in order to address the most common situations that will be encountered by LPA project sponsors in the course of their project development process and to stress the importance of State and Federal regulations on the subject – but it is certainly not an exhaustive investigation of the subject. Should you have any questions regarding the obligations related to Rights-of-Way under State and Federal law with respect to your project, or for additional assistance in navigating the sometimes complicated arena of property rights and access issues – please contact your NHDOT project manager for assistance, or visit one of the links provided later in this section.

All LPA projects must acquire ROW for federally funded projects in accordance with FHWA approved NHDOT Right-of-Way Manual and current regulations at 49 CFR Part 24 and 23 CFR Part 710. The NHDOT ROW Bureau Administrator or ROW Engineer must sign off on all ROW certificates for LPA projects per 23 CFR 635.309. Any ROW acquired for a Federal-aid funded project must be acquired in conformance with the Uniform Act (49 CFR 24), regardless of which phase of a project uses Federal funds. Each local agency must certify in writing they will adopt and use the FHWA approved NHDOT ROW Manual (23 CFR 710.201 (d)).

Each grantee and subgrantee, including any other acquiring agency acting on behalf of a grantee or subgrantee, shall be adequately staffed, equipped, and organized to discharge its real property related responsibilities (23 CFR 710.201(b)).

In general, the likely scenarios for ROW acquisition may include:

- Purchase of needed land for improvements in fee
- Purchase of permanent or temporary easements
- Donation of property and rights by affected property owners
- Land mitigation and open space requirements

Design/ROW Process

When projects have advanced through the Engineering Study phase the Sponsor should be prepared to identify the need for easements or fee takings. During this identification task the Sponsor and the consultant are advised that no contract be agreed to with any property owner. This initial work is only to have sufficient information to determine if easements or takings are needed and, if so, what are the potential size, shape and issues that may arise due to the need for property easements and/or takings; under no circumstance should real property values or costs be discussed during this contact.

The Right-of-Way (ROW) and adjacent property lines must be identified during the preparation of a base plan as required in Section 15 of this Manual. This work is “incidental ROW” work. Typically it includes identifying potential property issues and researching at registry of deeds for plans, deeds and names of property owners. This work will be done as part of Preliminary Engineering or Design phase as identified in the consultant agreement and specifically funded in that agreement. Concept plans may be developed to determine any potential ROW issues that might occur, and provide guidance on the selection and identification of alternate solutions during the Engineering Study phase of design. This incidental work may occur prior to NEPA completion.

Once concept plans have been developed and a preferred alternative has been selected, the project may be ready to enter the ROW phase of the project development process. If the project has obtained the following documentation, the ROW phase may begin:

- Current Environmental Decision Document (Categorical Exclusion, Finding of No Significant Impact (FONSI), or Record of Decision (ROD) ROW authorization and ROW funds allocated

The federal government through the Federal Highway Administration has the requirement and responsibility of ensuring that property owners affected by federally-funded projects are afforded due process in acquisition with just compensation and those public monies are spent in a reasonable and accountable manner. This is codified in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended 49 CFR – Part 24, known as the “Uniform Act”.

As specified in the Local Project Agreement, responsibility for ensuring that the provisions of the Uniform Act are met rests with the Sponsor. The following guidance is provided to assist you. Should there be situations where the ROW issues appear to be complex and/or displaced persons or businesses require relocation assistance, there will need to be additional guidance and/or assistance sought from NHDOT.

Funding

Eligible costs for ROW expenses consist of two parts – incidentals and acquisitions. Funding can be authorized and costs incurred/reimbursed for incidentals in the early stages of design prior to NEPA approval. These incidental costs must be incurred and reimbursed in the Preliminary Engineering (PE) phase of the project. Funding for acquisitions can only be authorized and costs incurred/reimbursed in the ROW phase of the project after NEPA approval.

ROW incidental expenses are defined as those costs incurred as part of (but not directly for) the acquisition of property or access to or over property. Examples of incidental costs in the ROW process include:

- Recording fees
- Transfer taxes
- Evidence of title
- Boundary surveys (if needed)
- Legal descriptions of real property
- Certified list of abutting property owners

ROW acquisition expenses are defined as those costs incurred in the direct acquisition of property or access to or over property. Examples of acquisition costs in the ROW process include:

- Fee simple acquisition - partial or total
- Permanent easements (drainage, utility, slope, retaining wall, sidewalks, etc.)
- Temporary construction easements
- Relocation expenses

It is essential that property owners understand that it is always their right to receive just compensation. Any necessary condemnation of property and any ensuing disputes will be the responsibility of the Sponsor.

Property owners always have the right to:

- Have necessary land, improvements and easements appraised and to receive just compensation, which may not be less than the approved appraisal value. The property owner is entitled to a written statement and summary of the amount established as the “just compensation”. This should be accomplished as expeditiously as possible.
- Accompany or have a designated representative accompany the appraiser during any inspection of their property.
- Challenge or appeal the just compensation offer.
- Receive payment of the agreed upon purchase price or condemnation award before surrendering possession of the property.
- Reimbursement for expenses incidental to transfer of title to the Sponsor or the Sponsor’s designee.
- At least a 90-day written vacating notice if the property is improved with structures or if personal property needs to be vacated. Incidental to this may be relocation services and payments.

An overview of the process follows in the order of events that must occur.

Abstract of Title

An abstract of title is required for all acquisitions. This will require, at a minimum, a copy of the current owner’s deed and encumbrances such as mortgages, liens, and any attachments. Legal title documents need to include the title source and address the project needs as to each owner and clear the land and/or rights to be acquired of all encumbrances when required.

Please note: The steps that follow cannot begin until the project has preliminary plans reviewed and accepted by NHDOT and NEPA approval has been received. Before valuation begins, Owners must be informed of the need for property and their basic rights in writing (49 CFR 24.102(b)).

Plans

ROW needs must be represented clearly on project plans or separate ROW plans. Separate ROW plans may be required for complex impacts and recording purposes. It is recommended that the affected property owners be contacted as part of the preparation of ROW plans to discuss the

effects of the project, confirmation of the title abstract data, and details relating to water and sewer systems, property line locations, driveways, etc. The plans should show the proposed

centerline of the project, existing ROW limits and any property monuments found, construction limits, and the proposed “acquisition line”. Should easements be needed these must also be shown on ROW and /or base plans.

It is very important to remember that any property impacted even only temporarily or minimally during construction must be included in the ROW plans.

Details within the “acquisition area” should be shown relative to any existing property improvements such as buildings, water sources, water or sewer lines, septic tanks, etc. ROW plans need to show parcel numbers, full property owner’s names, areas to be acquired, and rights to be acquired. ROW information shall be submitted to NHDOT as part of preliminary plan phase for review and comment. NHDOT comments will need to be addressed by the Sponsor prior to moving to the appraisal stage.

Notice to owner

Before (or at the same time) scheduling the appraisal, the written notice to owner and basic rights information must be provided the owner.

Appraisal of Property

A State licensed or certified appraiser must do all appraisal work. NHDOT Bureau of ROW maintains a qualified Approved Appraiser list with 5 year duration periods. A copy of this list will be provided to the Sponsor upon request. The fees of the appraiser must be reasonable – and competitive in the market and not based on the value of properties being appraised. All appraisals must conform to the FHWA approved NHDOT ROW Manual, Chapter 4.

It is important that there is compliance with several essential items. Procurement of services using federal funds requires these services be acquired using a competitive (low Bid) process, acquisition of appraisal services must be done using this process. Refer to the guidance on this topic in Appendix 11. The competitive process must be followed except in the instance when the appraisal services were part of the engineering design consultant’s initial proposal to the Sponsor. The appraiser cannot have any interest, either direct or indirect, in the property being acquired.

Also, please be reminded that the owner or a designated representative of property being acquired must be given the opportunity to accompany the appraiser during any inspection of the owner’s property. The presenting of this offer to accompany must be documented. The Sponsor must inform the appraiser that reports must conform to the NHDOT Bureau of ROW policies and pertinent State RSA’s. For more information regarding applicable rules & regulations, please see the following NHDOT Bureau of Right-of-Way literature entitled:

- NHDOT Right-of-Way Manual
[Web link: http://www.nh.gov/dot/org/projectdevelopment/rightofway/documents.htm](http://www.nh.gov/dot/org/projectdevelopment/rightofway/documents.htm)
- [Your Land & New Hampshire's Highways](#)

- [Public Highways and Your Property](#)

Appraisal Review

All appraisals must be independently reviewed to assess the compliance of the appraisal report with all pertinent appraisal standards, ethics provisions, and the overall reliability of the current market value. While the sponsor is responsible to insure this action, NHDOT may provide the review of appraisals on projects when staffing permits. In the event that the reviewing appraiser has concerns with the original appraisal, the appraisal can be returned to the appraiser for necessary revisions. All appraisal reviews must conform to the FHWA approved NHDOT ROW Manual. Once the reviewing appraiser is satisfied with the appraisals, a final review document will be prepared and approval letter summarizing the current market value and providing the appropriate recommendation (see ROW Manual Ch. 4).

As part of this process, the reviewing appraiser may determine that all or part of a remaining property may be an “uneconomic remnant”. An “uneconomic remnant” is the remainder of property that has been substantially damaged and has little or no utility or value to the owner because of the project plans. Under the Uniform Act, it is required that the Sponsor offer to purchase such remnants, or appraise the property as a ‘complete take’ as is as of the effective date of value.

Just Compensation

An agency official must set the estimate of just compensation based on a recommended appraisal per the approved ROW Manual.

Negotiation

Once just compensation is estimated, negotiations with property owners may begin. An appraiser who has appraised a property shall not act as a negotiator on the same property if the value of the impact is \$10,000 or greater. The negotiator must keep records of negotiations on a per parcel basis. The record shall be in writing and completed after each contact with a property owner. The record for each contact shall include, as a minimum:

- The date and time of the contact
- With whom offers are made (dollar amounts)
- Counter-offers
- Reasons why a settlement could not be reached
- Any other pertinent information
- Copy of written offer/summary statement presented

The record shall be signed and dated by the negotiator.

There may be instances where an acquisition settlement is proposed in excess of the approved estimate of just compensation. This is referred to as an “administrative settlement”. Approval of an administrative settlement will need to be obtained from NHDOT prior to execution of any binding documents in order to remain eligible for state and federal participation. Any settlement amounts greater than current market value and/or an approved administrative settlement will be the responsibility of the Sponsor.

During the negotiations, the Sponsor must put forward its current market value offer in written form and each property owner must be provided with a written statement of the approved amount established and a summary of the basis for the offer. When only a portion of the owner's property is being acquired, the statement must include both the amount of compensation being offered for the property being acquired and the amount for damages or loss in value to the remaining property if damages are involved per **49 CFR §24.102(d)(e)**.

If the acquisition involves an "uneconomic remnant" as previously described, the Sponsor must offer to purchase it; but the owner has no obligation to sell it nor can it be condemned. Except in instances where only temporary easements are required, the acquisition must include not only the owner's interest in the property, but also the interest of any mortgagees, lessees, lien holders, or other parties.

If the negotiator is unable to reach a settlement with the property owner, the Sponsor will need to assume the responsibility as the condemning authority and is subject to all the applicable sections of the pertinent State RSA's and policies of NHDOT Bureau of ROW that address the issue of the condemnation process.

It is expected that the Sponsor will have legal representation during this process. All legal fees must be determined to be reasonable and not on a percentage basis. The attorney used must have qualifications and experience in areas of property law and all legal work must be done in accordance with State RSA's and **23 CFR §710.00**. If any commitments are made to the property owner, other than a cash settlement, they must be in writing and must be approved by NHDOT. Again, further discussion with the NHDOT project manager will clarify this.

Should the project require the displacement of any person, business, farm, or non-profit organization, either in whole or in part, the Sponsor shall seek assistance from NHDOT Bureau of ROW. From CFR 24.2(a)(9) the term *displaced person* means, except as provided in paragraph (a)(9)(ii), any person who moves from the real property or moves his or her personal property from the real property.

Donations

A formal process regarding the acceptance of property donations has been developed by NHDOT and approved by FHWA. Refer to Appendix 11 for the "Donation Programmatic Policy and Procedure" process and the donation form template. This approved process and donation form is a requirement for all projects that have property donations.

Waiver Valuation Process

The waiver valuation process estimates just compensation for the property owner. This procedure can be used for *minor, uncomplicated acquisitions* where compensation to the property owner does not exceed **\$10,000**. This procedure cannot be used when condemnation of a parcel is required; an appraisal will be required for condemnation purposes.

Qualified staff or consultants may prepare compensation estimates. To be qualified to prepare compensation estimates, the preparer must be generally knowledgeable of land values,

particularly types similar to the property being acquired. Compensation estimates should be based on current land values in the market area and should be applied consistently to all parcels in a construction project. The individual preparing the valuation may also negotiate the real property if the value is \$10,000 or less.

In accordance with the “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” (URA); § 24.102 (c) (2) (ii), if “The Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data.”, said Agency is permitted to use waiver valuation to determine compensation.

The following procedure shall be used in determining waiver valuation compensation for LPA projects:

- A Waiver Valuation team will be established for projects which will include the Sponsor’s person in responsible charge (or their qualified designees), qualified person with appraisal/ROW management knowledge and market experience whose experience will be documented, and the Engineer of record, (or their qualified designees).
- The team shall perform a field overview of the project and shall conduct a preliminary inspection of the properties and proposed impacts to determine the appropriate use of waiver valuation.
- The team will then meet to determine which parcels are uncomplicated, are of low value, and meet the criteria for Waiver consideration, as identified in the New Hampshire Department of Transportation Right-of-Way Manual, Chapter 4, and which parcels will require an appraisal.
- The Sponsor will prepare plans delineating right-of-way impacts and an initial schedule of just compensation for parcels with proposed acquisitions including any temporary construction and permanent easements. The schedule will utilize the easement areas and comparable market data as described below to determine the initial just compensation values. **It is not appropriate to use ad valorem assessed values.**
- The Sponsor will have a qualified person collect comparable market data to compute or estimate the initial fair market values. Fair market values must be determined before the estimate of just compensation estimate is set. The just compensation estimate can be no less than the fair market value. The Sponsor will consider a person qualified who has a sufficient understanding of the local real estate market and has knowledge of the Uniform Act.
- The team will then determine, based on the size, type and duration of the required impacts, the reasonable and supporting values, using established procedures and comparable market data collected to finalize the just compensation values. The Sponsor will prepare a final schedule of just compensation and a notice of offer/estimate of compensation (EOC) sheet(s) for each impacted parcel. An agency official must estimate just compensation; this function cannot be delegated to consultants.
- The sponsor will send a “draft” copy of all ROW documents to NHDOT’s project manager for review prior to sending the documents to property owners. These documents typically includes the following:

- a) Transmittal letter of ROW documentation from sponsor to the property owner. This letter will include the just compensation offer and summary statement in writing.
- b) Completed Checklist for Determination if Acquisition is “Uncomplicated”
- c) Property Transfer Deed (easement, fee)
- d) Plan showing properties needed including all necessary easements and fee acquisitions
- e) Estimate of Compensation (EOC) form
- f) Backup information showing how the compensation values were obtained

Upon completion of NHDOT’s review of “draft “ROW documents, the NHDOT project manager notifies the project sponsor with the results of the review:

- a) If there are comments, the project manager sends the ROW documents back to the sponsor. The sponsor addresses the comments and resubmits the revised documents to the project manager for review.
 - b) If there are no comments, the project manager issues the Notice to Proceed with submission of ROW documents to property owners.
- After the property owners have received the ROW documents the following are the options in order of preference with regard to contacting the owner(s):
 - a) The Sponsor meets with the owner to review the offer that was sent in the transmittal letter noted above. At the meeting the Sponsor explains the waiver valuation process and informs the owner(s) of their right to request an appraisal.
 - b) If no contact can be made with an owner, the Sponsor will request an appraisal.

If the property owner(s) agree(s) to the offer, the Sponsor will obtain a signed Estimate of Compensation form and a Deed. If the property owner(s) does not agree with the offer, the Sponsor will review the plans to determine if the design can be modified to eliminate the acquisition and/or negotiate with the property owner. Since negotiations will result in an increased value above the amount of just compensation, the Sponsor may want to limit the increased amount to less than the anticipated cost of an appraisal and review appraisal. If this fails the Sponsor will request an appraisal and may consider further action such as condemnation (all projects are under the threat of eminent domain.)

Leasing property acquired with Federal Funds

Some LPA projects may be seeking federal funds to purchase property and then lease the property to a third party – such as for a parking facility. For those projects, Title 23 of the Code of Federal Regulations governs the terms of any lease agreements as follows:

- (a) Leasing of real property acquired with title 23 of the United States Code, funds shall be covered by an agreement between the Sponsor and lessee which contains provisions to insure the safety and integrity of the federally funded facility. It shall also include provisions governing lease revocation, removal of improvements at no cost to the FHWA, adequate insurance to hold the Sponsor, State and the FHWA harmless, nondiscrimination, access by the Sponsor, NHDOT and the

FHWA for inspection, maintenance, and reconstruction of the facility. For a list of all requirements see 23 CFR 710.405. The net proceeds must be returned to NHDOT to be used exclusively for eligible activities (see 23 U.S.C. 156 and 23 CFR 710 Subpart D).

(b) Where a proposed use requires changes in the existing transportation facility, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the Sponsor, NHDOT and the FHWA.

(c) Proposed uses of real property shall conform to the current design standards and safety criteria of the Federal Highway Administration for the functional classification of the highway facility in which the property is located.

Certified Statement (ROW Certificate)

The Sponsor must issue a certified statement to NHDOT that all ROW issues, including control of access rights, as well as legal and physical possession, have been acquired in accordance with State regulations and the Uniform Act. The ROW Certification Letter (see Appendix 11) must be signed by the appropriate Sponsor's representative. If any special ROW agreements were made, they need to be included in a certification package, as well as final ROW plans with changes noted, appraisals, current market value certificate, mortgage releases, easements, and acquisition documents. NHDOT will then issue the final ROW certificate to FHWA. Please note that the NEPA process must be concluded prior to any acquisition of property utilizing federal funding.

The ROW Certificate is required even if there are no impacts to private property. See ROW Certificate in Appendix 11.

Utilities

The accommodation of utilities within project limits is a crucial component to the design process. Administrative procedures, minimum requirements for location, methods of installation, and adjustment and maintenance of utilities need to be properly considered. This applies to new utility installations, additions to or alterations to existing installations, or relocations of existing utilities.

Utilities include: All public or private lines or equipment having the purpose of supplying the public with services such as electrical power lines, telephone landlines, cable television lines, fire alarm lines, underground water, sewer, and gas lines, and railroad lines. The NHDOT policy is not to reimburse for the cost of relocating utilities underground.

Almost all projects will impact or include these types of utilities somewhere within the project limits. It is important that these utilities are identified, along with contact of the owners, very early in the project development process to allow the necessary time to work out the details of avoidance, relocation, protection, or upgrading. The earlier the process begins, the more likely that coordination will go smoothly and deadlines will be met. The Project Sponsor **must certify to NHDOT that all ROW clearance, utility and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. All utility work is to meet the requirements as set forth in the NHDOT Utilities Accommodation Manual, dated Feb 2010 (NHDOT UAM) and Federal requirements set forth in 23 CFR 635.309.** It is extremely important to note that all coordination of utilities must be completed prior to the advertisement for construction. (See appendix 7 for a copy of the Utility Certificate)

Sponsors and consultants are required to use the NHDOT UAM, which is based on FHWA requirements as set forth in 23 CFR 645, dated February 2010, and as prepared by NHDOT Design Services' section of the Bureau of Highway Design. This comprehensive, 170-page manual is established to regulate the accommodation of utilities within highway and railroad rights-of-way. It provides certain administrative procedures and establishes minimum requirements for the location, method of installation, adjustment, and maintenance of the utility facilities so accommodated. Some important excerpts from this manual are:

- All work performed by any utility or by any party on behalf of a utility within a right-of-way, whether it be new construction, adjustment, or maintenance operations, shall be conducted in a manner to protect the public. A traffic control plan shall be required for any activity with the highway right-of-way.
- The utility owner is responsible for the design of the utility facility to be installed within the highway right-of-way or attached to a highway structure (such as a bridge). The Project Sponsor is responsible to review for approval the utility's proposal with respect to the location of the utility facilities to be installed and the manner of installation or attachment.

- The utility company is required to secure any necessary environmental permits applicable for the proposed installation, except when the relocation of facilities is necessitated by a highway improvement project. This exception is applicable only to facilities existing and relocated within highway rights-of-way or covered by utility easements or property replacement.
- To accommodate all possible underground utilities within the highway right-of-way, anticipation of future utility installations and coordination of activities with municipal and private utility companies is essential. In both rural and urban areas, the layout of facilities as near to the right-of-way as practical is desired with sewer and water lines being located on opposite sides of the roadway.

The NHDOT UAM contains important State Laws regarding utilities.

Section XVI of the NHDOT UAM discusses utility reimbursement qualifications. Federal regulation 23 CFR 645.113 requires that on Federal Aid projects involving utility relocations, the utility and right-of-way owner shall agree in writing on their separate responsibilities for financing and accomplishing the relocation work. Generally, the agreement needs to follow information listed in 23 CFR 645.

Seven conditions are given and meeting any one of these allows the utility to obtain reimbursement from the project for their work. The seven qualifications listed in the NHDOT UAM are as follows:

- The facility occupies property by rights granted to the utility owner by an easement; or the utility owns the property
- A municipally owned utility is located within the right of way of a road or street owned by said municipality, provided that the utility is not required by law to relocate its facilities at its own expense.
- The facility occupies a highway right-of-way where the utility had the right of easement prior to the acquisition of the right-of-way by the state, City, or Town or prior to 1905 when the Department was incorporated, and the utility has not been compensated for easement rights.
- The facility occupies a highway right-of-way and the right of easement was reserved to the utility in the highway return of layout.
- Municipally owned subterranean facilities located within the ROW of a state owned and maintained roadway requiring relocation will receive reimbursement in accordance with RSA 228:22. This consists of trenching and backfill costs plus book value of any abandoned facilities.
- The State Attorney General's Office issues an opinion obligating the state to bear any or all of the costs for alterations to and/or protection of utility facilities.
- The facility is located on US Government land such as forest service with a permit or lease. Federal agency may participate – FAPG 23 (3) CFR 667.

One common condition is “A municipally owned utility is located within the right-of-way of a road or street owned by said municipality, provided that the utility is not required by law to relocate its facilities at its own expense.” This Section also discusses sufferance, tree clearing/trimming responsibility, and procedures for reimbursement.

The NHDOTUAM can be viewed online at:

http://www.nh.gov/dot/org/projectdevelopment/highwaydesign/documents/UAM_complete.pdf

A hardcopy can be purchased from NHDOT Records section located at 7 Hazen Drive, PO Box 483, Concord, NH 03302-0483. Telephone inquiries can be made at 603-271-1601.

Project Permits and Approvals

The Project Sponsor is responsible for obtaining all necessary permits and approvals for the work as defined in the plans or contract proposal prior to advertising the project for construction. All required permits must be obtained or NHDOT will not give approvals to advertise or authorize funding for construction.

The permits and approvals must be coordinated with the appropriate agency (see Section 17). Typically, the preliminary and/or final design of a project is progressed to a point where impacts can be confidently quantified. The Sponsor then submits the appropriate applications for the permits specific to the project.

The Sponsor should allow adequate time in its schedule to obtain the permits and approvals (see Section 7). Typically, it can be a few months from the time a permit application is submitted to the Sponsor's receipt of a permit.

NHDOT provides monthly review meetings with state and federal agencies responsible for natural and cultural resources to give project sponsors an opportunity to review their proposed projects with the permitting agencies prior to actually submitting the applications (see Section 17).

NHDOT strongly urges sponsors to use the monthly meetings as they proceed with the design of their projects to avoid any unacceptable impacts and significant re-design late in the project development process. NHDOT also suggests that the Sponsor be prepared to present enough detail at the meeting to promote the discussion of potential impacts. The Sponsor can contact the NHDOT Bureau of Environment at 603-271-3226 to schedule an appointment at either the Natural Resources Meeting (typically held on the third Wednesday of the month) or the Cultural Resources Meeting (typically held on the second Thursday of the month).

Generally, permits and approvals that are required include, but are not limited to:

- Wetlands Permit from the NH Department of Environmental Services (NHDES)
 - Wetlands permit with all conditions shall be included in the bid documents
 - Wetlands permit shall be displayed at the project site
- Alteration of Terrain Permit from NHDES, Alteration of Terrain Bureau
- Water Quality Permit, if needed
- Individual 404 Permit from the U.S. Army Corps of Engineers, if needed
- Cultural Resources Effect Memo, prepared by NHDOT and signed by the NH Division of Historical Resources (NHDHR)
- Shoreland Protection Permit
- Coastal Zone Consistency finding, if needed
- US Coast Guard Bridge Permit, if needed
- Essential Fish Habitat assessment approval
- National Environmental Policy Act (NEPA)

- Permission or agreement with the railroad or track owner if work proposed is in or over a railroad right-of-way
- A SWPPP plan (see below) is the basis to obtain an EPA Construction General Permit
- Accessible Route – compliance with ADA requirements

It should be noted that the federal process requires that the NEPA Study resulting in Environmental Classification be completed prior to beginning the final contract plan phase of design.

It will be the project contractor's responsibility to secure permits, variances, or modifications to the permits secured by the Sponsor for additional work not shown on the plans or work necessary for the contractor's method of construction. The bidding documents shall notify the potential bidders that they are required to observe and fully comply with all federal and state laws that affect the conduct of the work or individuals working on the project. These include, but are not limited to, laws relative to wetlands and waterways and safety and health.

Operators of construction sites where one or more acres are disturbed must prepare and submit a Notice of Intent (NOI) to obtain coverage under a National Pollutant Discharge Elimination System (NPDES) Permit. This process refers to Environmental Protection Agency's Construction General Permit definition of operator, but this typically is the contractor and owner or Project Sponsor. A Stormwater Pollution Prevention Plan (SWPPP) must be prepared prior to start of construction as required by the Construction General Permit.

Further information on the resource review process can be found in Section 17.

Federal Labor Compliance Requirements

All Local Public Agency (LPA) projects must adhere to Federal labor compliance requirements through the NH Department of Transportation (NHDOT) Office of Federal Compliance (OFC). Project sponsors should note that if an LPA project is part of a larger multi-funded project; all federal requirements apply to the entire project. The OFC first becomes involved at the bidding phase of a project and completes its involvement with the issuance of a Final Payment Release Authorization to NHDOT's Bureau of Planning and Community Assistance at final project reimbursement (See Section 31 – Final Reimbursement). This section summarizes the key steps of the NHDOT OFC, sponsor, and consultant roles from the beginning of the project to its end. As discussed below, there are several OFC documents pertinent to the locally-managed process. These documents underlined below can be found at the following OFC website link under "Local Public Agency (LPA)":

<http://www.nh.gov/dot/org/administration/ofc/documents.htm>

Samples of these documents are also provided in Appendix 12. However, since these documents are subject to change, the latest version should always be obtained from the OFC website.

The following is a summary of the pertinent steps with regard to labor compliance:

1. Incorporation of OFC documents – The project sponsor or consultant prepares construction or bidding documents. The bidding documents must include the Required Contract Documents Package by OFC that can be found at the OFC website link noted above. The package contains the documents that are required to be incorporated into all federally-funded LPA projects.

In addition, NH wage rates also need to be incorporated and these can be found at:

<http://www.wdol.gov/wdol/scafiles/davisbacon/nh.html>

2. OFC check of documents - OFC is part of NHDOT's review and approval of the bidding documents. OFC has developed a review checklist entitled Office of Federal Compliance – Municipal Contract Review Checklist in order to verify that all the required labor compliance documents have been incorporated into the bidding documents. This can be found as Contract Checklist on the OFC website link noted above.
3. Bid Approval letter - Upon review and approval of the bid tabulation submitted by the project sponsor, the NHDOT project manager will issue a "Bid Approval" letter to the sponsor, with a copy of the letter to the OFC. This "Bid Approval" letter requests that the NHDOT project manager and the OFC be notified of the date of the pre-construction meeting. Within five working days of the date of the "Bid Approval" letter, the OFC will contact the sponsor to obtain the information listed below:

- Name and contact information of sponsor's person in responsible charge
 - Name of Prime Contractor and construction dollar amount. This should be the same as the amount in NHDOT's Bid Approval letter.
 - Projected start and completion dates of construction.
 - Bid advertisement date and bid award date
 - Description of work
 - Name and contact information of consultant's person in responsible charge and person providing construction oversight services (if consultant is used)
4. Pre-construction meeting - A representative from OFC will attend the pre-construction meeting and should be allotted approximately 30 minutes to provide a brief summary of compliance requirements. The summary will include a review of the OFC process during construction and a review of the responsibilities that need to be completed by the project sponsor, consultant and the contractor. Please refer to the *Responsibilities Guide For LPA's*, which provides detailed information with regard to the responsibilities of sponsors and consultants. The Sponsor or Consultant should also come to the Pre-Construction Meeting prepared to provide the Prime Contractor a complete list of Additional Work Classifications needed in order to complete the project work. Sponsors/Consultants are encouraged to review the list with the OFC prior to the meeting. A summary of sponsor's and consultant's responsibilities during the construction phase includes:
- Verify that only OFC approved subcontractors are allowed to work on site. NHDOT will not reimburse the sponsor for work performed by unapproved subcontractors.
 - Assist OFC as needed to verify that contractors are in compliance with Federal/State contract requirements.
 - Monitor work climate and report suspected instances of unlawful harassment/discrimination to the OFC.
 - Verify that sign-in sheet requirements (OFC Form 20) are being met:
 - All workers are signing in daily
 - Verify work classifications listed
 - Collect sheets daily from prime contractor, initial in column provided and retain with project records in three-ring binders with newest sheets on top
 - Verify that subcontractors do not further sublet without approval. If an unapproved subcontractor is found to be working on site, they should be removed from the project and the OFC should be notified immediately.
 - Monitor open OFC field audits until "closed". Verify that prime contractor responds appropriately within the time frame allowed
 - Perform Employee Interviews in Accordance With OFC Guidelines
 - Use OFC Form 11
 - Monthly Requirement: No later than the last calendar day of each month, send copies of completed interviews (fax or email) to the OFC.
 - Retain with project records
 - See below for detailed information with regard to employee interviews

- Inform OFC if a resident engineer changes
- Perform Commercial Useful Function (CUF) reviews on each DBE performing work on site
 - Use OFC Form 21
 - Retain with project records
- Keep OFC informed on current status of project
 - Complete OFC Form 13 each time the project starts, suspends (10 days or more), resumes, and when the project is completed
 - Fax submissions to 271-8048. Submissions are timely if received within 10 days

Perform and Document (OFC Form 11) Employee Interviews

- Provide courtesy notification to prime's superintendent
 - Inform worker that no information is released without his/her written consent
 - Do not perform interviews in front of other workers or in groups
 - Verify classifications worked in
 - Verify hourly rate and if overtime is being paid
 - Ask if worker is being paid weekly
 - Determine if workers are completing time sheets
 - Ask if worker receives benefits
 - Ask if deductions are being taken
 - Ask if worker is taking paid lunch breaks
 - Ask for instances of discrimination/harassment
 - Compare information from interviews to information reported on payrolls
 - Notify OFC if any discrepancies
 - Strive to interview each worker at least once over the life of the project
5. During construction, OFC will visit the project work site to perform a monthly field audit. A Field Audit Report will be generated at the end of each visit and a copy of the Field Audit Report will be emailed to the prime contractor, the sponsor, and its consultant. One of three ratings will be assigned: ***"Satisfactory"*** (no discrepancies), ***"Not in Full Compliance"*** (minor or few discrepancies noted), or ***"Unsatisfactory"*** (significant or numerous discrepancies noted).

The prime contractor must take corrective actions for any discrepancies cited in the Field Audit Report to OFC no later than seven calendar days from the date of the Audit Report. Extensions, if needed, must be justified and submitted in writing and will be considered/ approved on a case-by-case basis. Failure to respond appropriately by the due date **will** result in the withholding of progress payments until corrective action has been completed and verified.

Prompt Pay Verifications:

Sponsors shall provide Prime Contractors an OFC Form 12, Prompt Payment Certification, with each progress payment with instructions that the Prime shall complete the upper portion of the form and then forward same to his/her subcontractor or major material

supplier when payment is made to that company (must be no later than 21 calendar days). Sponsors shall advise the Prime to have his/her subcontractor or major material supplier complete the lower section of the OFC Form 12 and then forward directly to the on-site Contractor Administrator. This process will be repeated for each progress payment.

Sponsors and Consultants should refer to the OFC's *Responsibilities Guide for Sponsors/Consultants* as needed. In addition, project sponsors and contractors can also refer to the *Labor Compliance Brochure for Contractors* to better understand contractor requirements. This document can be found at the OFC website link under "Other Documents". This brochure provides information on the following topics:

- Monthly submissions
- Annual assurances submissions
- Subcontractor approvals
- Owners who work on site
- Salaried supervisors and workers
- Leased employees/temporary laborers
- Prompt pay requirements
- Requesting additional work classifications
- Hiring
- Wages & Payrolls
- Sign in sheets (LPA projects only)
- Office of Federal Compliance field audits
- NHDOT Restitution Policy
- Bulletin Board-Mandatory Poster Requirements
- Special training provision (OJT training program)
- Annual Equal Employment Opportunity (EEO) Report Submission
- Final Payment
- EEO Officer Requirements
- Work Classification Descriptions and Information
- Miscellaneous

6. Final actions by the Project Sponsor or Consultant

- Inform OFC of Final Inspection Date (informational purposes)
- Fax or email OFC Form 13 and Status Report within 10 working days of project completion
- Verify all payrolls have been received not later than 14 calendar days from completion date and are complete and correct.
- Verify OFC Form 3, Payroll Log Sheet, is finalized not later than 14 calendar days from completion date
- Notify OFC in writing if payrolls have not been accounted for not later than 14 calendar days from completion date. Perform follow-ups, in writing, with the Prime Contractor, to obtain any missing payrolls and keep the OFC informed.
- Contact the OFC not later than 30 days after project completion to arrange for a final audit. The following documents should be made available for inspection:

- Certified payrolls
- Payroll Log Sheets
- Sign-in Sheets
- CUF Reviews (if applicable)
- Prompt Pay Certifications, OFC Form 12s
- OFC Form 11s, Interviews

The OFC will send a final reimbursement payment release authorization (“ok to pay”) to the NHDOT project manager when all of the Final Actions from item 6 above have been satisfied.

7. Transfer and Retention of Project Records - Consultants shall transfer project records to the project sponsor by transmittal documents, with a copy to OFC. The sponsor must maintain project records for three (3) years from date of final voucher.
8. At completion of construction, OFC completes and issues a Consultant Evaluation Form to the project sponsor, the NHDOT project manager, consultant committee, and the consultant. This form, which can be found on the OFC website as *OFC Form 19: Consultant Evaluation*, gives an overall evaluation rating, a recommendation, and scoring for the various components of the consultant’s responsibilities with regard to labor compliance. The components evaluated include Performance, Disadvantaged Business Enterprise, On-the-Job Training, and Final Closeout Procedures.

Work Zone Traffic Management

An essential component of a construction project is traffic management that provides for the safe movement of all legal traffic through or around the construction site, maintenance operations, or utility work and for the safety of the workers. Consideration of impacts to traffic and the necessary traffic control shall be documented for every LPA project.

Each project is required to develop a Traffic Management Plan (TMP), which shall include a Traffic Control Plan (TCP), but may also require traffic operations and public outreach components based on the perceived impact to local and regional traffic. Most LPA project TMP's will simply require a well thought-out TCP, given the relatively minor impact to area traffic that is typically experienced. However, some projects may require a more robust TMP with traffic operations and/or public outreach components if it is believed that the project could have significant impacts to regional traffic operations.

The New Hampshire DOT's Traffic Control Committee (TCC) makes the final determination on what will be required in the project's TMP including determinations regarding whether the TMP will include traffic operations and public outreach components, or will it simply include the required traffic control plan. The determination is based on specific information that must be submitted to the TCC as outlined in the NHDOT's *Work Zone Safety and Mobility Guidelines*, which can be found online here: <http://www.nh.gov/dot/business/engineers.htm>.

This information must be submitted by the consultant and project Sponsor using the *NHDOT Traffic Impact Significance Determination Memorandum* template found in Appendix 13.

The TCC chairperson will review the information submitted by the project representative and decide if the projects Traffic Management Plan needs to be presented to the full TCC. If yes, the project's TMP shall be presented to the TCC for a determination of significance. This may result in the sponsor having to develop a more comprehensive TMP with additional TCP, traffic operations and public outreach measures. For projects where these additional requirements apply, the project representative will be given further direction as to what will be required at the time of the presentation.

Traffic Control Plan

The project specific Traffic Control Plan (TCP) shall be developed as part of the design process. The TCP shall be based on the use of standard sequence of signs and other traffic control devices as shown in the NHDOT Highway Design Manual and also on NHDOT 2010 Standard Plans for Road Construction which may be found online here:

<http://www.nh.gov/dot/org/projectdevelopment/construction/documents.htm>

The work zone TCP shall also follow provisions of the Manual of Uniform Traffic Control Devices (MUTCD). The TCP shall also be included in the project's contract documents and plans. The guidelines in this section are directed to the safe and expeditious movement of traffic through

work zones and to safety of the work force performing the operation. These guidelines are based on the following fundamental principles of traffic control.

A. Traffic safety in construction and maintenance zones should be an integral and high-priority element of every project from planning through design and construction.

- The basic principles used in the design of permanent roadways should also govern the design of traffic control in work zones.
- Knowledgeable persons should prepare appropriate temporary traffic control plans, based on the complexity of the job and duration of each operation for phase of work. Pertinent information should be gathered, analyzed, and used to prepare the traffic control plan.
- Pedestrian movements and safety, with particular attention given to addressing accessibility, should be maintained and accounted for in the traffic control plan design.
- NHDOT needs to approve the plan before construction of the project.

B. Traffic movement should be inhibited as little as possible.

- Assume motorists will reduce their speed only if they perceive a need to do so. Therefore, reduced-speed zoning should be avoided as much as possible, and only used when appropriate.
- Frequent and abrupt changes in geometrics (lane narrowing, dropped lanes, lane shifting) should be avoided. Proper distances between maneuvers must be maintained.
- Consideration should be given to the safe operation of work and vehicles, especially on high-volume, high-speed roadways. As a reminder, the use of a uniformed police officer on projects needs to be pre-approved by NHDOT.
- Construction time should be minimized to reduce worker, pedestrian and driver exposure to potential risks. For example, in high traffic volume areas work activities may need to stop 2 PM on Friday afternoons or when traffic volume increases by more than 20%.
- Construction zones need to be monitored to ensure they are safe and functional through the period of no construction such as a weekend. Local police or fire dispatch centers should have contact information so that, if there is an issue at the site, they have a contact that has the ability to come to the site and correct any issues such as washouts, excessive dust, debris, down traffic control devices, etc.

C. Motorists and non-motorists should be given clear and positive guidance when approaching and traversing construction areas.

- Proper warning, delineation, and channelization should be provided to assure positive guidance through the work area for both vehicles and pedestrians. Multiple work areas within a work zone or multiple work zones within close proximity to each other need to be coordinated to ensure smooth traffic flow and minimum delays for vehicles, non-motorized vehicles and pedestrians. Traffic control should also be reviewed to ensure advanced warning signs and other devices from multiple work zones in the same vicinity do not overlap each other such that they cause confusion or unnecessary repetition.
- Existing traffic controls (signs, pavement markings, etc.) that are no longer appropriate or conflict with temporary traffic controls should be removed or covered to prevent motorists' and pedestrian confusion.
- The typical applications from the Manual of Uniform Traffic Control Devices (MUTCD) and the NHDOT Highway Design Manual and Standard Plans should be used for the layout of

- signing, traffic control devices, and markings to the extent possible. When the typical applications are not sufficient to address the specific traffic control needs of the work site, unique plans should be developed using the MUTCD standards, guidance and principles.
 - No temporary, homemade, makeshift, signs or control devices are to be used in place of MUTCD approved designs and standards. Approved signs and devices need to be clean and in good condition and maintained in such condition throughout the life of the project. NHDOT reserves the right to issue a stop work order on any construction projects that are not in compliance with the traffic control plan, traffic control standards or are poorly maintained and/or create a potential hazard to the public, either to vehicle traffic to include non-motorized vehicles or to pedestrians in the area as determined by the Department.
- D. The contract administrator should make frequent reviews of actual traffic control installations throughout the duration of the project, typically once daily, and immediately upon new traffic control setups. Special attention should be given to the effectiveness of the traffic control and any problems that have been encountered. The contract administrator should coordinate with the contractor to adjust the projects traffic control plan as needed. If law enforcement officer use is being considered because of safety concerns, prior approval is needed from NHDOT in order for the Project Sponsor to be reimbursed for the use of law enforcement officers.

Other documents re: traffic control requirements for LPA projects may be found in Appendix 13.

Policy and Guidance on the use of Flaggers and Law Enforcement Officers in Work Zones

The NHDOT has both a policy and guidance on the use of flaggers and law enforcement officers in work zones. It is the responsibility of the Sponsor to see that both the policy and guidance are followed. The following is the web location for these policies and guidance:

<http://www.nh.gov/dot/laws/index.htm>

In most situations flaggers are able to safely control traffic. If a Sponsor feels that the work zone situation warrants the use of uniformed law enforcement officers, the use of those officers must be preapproved as part of the approved traffic control plan by NHDOT. The submitted Traffic Control Plan must be in compliance with NHDOT Flagger and Uniformed Officer Guidelines. Any use of uniform officers without prior written approval will be ineligible for reimbursement.

NOTE: The NHDOT policy and guidance on the use of Uniformed Law Enforcement Officers applies even to those municipalities (LPA's) with a specific policy or ordinance that requires the use of uniform law enforcement officers to direct traffic at constructions sites, or which confers traffic control decisions to the Chief of Police. Management of this issue requires sustained communication regarding the NHDOT policy and local concerns in regards to LPA projects. All project Sponsors will be expected to sign agreements to this effect when projects are in their jurisdiction on state or municipal roads.

In those situations where the NHDOT project manager or their designee determines that the use of uniformed law enforcement is not necessary to maintain the safe flow of traffic through the construction zone, then it will be the responsibility of the Sponsor to pay for any law enforcement

personnel used. The Sponsor may be able to be reimbursed at the flagger's rate for the law enforcement personnel provided you have the necessary documentation and the officers are trained to, work as, flaggers using appropriate flagging devices and procedures.

NOTE: Effective April 1, 2013, all uniformed officers working on any NHDOT funded projects, including LPA projects, shall have successfully completed a NHDOT approved course on "The Safe and Effective Use of Law Enforcement Personnel in Work Zones". This course shall be taken once every four years. Proof of successful course completion shall be documented in the project files for each officer used on an LPA project prior to payment of police invoices. It is highly recommended that Contract Administrators communicate this requirement to the police prior to them working on the site.

Please follow the link below for more information regarding the training requirements:

<http://www.nh.gov/dot/org/projectdevelopment/construction/documents/NHDOTApprovedWZTrainingforLawEnforcement.pdf>

NHDOT also has a work zone safety and mobility policy that applies to any state or local government that receives Federal-aid highway funding. The complete policy can be found through the following link:

<http://www.nh.gov/dot/org/projectdevelopment/highwaydesign/documents/WorkZoneSafetyPolicy.pdf>

Work Zone Traffic Control Operations:

The inspection of work zones must be completed by the Sponsor's Construction Administrator on a regular basis (weekly) documenting the traffic control setup at the time and all findings associated with it. The inspections should pertain to the placement of traffic control devices and their condition, traffic flow through and around the work zone, indications of safety problems, as well as overall work zone operations. The intent of the inspections is to communicate and document issues and experiences as well as to identify that the contractor is properly managing the work zone or identifying where improvements are needed. Inspections should be completed utilizing the *Traffic Control Checklist* provided in Appendix D located in the "Guidelines for Implementation of the Work Zone Safety and Mobility Policy", NHDOT Policy #601.01 The inspection report should be part of the on-site documentation.

Work Zone Crash Reporting:

All crashes or accidents occurring within the Work Zone designated by the Project limits must be reported to the NHDOT project manager by the Sponsor and/or the Sponsor's consultant working on the project. Crashes are to be reported using the NHDOT Work Zone Crash Report (WZCR) form. The web location of the Guidelines for Implementation of Work Zone Safety and Mobility Policy governing the WZCR reporting is as follows:

<http://www.nh.gov/dot/org/projectdevelopment/highwaydesign/documents/WorkZoneSafetyPolicy.pdf>

Nonstandard Project Procurement

Any project that uses federal funds must engage in a competitive bid process for construction contracts (see Section 26). Non-construction procurement (see Section 28) shall follow the State of New Hampshire requirements unless a project sponsor has adopted stricter standards.

Competitive bidding is the principal means to award Federal-aid construction contracts. Therefore, the consideration of any non-competitive construction contract procurement method requires a cost-effectiveness determination as well as an evaluation that demonstrates the unusual circumstances surrounding the request. In addition, it must be clearly shown that the non-competitive methodology would meet all the normal requirements for this type of project and result in a similar quality finished product.

When it is in the best interest of the public to deviate from competitive bidding practices, a request for Public Interest Finding (PIF) needs to be prepared by the project sponsor and approved by NHDOT with concurrence from FHWA.

What should be included in a request for a public interest finding (PIF)?

While there is no specific format for a request for a PIF, the level of documentation will be dependent upon the specific nature of product and projects involved. In general, the PIF should document the reasonableness of the project sponsor's minimum needs and the best method to meet those needs consistent with the requirement for the broadest practical competition. The actual cost effectiveness/public interest finding will consist of a written document outlining the basis for the request and any supporting documentation such as a cost/benefit analysis, discussion of product compatibility, logistical concerns, etc. The supporting material may include engineering and economic considerations, product availability and compatibility, logistical concerns, and other unique considerations.

For your information, the current version of the FHWA "Contract Administration Core Curriculum Participant's Manual and Reference Guide" contains guidance regarding the content and review of PIFs. The manual also contains guidance about product selection, specifications, and other contract administration topics, and is available on-line at:

www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm.

Proprietary Items

Below are examples of conditions under which patented or proprietary materials may be approved on Federal-aid projects.

Case I. The item is identified by the contract specifications along with a listing of other acceptable products, and the list includes a reasonable number of acceptable products. FHWA may then participate in the cost of a patented or proprietary item since it is acquired competitively.

Case II. The project sponsor certifies that the product is essential for synchronization. This may be appropriate when upgrading or expanding existing traffic signal systems. The controller is part of an existing system that is not compatible with any other system hardware. To convert the

overall system could be more expensive than to add to what is already there. Thus, it may be in the public interest to require the compatible proprietary item, and upon concurrence, the item may be specified.

Case III. The project sponsor certifies that there is no equally suitable alternate. The Sponsor will be required to provide adequate documentation for FHWA to verify the reasonableness of this situation. Based on a public interest finding with FHWA's concurrence, the item may be specified.

Case IV. Products appear from time to time that are new and innovative, i.e., research item or experimental feature. Based on the developer's claim, manufacturer's claims, or because of certain local conditions, there may be sufficient justification to evaluate the product in actual highway usage. The Project Sponsor may then elect to submit a detailed plan of research and evaluation (work plan) for the product. The work plan may also be used to develop specifications in order to provide a basis for future competition with other materials. The work plan should be approved with or prior to PS&E approval, and the specifications may then require the proprietary item.

Force Account Work

The following section is taken from the Code of Federal Regulations (CFR) and gives the requirements for the use of force account work:

Sec. 635.205 Finding of cost effectiveness.

(a) It may be found cost effective for a State highway agency or County to undertake a federally financed highway construction project by force account when a situation exists in which the rights or responsibilities of the community at large are so affected as to require some special course of action, including situations where there is a lack of bids or the bids received are unreasonable.

(b) Pursuant to authority in 23 U.S.C. 112(b), it is hereby determined that by reason of the inherent nature of the operations involved, it is cost effective to perform by force account the adjustment of railroad or utility facilities and similar types of facilities owned or operated by a public agency, a railroad, or a utility company provided that the organization is qualified to perform the work in a satisfactory manner. The installation of new facilities shall be undertaken by competitive bidding except as provided in §635.204(c). Adjustment of railroad facilities shall include minor work on the railroad's operating facilities routinely performed by the railroad with its own forces such as the installation of grade crossing warning devices, crossing surfaces, and minor track and signal work. Adjustment of utility facilities shall include minor work on the utility's existing facilities routinely performed by the utility with its own forces and includes minor installations of new facilities to provide power, minor lighting, telephone, water and similar utility service to a rest area, weigh-station, movable bridge, or other highway appurtenance, provided such installation cannot feasibly be done as incidental to a major installation project such as an extensive highway lighting system.

Plans, Specifications & Estimate Authorization

The final step in the design process as described in Section 15 is the submission of final plans, specifications and engineer's estimate (PS&E). The result is a notice-to-proceed issued by the NHDOT approving the project to be advertised for construction. Prior to the issuance of the notice-to-proceed NHDOT must prepare, process, and obtain FHWA approval of the PS&E estimate and authorization of federal funds. This section describes the requirements of this process.

Prior to the preparation of the PS&E estimate, the NHDOT project manager needs to complete the PS&E Checklist (see Appendix 14). All of the following NHDOT-approved documents are required to complete the checklist:

- Copy of Environmental classification memorandum prepared for the project. This is typically an inter-department memorandum prepared by NHDOT, based on the environmental study document, confirming the project has met the criteria for processing as either a Programmatic Categorical Exclusion or Individual Categorical Exclusion and that the National Environmental Policy Act of 1969 (NEPA) process is complete. As discussed in Section 15, the project sponsor cannot start Final Design until the NEPA process is complete.
- Right-of-Way Certificate completed and signed by the project sponsor and approved by NHDOT Bureau of Right-of-Way.
- ITS Certificate
- Utilities and Railroad Certificate completed and signed by the project sponsor.
- Final plan cover sheet stamped by a professional engineer or architect licensed in New Hampshire.
- Final Engineer's Estimate, including construction engineering.

For Final Estimate equal to or less than programmed funds:

Upon completion of the checklist, the NHDOT project manager will prepare the internal PS&E project estimate based on the final engineer's estimate prepared by the consultant or project sponsor. If the engineer's final estimate is equal to or less than the programmed funds, it is a one-step process to prepare the PS&E estimate to request authorization of funds for construction and submit it to NHDOT's Project Programming section for processing. Project Programming will send the processed estimate to FHWA for approval.

Upon FHWA approval of the PS&E Estimate, the NHDOT project manager will issue notice-to-proceed to the project sponsor approving the project to advertise for construction. The time frame from preparation of the PS&E estimate to the issuance of the approval to advertise letter is typically 10 to 14 days for this one-step process.

For Final Estimate greater than programmed funds:

If the engineer's final estimate is greater than the programmed funds available, the time frame typically takes four to six weeks or even longer. The increased time frame is due to a two-step process to first prepare the PS&E estimate to program and obtain FHWA approval of the additional funds in the Statewide Transportation Improvement Program (see Section 9 for more information

on the STIP). After FHWA approval of the STIP revision, the process described above to authorize funds will then be required.

Unfortunately – additional federal funds will not always be available to LPA projects. In those situations the sponsor will either have to come up with the additional funds necessary on their own – referred to as non-participating funds – or look to re-bid the project at a more competitive time of the year for bidding or in a more costs effective manner via methods such as add alternates.

Sponsors should note that at this phase of the project, cancellation of the project due to unaffordability is no longer an option and would require repayment of all federal funds reimbursed to the sponsor. Please see Section 30 for more information on Project Cancellation.

Bid Phase

The final step in the design process of a project is the bid phase, which follows completion and approval of the final design process, which is the Plans, Specification & Estimate (PS&E) phase of a project. These contract documents have been developed based on the requirements described in previous sections of the manual and particularly as developed during the design process (Section 15). The approved PS&E plans and documents are to be used for solicitation of construction bids.

Section 26 will discuss several components of the construction bid portion of the project, including:

1. Contract advertising for bids
2. Pre-qualification of contractors
3. Bid opening
4. Bid review
5. Bid award
6. Bid phase services eligible costs

1.) Advertising for Bids

Any project that uses federal funds must engage in a competitive bid process for construction contracts unless construction is done by Force Account as explained below. This means the majority of construction work shall be performed under a contract awarded by competitive bid process. On rare occasions, the Sponsor and NHDOT may demonstrate to the satisfaction of FHWA that some other method of contracting is more cost effective such as “force account” or work needing to be accomplished as a result of an emergency. For reference, see Title 23 CFR 635.104. For more information on “force accounts”, see Section 27.8 Miscellaneous Items, “force account” and Section 24 Nonstandard Project Procurement.

Under special circumstances, the use of “force account”, negotiated contract, or other unusual method of construction may be approved by NHDOT with concurrence from FHWA. These circumstances are the exception to the rule. Therefore, the consideration of any non-competitive construction contract method requires a cost-effectiveness determination as well as an evaluation that demonstrates the unusual circumstances surrounding the request. In addition, it must be clearly shown that the non-competitive methodology would meet all the normal requirements for this type of project and result in a similar quality finished product. When it is in the best interest of the public to deviate from these practices, a Public Interest Finding (PIF) needs to be prepared by the Sponsor and approved by NHDOT with concurrence from FHWA. (See Section 14).

Following approval by FHWA of the PS&E submission (Section 15) and request for authorization of construction funding, the NHDOT Project Manager will issue a notice-to-proceed to the Sponsor that the project may advertise for bids. The Sponsor shall not advertise prior to receiving this approval notice by FHWA through NHDOT.

The Federal requirements for advertising for bids are outlined in Title 23 CFR 635.112 Advertising for Bids. These include the following:

- Competitive sealed bidding is used for construction and procurement activities. If the Sponsor agency has procurement procedures, these may be followed except where in

conflict with the Federal requirements. In those cases, the federal requirements override the local procedures.

Advertising for bids is done publicly by an advertisement for bids or solicitation for work in newspapers with significant regional or statewide distribution. FHWA and NHDOT strongly encourage wide distribution of the solicitation including use of the Internet and posting to other entities such as plan houses and construction listing agencies. The costs of advertising are eligible project expenses, but must be pre-approved as part of the scope and fee for the bidding phase. Use of additional forms of advertising such as posting local websites is encouraged.

- The advertisement and approved plans and specifications shall be available to bidders **a minimum of 3 weeks** prior to opening of bids.
- During the bidding period, the Sponsor shall obtain the approval of NHDOT prior to issuing any addenda that contain major changes to the approved plans or specification during the advertising period. Minor addenda do not need prior approval but should be submitted to NHDOT prior to the opening of the bids. If there is any question as to significance and approval of the addenda, the Sponsor or their consultant should contact the NHDOT project manager. The bidders shall acknowledge all addenda in their submitted bid document.
- The Sponsor may find benefit in holding a pre-bid conference at a given time and place for potential bidders to view the project and submit questions. The Sponsor may require mandatory attendance at the pre-bid conference as a requirement for bidding.
- If questions are submitted during the bidding phase, the Sponsor and their consultant shall not provide answers to any one bidder, but shall provide the same information to all bidders through addenda or at the pre-bid conference. Should responses to questions occur at the pre-bid conference meeting minutes shall be made part of an addenda.
- The advertisement for bids shall clearly specify the date and time at which the bids will be opened and publicly read aloud. If that date is changed because of addenda or other reasons, the bidders shall be noticed through addenda and the announcement made at the first date and time.

2.) Pre-qualification of Bidders or Contractors

Purpose: The bid will be awarded to the lowest responsible responsive bidder. The process for determining that the bidder is qualified must be approved by NHDOT through review and approval of the proposed contract and bid documents. The bidder is considered responsive if their bid meets all the requirements of the advertisement and proposal. A responsible bidder is one who has the experience, is physically organized and financially equipped to undertake and complete the project. Stated more simply, the bidding process shall include procedures that ensure that the contractor is capable of completing the project.

Pre-qualification options: The Sponsor has three choices for establishing the qualifications of the bidders including:

1. The Sponsor may require that the potential bidders be on the NHDOT list of pre-qualified bidders for the type of work included in the contract. The NHDOT list is on the Department's website at the following link:
<http://www.nh.gov/dot/business/contractors.htm>

2. The Sponsor may establish their own process for establishing that the bidders are qualified.
3. The bidding documents may require that the bidder submit references for completing similar projects.

General requirements: If the Sponsor establishes a pre-qualification process, sufficient time must be allowed for the potential bidders to be pre-qualified between the advertising and opening of bids.

- The Sponsor cannot include any procedures or requirements for bidding, bonding, insurance, or licensing that restrict competition.
- The Sponsor cannot give geographic preference.
- Contractors who are currently suspended, debarred or voluntarily excluded under 49CFR part 29 or otherwise determined to be ineligible shall be prohibited from participating in the federal-aid highways program. NHDOT will review the recommended low bidder relative for debarment as part of the bid approval process.
- The potential bidders cannot have a conflict of interest resulting from performing services for the Sponsor.

NOTE: If it is determined that a project received inadequate competition as a result of unrealistic pre-qualifications, the sponsor may be required to rebid a project or risk loss of federal eligibility for construction reimbursement. In particular, 23 CFR 635.112(h) requires that the sponsor "...shall clearly identify in the bidding documents those requirements a bidder must assure are complied with to make the bid responsive."

3.) Bid Opening

All sealed bids received in accordance with the terms of the advertisement shall be opened in a public forum and read aloud. The bids should be logged in with the date and time of receipt and remain sealed and safely stored until the appointed time of opening. A contract must be awarded to the lowest responsive and responsible bidder for the amount of the bid. A bid shall be considered responsive if it meets all the requirements of the advertisement and proposal.

The bid opening shall be conducted in a formal proceeding with each bid being opened and reviewed initially for basic requirements. The review shall determine if the bid is responsive, i.e. if it meets all the requirements of the advertisement and proposal. If a bid proposal is found in the initial review to have irregularities, it will be rejected as non-responsive. Some common reasons why a bid might be found non-responsive are:

- Failure to sign the bid and/or signature by the appropriate person
- Failure to furnish any required bid bonds
- Failure to include a unit bid price for each item
- Failure to include a total amount for the bid
- Failure to prepare the bid in ink
- Failure to submit a non-collusion affidavit
- Inclusion of any unauthorized additions, conditional or alternative bids that make the bid package incomplete, indefinite, or ambiguous

The next step at the bid opening is for all bids to be read loud either item by item or by total amount. The apparent lowest bidder will be identified.

If bid-alternatives have been included in the bid proposal, the Sponsor must identify the bid as including the bid-alternatives as determined by priority and available funds. (See Section 15)

After the bid opening the Sponsor must review all bids submitted and determine if the bids are responsive to the contract and are proffered by a responsible bidder. This process will then determine the apparent lowest bid from a responsible bidder.

4.) Bid review and analysis

Following the bid opening, the Sponsor must thoroughly review and analyze the responsive bids to ensure that the bid submissions were technically and legally responsive to the solicitation for bids. If the Sponsor, their attorney or their consultant determine that the apparent low bid proves to be unsatisfactory for any reason, the Sponsor may seek approval from NHDOT and FHWA to award to the next lowest bidder. A statement of justification must be sent to NHDOT for approval of the request to use the next lowest bidder.

The analysis of the bids shall include the following in addition to the items listed in section 26. 3 above:

- Examining unit bid prices of the apparent low bid for reasonable conformance with the engineer's estimated prices;
- Reviewing unit bid prices that vary greatly from the engineer's estimate to determine the basis of the difference;
- Reviewing unit bid prices for obvious unbalancing, materially or mathematically
 - Materially unbalanced bids are ones that generate doubt that the award would result in the lowest ultimate cost
 - Mathematically unbalanced bids are individual price quotations that do not reasonably reflect actual costs
- **Checking unit prices, both numerical and written to ensure that they agree. (In the case of differences the written unit price applies.)**
- Checking all mathematics including multiplication of unit price and quantity for total item cost and summing items for total bid.
- Adjusting bids for errors comparing again to determine lowest and order of bids.
- Reviewing bid and "add alternates" to and that the award meets the requirements of the bid documents, available funds, State and Federal requirements. "Add alternates" are established at the PS&E phase of the project and their use is more fully described in Section 15 and is part of the bid documents.

The Sponsor shall prepare a letter with the recommended bid award that includes a summary of the results from bid reviews along with spreadsheet bid tabulation with any needed corrections and including the engineer's estimate. The spreadsheet shall show all bid items, unit prices, add alternates and totals for all bidders along with the engineer's estimate. A copy of the recommended low bidder's bid form shall be submitted along with the letter and spreadsheet. These shall be forwarded to NHDOT for review and approval prior to the award of the contract. If

requested by the NHDOT the Sponsor shall provide copies of all the submitted bid forms from each bidder.

If the bid total is greater than the funds previously authorized for construction, NHDOT Project Manager must do several things:

- 1) Seek approval from the NHDOT Program Manager to see if funds are available from the funding program;
- 2) Seek authorization of any available additional funds from FHWA.
- 3) Seek assurance from the Sponsor that matching additional local funds will be available for the construction phase cost increase.

5.) Bid Award

The contract can only be awarded based on sufficient authorized funds being available. The contract shall be awarded based on the lowest responsive bid submitted by a contractor meeting the criteria of responsibility as determined by the Sponsor. The contract cannot be awarded to the recommended contractor until approval has been granted to the Sponsor from NHDOT.

It is important to note that negotiation with contractors during the period following the opening of bids and before the award of the contract shall not be permitted.

A copy of the notice of award and the executed contract between the Sponsor and the construction contractor shall be furnished to the NHDOT project manager.

6.) Bid Phase Services Eligible Costs

The costs associated with the bid phase are eligible for reimbursement including the consultant's time and direct costs of copying and advertising. These costs must be pre-approved as part of a scope and fee for design phase engineering services. It is important to remember that these costs are part of the design or preliminary engineering phase. They cannot be charged to construction engineering.

Construction Phase

The construction phase of the project follows award of the contract to the lowest responsive responsible bidder. The purpose of this section is to outline requirements and provide guidance on construction oversight and documentation for locally administered federal-aid projects. The section will include the following topics:

- 27.1. Construction Oversight and Inspection
- 27.2. Pre-construction Conference
- 27.3. Contractor's Schedule
- 27.4. Construction and Liquidated Damages
- 27.5. Construction Project Records
- 27.6. Change Orders
- 27.7. Quality Assurance & Materials Testing Program
- 27.8. Miscellaneous Items/Force Account

27.1 Construction Oversight and Inspection

The project sponsor is required to provide “close to full-time construction oversight” of a federal aid construction project. That construction oversight must be under the supervision of a Professional Engineer (PE) or architect licensed in New Hampshire.

The construction oversight can be performed in two ways:

- 1) Project sponsor (Sponsor) may hire a qualified engineering consultant to act as their agent and provide the construction oversight services; however the sponsor remains in responsible charge of the project. If the Sponsor chooses to retain the services of a Professional Engineer (PE) or Architect, the consultant must provide a full-time employee who is a licensed PE or Architect to be in responsible charge and adequate staff, suitably equipped to undertake and satisfactorily complete the work. The engineering consultant or architect shall be obtained through a qualification-based (QBS) selection process.

NOTE: The Sponsor is reminded that Section 23C CFR635.105 (c) (4) states that the Sponsor shall provide a full-time employee of the Local Public Agency (LPA) to be in responsible charge of the project and to oversee that the consultant is performing the work required by the process

- 2) Project sponsors may use their own staff if that staff member is a licensed PE or Architect with expertise and experience in construction of the type of project. The Sponsor must be adequately staffed and suitably equipped to undertake and satisfactorily complete the work, notably “close-to-full-time” oversight of the construction. Also refer to Section 13 for additional information on “In-House Design”. Please also note that as indicated in Section 14, NHDOT must issue an approval letter of the contract prior to work performed, in order to be eligible for reimbursement.

The major responsibilities of construction oversight and inspection include:

- 1) Observing that all phases of the project for compliance with the plans, specifications, and contract including checking line and grade;
- 2) Monitoring that the project is maintained in such a way that allows for the safe and efficient movement of traffic through the Work Zone in accordance with the MUTCD and approved Traffic Control Plan (TCP);
- 3) Monitoring that all phases of the project are constructed in compliance with project specific environmental commitments, permit requirements, and “Best Management Practices”;
- 4) Promoting a safe work environment through observation and monitoring that the contractor is compliant with all applicable OSHA and state safety requirements and sharing observations with the contractor with the goal of a safe working environment;
- 5) Providing for quality control through quality assurance and materials testing;
- 6) Rejecting materials and work that does not comply with the plans and specifications;
- 7) Preparing and managing all documentation related to the construction phase of the project;
- 8) Approving payments for work completed satisfactorily;
- 9) Assisting the NHDOT Office of Federal Compliance with federal and state labor requirements and documentation

“Close to full-time construction oversight” means that the project sponsor shall designate a person to be the on-site Contract Administrator (CA) overseeing the daily activities of the project including observing that the project is being built as per the plans and specifications and is being conducted in compliance with all federal and state laws particularly as related to labor compliance. The Contract Administrator needs to be on the project daily, however, can vary the hours depending on the activities at the project; i.e. does not need to be there every hour that the contractor works, but does need to be there every day to observe significant contractor operations and to fulfill the project level labor compliance responsibilities. This requirement is based on the Code of Federal Regulations Title 23 CFR Sec 635.105.

Licensed PE or architect: The construction oversight is required to be under the supervision of a licensed Professional Engineer, but this does not mean that the PE is the CA or person doing the day-to-day inspection. The PE needs to oversee that the CA or person assigned to the project on a day-to-day basis is fulfilling the major responsibilities listed above. As noted above the project sponsor can hire qualified consultants or use their own staff. Anywhere PE or CA is used, it can be either person, and will be referred to as “the Engineer” in this section.

Sub-consultants: The consultant or project sponsor should hire sub-consultants when special expertise is needed. These typically include certified materials testing personnel, geotechnical experts, inspectors of steel fabrication and painting, wetlands scientists, or archeologists and historical consultants.

Consultant Selection: The sponsor may seek to retain a consultant to provide construction oversight. The LPA’s person in responsible charge must then follow the Qualifications Based Selection (QBS) process for consultant selection. The Qualifications-based selection (QBS) of a consultant is a required two-step process (selection and negotiation) that provides a fair and

rational procedure enabling the Sponsor to obtain the services of qualified engineers, architects, or land surveyors at a fair and reasonable cost.

Selection of a consultant to provide engineering, surveying, or architectural services must comply with RSA 21-I:22, "Selection of Engineers, Architects, and Surveyors." This RSA requires a selection process based on qualifications and not on fees. Other consultant services not defined in this RSA shall be obtained by pre-qualified, low bid procedures. The process is more fully explained in Section 13 of this manual.

Scope and fee: The consultant should submit a scope and fee to the project sponsor and NHDOT outlining the work tasks and detailing all charges associated with construction oversight. The scope and fee should include a written description of the work tasks and a spreadsheet listing the:

- Tasks;
- Estimated work hours for each task and class of labor;
- Direct labor rate for each class of labor;
- The total for direct labor;
- The overhead factor for the labor; and
- The fixed fee as a total.

As noted in Section 14, the scope and fee for Construction Engineering should be submitted to NHDOT for review and approval eight weeks prior to advertising for bids (See Section 14 Contract requirements for project design and Section 12 Reimbursement of Project Costs for more information.)

27.2 Pre-construction Conference

As soon as possible after the Federal contract for construction has been awarded, the consultant will arrange a pre-construction conference with the Contractor and interested parties for the purpose of reviewing construction details, proposed schedules, utility work and special requirements of the project. The following parties shall be invited with the first five listed below as mandatory attendees:

- NHDOT Project Manager
- Project sponsor's person in responsible charge
- Consultant's PE in charge and the Construction Contract Administrator (CA) for day-to-day oversight
- Contractor and principal personnel including project superintendent
- NHDOT Office of Federal Compliance
- Municipal officials, if involved, such as police and fire chief, school principal, public works director or road agent
- NHDOT Maintenance District representative, if state highway involved
- Representatives of involved utilities
- Any other interested parties

The consultant shall prepare an agenda that typically includes:

- Introductions and identification and contact information of key personnel of all parties;
- Identification of emergency contacts for each party;

- Contractor's proposed schedule, critical path method (CPM) showing in the schedule the items that constructed sequentially will determine the schedule
- Review of traffic control plans that were included in the bid documents with focus on traffic control and coordination and completion date requirements. If there are any changes as a result of comments or proposed by the contractor, the traffic control plans will need to be revised and resubmitted to NHDOT for review and approval;
- Identification of work to be sublet and subcontractors doing the work;
- Definition of responsibilities of consultant overseeing construction inspection and who will be responsible for construction inspection;
- Discussion of Quality Assurance Materials Testing Program and anticipated needs for materials testing including furnishing samples;
- Identification of anticipated shop drawings that will be required;
- Discussion of each utility that will be impacted and their schedule for re-location if needed;
- Discussion of environmental requirements including conditions of wetlands permit, proposed erosion control, Stormwater Pollution Prevention Plan (SWPPP) if needed, and historical commitments (See Appendix 14);
- Summary by NHDOT Office of Federal Compliance all requirements associated with civil rights and labor compliance;
- Summary by NHDOT Project Manager of the items contained in the Federal Project Construction Phase Checklist (See Appendix 15);
- Discussion of any special requirements or unusual conditions, conflicts and anticipated problems, clarification of any details, and special abutter commitments or needs.
- Required before photos of project area.

Following the meeting, a written record of the meeting shall be prepared by the Engineer overseeing the project and distributed to all attendees and interested parties. The written record shall include a sign in sheet of the attendees and include contact information. These documents will become part of the project records.

27.3 Contractor's Schedule

The contractor needs to plan and schedule the project and provide sufficient materials, equipment, and labor to guarantee completion of the project within the contract time. The contractor shall develop and submit to the CA a schedule based on critical path method (CPM). The schedule shall be used to track progress, determine extensions of time, and to determine the validity of claims. If the schedule is not submitted and updated as required, NHDOT can withhold reimbursement until the item is brought into compliance.

The initial CPM schedule should be submitted to the Engineer at least 10 days prior to the pre-construction conference for review and comment. The Engineer and Contractor at the pre-construction conference will review the proposed initial schedule. Following that review, the schedule will be revised based on the comments and formally accepted by the Engineer. It should

be made clear to all that the CPM schedule Float time is owned by the Project and neither the Contractor nor the Sub-contractor owns the Float time. This Float time is a shared commodity within the project and is useful to both the Owner (Sponsor) and the Contractor as mutually agreed.

As the project proceeds, the contractor shall submit the CPM schedule monthly with updates and actual progress as compared to the original accepted schedule. The Engineer will use the monthly schedule to monitor the progress of work. The schedule should be the basis of discussions with the contractor if sufficient progress is not being made or a request is made for an extension of time. **The schedule will be the basis for liquidated damages as required by the contract.**

The CPM schedule shall show:

- Planned start and finish dates for each activity.
- Duration of each activity in workdays.
- Finish-to-start relationships among activities.
- Interim and final completion dates specified in the contract.
- Activities related to the procurement of critical materials, equipment, and items of special manufacture.
- Activities related to the submission of shop drawings and other items needing approval by the Engineer.
- Activities related to consultant inspections.
- Activities related to specified activities by the sponsor or third parties.

The CPM schedule shall be available at the project at all times. Hard copies will be available for review by NHDOT and FHWA during site visits and reviews.

27.4 Completion and liquidated damages

The bidding documents shall include the requirement of liquidated damages if a project remains uncompleted after the contract time and completion date. The contract will need to specify the amount to be charged to the contractor. This sum shall not be considered and treated as a penalty but as liquidated damages due the Project Sponsor by reason of inconvenience to the public, added cost of Engineering and supervision, and other extra expenditures of public funds due to the Contractor's failure to complete the work on time. Any adjustment of the contract time for completion of the work granted under the provisions of contract time extensions and change orders will be considered in the assessment of liquidated damages.

Documentation relative to work progress is important in the administration of liquidated damages. See sections 27.5 and 27.6 for more information on Notice-to-proceed, Daily Report, and Change Orders.

27.5 Construction Project Records

The project records are an essential part of a construction project to document activities at the project and to be the basis of payment and reimbursement by NHDOT and FHWA. Failure to maintain acceptable documentation could result in findings of ineligibility for reimbursement of part or all of the costs of the project by FHWA. The records become the primary reference in the

event of any future problem, claim, or litigation. Project records shall be completed in a manner that allows them to be understood by an independent auditor or reviewer without explanation by the person generating the records.

Project records shall include the following parts:

Notice-to-Proceed: The project sponsor with the assistance of the consultant shall issue a formal notice-to-proceed document that clearly indicates the start of construction. If the project is suspended for reasons such as the winter season, the sponsor or consultant shall issue a suspension letter and then a start-up letter when work resumes in addition to notifying the Office of Federal Compliance. These documents shall be included in the project documentation in hard copy and available for review by NHDOT and FHWA.

Daily report: The daily report is one of the most important documents kept by Contract Administrators. It is a record of all phases of the work including the contractor's operations and work accomplished record of orders given or received, unusual conditions, delays in operations, presence of visitors, and discussions with the contractor. The importance of daily reports cannot be emphasized enough. The daily report can be used in court cases as evidence and be a determining factor in settling claims.

The daily report shall be completed each day elapsing between the start and finish of the project except when the work is suspended. Since it is an official document, it shall be signed by the Contract Administrator. The daily reports may be done electronically, but shall be assembled in hard copy and available for review by NHDOT and FHWA during site visits and reviews.

The daily report shall include, but not be limited to:

- The weather conditions.
- Visitors on site
- Contractor and subcontractors present at project including type and quantity of manpower and equipment.
- Progress of work including day count or % project complete with reference to completion date or number of allotted working days.
- Non-working days with an explanation for non-work day status.
- Extenuating circumstances that may have a bearing on working days or time extensions.
- Items of work completed with approximate quantity and locations given, typically referenced to centerline stations.
- Discussions with the contractor that pertain to the work, public safety, or construction signing with record of any action taken or decisions made.
- Notations of possible change orders or claims by the contractor.
- Discussions with landowners and abutter.
- Notations of meetings, phone calls, discussions with stakeholders, visitors, or vendors.
- Accident information.
- Consultant inspector and tester times worked, type of work performed, and certification number if required.
- A copy of the daily worker sign-in sheet that is required by NH regulation.

- Police and/or flaggers.
- Utility or railroad crews.
- The daily report shall include notation that other entries were made in the Quantity Book, Record Book, Field book, Lab Book or other files kept for the project. Include any other information of importance to the project. The daily report should be factual and concise, but thorough, while keeping personal opinions and editorializing to a minimum.

Correspondence: A file containing all correspondence pertaining to the project issued and received during construction shall be maintained as part of the project records. Typical correspondence should include letters, e-mails, faxes, and letters-of-transmittals. Correspondence may include utility force account agreements and shop drawings. Payrolls and the Storm Water Pollution Prevention Plan are also items that should be included in correspondence files. Specialty items such as these may warrant separate folders though are still considered part of correspondence.

Correspondence shall be maintained as hard copy files available for review by NHDOT and FHWA. The consultant should be mindful of printing significant e-mails to become part of the record of the project.

Federal and State Labor Compliance: All LPA projects must adhere to Federal labor compliance requirements through the NHDOT's Office of Federal Compliance (OFC). The record files must have the following documents:

- Contract listing of wage and fringes for the project as contained in the project construction documents.
- Wage Requests for additional work classifications and U.S. Department of Labor (USDOL) responses for additional labor categories and the proposed and final wage and fringe determinations.
- Copies of the Weekly payrolls as submitted by the Contractor.
- Copies of the review comments from the OFC, and any restitution documents required.
- Copies of the following:
 - Required notifications or monthly submissions
 - Subcontractor and lower-tier approvals
 - Hiring
 - Wages & Payrolls
 - Restitution Policy
 - Bulletin Board-Mandatory Poster Requirements audits
 - Federal Compliance Field Audits
 - On-the Job Training (OJT) Program documents
 - Annual Equal Employment Opportunity (EEO) Report Submission
 - Final Payment
 - EEO Officer Requirements
 - Work Classification Descriptions and Information

Bound field notebooks for field measurements: All items constructed as part of the project shall be measured in the field by the Contract Administrator and recorded in bound field notebooks

with numbered pages that become part of the project records. The notations in the field notebooks shall include clear identification of the items involved, unit of payment, location, dates of construction and measurement, sketches, if needed, and the signature of the person making

the measurements. The item totals shall be cross-referenced to a Quantity Book for progress payments and to the Record Book for final payment (see below).

These measurements become the basis of partial payments. The Engineer shall make the measurements, i.e. they cannot be done by the contractor and provided to the Contract Administrator. The contractor may observe the measuring or compare and verify that their measurements agree. If there are any differences, they should be brought to the attention of the Engineer overseeing the project for resolution. If the contractor disagrees with measurements and payments, he should make his protest known in writing.

Quantity Book: The purpose of the Quantity Book is to document how the work is paid for, keep a running total of the quantity of work performed for each item. It is a source of documentation for quantities to be paid in partial estimates for progress payments.

In general, entries in the Quantity Book shall be made daily for the individual items constructed. Exact measured quantities are preferred, but there are times when exact quantities are not able to be provided. Estimated quantities can be entered for partial payment. Calculations supporting the estimated quantities shall be included with the entry.

Entries in the Quantity Book shall include a cross-reference to the source of the quantity such as the bound field books. Entries for the individual items shall include location, date of entry, and initials of the person making the entry. Sub-totals shall be entered at each point of partial payment.

The individual items may be brought forward to a summary spreadsheet for each pay period. These spread sheets shall be included as part of the Quantity Book.

The Quantity Book becomes part of the permanent project records. The Quantity Book shall be available in hard copy for review by NHDOT and FHWA during site visits. *(Sample from NHDOT Construction Manual included in appendix 16)*

Engineer's Estimate of Balances and Excesses: The Engineer shall track the ongoing and future expenditures of the project as work progresses. This is call the "Engineer's Estimate of Balances and Excesses", also known as "B&E". The purpose of this effort is to predict and update the final cost of a project. The benefit of doing this is preventing unanticipated cost overruns that may or may not be eligible for reimbursement. NDHOT suggests that a B&E be done as the project approaches 25%, 50%, 75%, and 90% complete. If the project is relatively small and of short duration, it may not be possible to check the anticipated total cost of the project at all of these progress points, but we do recommend at least checking at the 50% complete point.

The B&E effort should include checking for each item, the amount of work completed, the amount remaining to be done, and comparing that to the amount in the original contract bid. If the

amount is anticipated to increase that amount should be documented. Likewise, if a final amount of an item is anticipated to decrease. Any change orders for additional work should be added to the anticipated project total.

The B&E documents shall be kept as part of the project records.

If the project total cost is anticipated to increase, the additional costs shall be submitted to NHDOT in order to determine if additional funds are available in the program and will be authorized by FHWA. The additional costs **must** be authorized prior to the work being done. See the section on Change Orders for additional information

Record Book: The Record Book shall consist of individual item summary pages, substantiating documents, and calculation pages. It becomes the final record of all items constructed and paid for as part of the project. Unlike the Quantity Book, the Record Book shall not include partial payments.

An Item Summary page is to be used for each individual item. The notations of the quantities shall include cross-references to the source of the quantity and the initials of the person making the entry. The reference may be the field book or an official envelope of weight slips for items such as concrete or hot bituminous pavement. If an item is paid by *Daily Report of Extra Work – Force Account* based on time, equipment, and materials, those daily reports shall be included behind the item summary page. (See appendix 17 for sample of *Daily Report of Extra Work*) If the item is based on actual computations, the calculation sheets shall be included behind the item summary page. When an item is not used in the construction of the project, a notation should be made of “None” or “Item eliminated” on the Item summary page and explain the reason in the remarks section of the summary page.

The Item Summary page shall also include an explanation of any cost overruns or under-runs in comparison to the original contract bid items. An explanation is required for:

- Variation (plus or minus) in cost exceeding 10% on items whose contract total exceeds the monetary value of \$1,000.00
- Variation (plus or minus) in cost exceeding 50% on items whose contract total is less than or equal to \$1,000.00

The Item Summaries and their supporting documentation shall include the initials of the person making the entry and date of the original entry. All items shall be checked and include the initials of that checker and date.

The Record Book in conjunction with the Record Plan (see below) becomes the basis of the final payment for the project. (See sample item summary pages from NHDOT Construction Manual in Appendices)

Record Plans: Record Plans shall consist of project plans that are updated with actual measurements and information regarding changes made through the construction period. These changes shall be transferred to and become part of the As-built plans. They are used in conjunction with the Record Book as noted above as the basis of the final payment for the project. (Refer to Section 31 Close-out)

Lab Book: A Quality Assurance Program is required for testing of materials on all federally funded locally administered construction projects. The results and documentation of that testing shall be kept as part of the project records. For more information on the program see Section 27.7 Quality Assurance & Materials Testing & Acceptance

27.6 Change Orders

Situations arise where work is needed that is different or in addition to the work provided for in the contract, plans, and specifications. A change order is needed for these instances. A change order is a written agreement between the contractor and the project sponsor covering work not provided for in the contract, or revision or amendments to the terms of the contract, including increases or decreases to the original quantities as set forth in the original contract, or the addition or deletion of items. Change orders constitute amendments to the Contract once properly signed and executed.

Change orders typically occur in three different situations requiring variations in the processing. It is always important to make timely decisions on change orders. The three processes for handling change orders include:

1. The preferred option is the need for additional work to be identified ahead of the time when the work needs to occur. The change order paperwork shall be prepared by the contractor or consultant and agreed to by the project sponsor. As part of that review the project sponsor will do an independent government estimate of what the work should cost based on the agreed upon scope. The change order including the independent government estimate is then submitted to the NHDOT Project Manager who reviews and seeks approval of additional funding. The NHDOT Project Manager will need to consult with the NHDOT Program Manager to determine that the funds are available and seek authorization of funds by FHWA. As part of this process, the NHDOT Project Manager will give approval for the work. The work may not START prior to that approval.
2. The work is currently on the critical path of the CPM schedule and it is critical to the progress of the project such that there is the potential for delay if the preparation of a change request and subsequent approval is not timely. A written estimate of the scope and costs of the work shall be submitted immediately to the NHDOT Project Manager. The NHDOT Project Manager will need to consult with the NHDOT Program Manager to determine that the funds are available and seek authorization of funds by FHWA. As part of this process, the NHDOT Project Manager will give approval for the work. The work may not be STARTED prior to that approval.
3. The work is of an emergency nature such that there are concerns of imminent damage or unsafe conditions. These instances should be rare. In that case, the NHDOT Project Manager should be notified immediately of the situation and given a rough estimate of the additional scope of work and additional cost. Based on this, NHDOT may give notice to FHWA of the pending change order and give approval. However, the formal written

change order and all back-up documentation must be submitted to NHDOT in a timely manner.

In all three cases, the following will apply:

The Contractor or the Engineer shall submit a request for a proposed change order in writing to the Contract Administrator (CA). The proposed change order shall include justification for the change, description of work, schedule impact determination, cost implication, and all backup for the associated quantities and costs. The CA, on behalf of the project sponsor, shall review only the justification and description of work and determine if the change order is justified and if the work described is acceptable to address the situation. The CA will not initially review the Contractor's or Engineer's cost calculations. The CA will do an independent government estimate (IGE) of the cost of the proposed work in consultation with NHDOT. Following that, the CA will compare his/her estimate to the Contractor's or Engineer's estimate. Any differences will need to be understood and negotiated among the CA, Contractor and Engineer. Once agreed, the proposed change order shall be submitted to NHDOT for review and approval.

It is important to note that all change orders shall be approved by NHDOT prior to the work being initiated, even change orders involving no cost or schedule only modification. The proposed change order, backup materials, schedule impact determination, and cost implication shall be submitted as part of the request for a proposed change order. As part of the review, the NHDOT Project Manager must consult with the NHDOT Program Manager to determine availability of funds and seek authorization of additional funds from FHWA. The contractor cannot proceed with the work until NHDOT has given final written approval of the change order. The process for change orders is based on the Code of Federal Regulations Title 23 CFR 635.120 Changes and extra work.

Please note: Change orders for work that is non-participating work also need to be submitted to NHDOT for approval and inclusion in the total financial picture of the project. Once a change order has been approved and fully executed, a copy shall be included in the project records and a copy should be forwarded to NHDOT. The letter by the NHDOT Project Manager approving the change order shall be included in the project records.

Balancing Change Orders: At the completion of a project, the Engineer typically prepares a "Balancing Change Order" which documents the final pay quantities for every item that was constructed. Based on this the final cost of the construction of the project is determined. However, it should be emphasized that, if this results in identifying the need for additional funds, the funds will not be reimbursed by FHWA after the work has already been completed. If additional funds are needed, they should have been identified earlier in the project and funds authorized through change orders prior to the work being constructed. This is why doing the Engineer's Estimate of Balance and Excess and processing change orders is so important (see above for more information).

27.7 Quality Assurance & Materials Testing

Locally administered projects shall be constructed in accordance with the contract specifications. Acceptance of materials may be made on the basis of one or more of the following:

- Sampling and Testing as part of a Quality Assurance Program

- Certificate of Compliance
- Field Inspection Acceptance

Quality Acceptance Program: Quality assurance to ensure compliance with the specifications shall be done in compliance with the NHDOT Quality Assurance Program for Municipally Managed Federal-aid projects, most current version. The materials covered by this program include but are not limited to soils compactions and gradations, pavement materials, concrete materials, painting, and steel fabrication.

This document is located in appendix 21 and via the NHDOT website at:

<http://www.nh.gov/dot/org/projectdevelopment/planning/documents/QA-QCMaterialStandards-2010.pdf>

Typically, the consultant will engage a sub-consultant who is qualified to do materials testing. The sub-consultant shall provide testers with the appropriate certifications.

- For soil and asphalt materials, qualified personnel are those who have been certified in the sampling and testing to be performed by the NorthEast Transportation Training & Certification Program (NETTCP).
- For concrete materials, qualified personnel are those who have been certified in the concrete sampling and testing to be performed by either the American Concrete Institute (ACI) or the NETTCP.
- For inspection of steel fabrication, qualified personnel are those who have been certified to check all applicable portions as specified in Section 550, Structural Steel of the most current "NHDOT Standard Specification for Road and Bridge Construction". Proof of past experience and references shall be required.

The requirements and procedures for the plants producing hot bituminous pavement, concrete and precast concrete include:

- **The plant producing the hot bituminous pavement shall have been inspected by NHDOT in the spring of that construction year. The inspection form is completed and posted in the plant laboratory.**
- **The inspection by NHDOT of the concrete redi-mix plants and trucks occurs annually. NHDOT sends an approval letter to the plant annually. Mixes are not approved from a plant that has not been approved.**
- **For precast concrete plants, State DOT's inspects the batch plant, scales, etc for the plants within their state. We would accept the inspections by other State DOT's for plants outside of NH. Representatives of the LPA project inspection consultant or sub-consultant could do the out-of-state inspection as part of their inspection duties if a State DOT inspection is not available.**

The consultant on behalf of the project sponsor shall develop a Quality Assurance Program based on the document referenced above. The Program will identify all items that require compliance testing, the tests required, the frequency of testing based on quantities, and the materials testing firm or individuals engaged to do the testing. The Program will be submitted to NHDOT for documentation prior to the contractor starting work.

An independent assurance testing sampling and testing program shall be the responsibility of NHDOT. This shall be done in coordination with the project consultant and materials testing sub-consultant.

As noted in Section 27.5 Construction Project Records Lab Book the project records shall include a separate notebook called the "Lab Book" that includes the Quality Assurance Program and copies of all field and/or lab test results. A copy of each individual technicians credentials along with a photographic ID of each technician performing the Quality Assurance Program's testing and inspection shall be maintained in the "Lab Book". Information on all materials tested such as sand, gravels, pavement, pavement markings, concrete, reinforcing steel, structural steel etc. should be included. The certified lab reports and field documents shall be initialed and dated by the testing agency and the report shall indicate passing or failing test results based on the contract

specified values. If reports are too large to be included in the "Lab Book", they should be included in the project records and referenced as to their location.

A summary of non-conforming materials should be included in the "Lab Book" for reference when estimating pay quantities and final record quantities.

Certificates of Compliance: Acceptance of materials may be made on the basis of one or more of the following:

- Sampling and Testing Acceptance as described above
- Certification Acceptance (see below)
- Field Inspection Acceptance for items not covered by sampling and testing or certification. This may include items such as granite curb, fieldstone, mulch and similar natural materials.

Materials may be accepted by Certificates of Compliance based upon the following:

- Certificate of Compliance only;
- Certificate of Compliance and verification tests as defined by the Test Guide;
- Certificate of Compliance plus being on the NHDOT Qualified Products List as required by the NHDOT Specifications; or
- Consultant inspection.

No payment will be made for any material until the required Certificate of Compliance has been received. The certificates should be submitted at the time of field delivery of the product.

Therefore, some certificates will cover only a partial quantity of the total item. Therefore, payment for quantities above the certified amount shall not be made until additional certificates for subsequent deliveries have been received.

Certificates of compliance shall be submitted by the manufacturer, supplier, or Contractor. The required Certificate of Compliance form may be obtained on the NHDOT website at:

<http://www.nh.gov/dot/org/projectdevelopment/highwaydesign/documents/CertificateofCompliance.pdf>

Copies of all Certificates of Compliance will be retained as part of the project records. These shall be organized, cross-referenced, and summarized. They shall be available for review by NHDOT or FHWA at the project.

Buy America Certificates: In accordance with the Buy America requirements of the Federal regulations, all manufacturing processes for steel and iron materials furnished for permanent incorporation into the work on a federally funded project shall occur in the United States. This includes all melting, rolling, extruding, machining, bending, grinding, drilling, coating, etc. Products of steel include but are not limited to such products as structural steel, piles, reinforcing steel, structural plate, steel culverts, guardrail, and steel supports for signs, signals, and lights. Products of iron include, but are not limited to, such products as cast iron frames and grates. Coatings include, but are not limited to, the applications of epoxy, galvanizing, and paint.

A Buy America Certificate of Compliance shall be furnished for steel and iron materials. The records associated with this certification shall include a signed mill test report and a signed certification by each supplier, distributor, fabricator, and manufacturer that has handled the steel or iron product. These signed certificates affirm that every process has been performed on the steel or iron product in the United States. Certificates shall be provided by item with each delivery or lot. One certificate provided at the beginning of the project does not constitute compliance with Buy America Act. Depending upon the product or number of steel/iron components, more than one certificate may be required.

Exceptions to the Buy America requirement include:

1. Production of pig iron and processing of iron ore which may occur in another country.
2. If the cost of materials including foreign steel and iron materials does not exceed one-tenth of one percent (0.1%) of the total contract price or \$2,500.00 whichever is greater.

No payment will be made for these items subject to Buy America until the certificates have been received at the project.

The certificates shall be included in the project records at the project as hard copies and available for review by NHDOT and FHWA.

A "Special Attention Buy America" must be included in the contract documents and specifications prior to bidding. The Special Attention is located in appendix 20 and available online at:

<http://www.nh.gov/dot/org/administration/ofc/documents/43PageFederalContractInsert15Feb11.pdf>

The required certificate is located in appendix 19 and is available online at:

<http://www.nh.gov/dot/org/projectdevelopment/highwaydesign/documents/BuyAmericaCertofComp.pdf>

If there are questions regarding the application of Buy America requirements, contact your NHDOT project manager.

27.8 Miscellaneous items

Checking of line and grade: As part of their observation duties, the Contract Administrator needs to confirm that the project is being built to the lines and grades as shown in the plans. Typically

the contractor is responsible for establishing ongoing lines and grades as needed during construction based on survey controls that were established by the design consultant. The Engineer shall do independent checks of the lines and grades. When these are done notations should be made in the project records of what was checked and what the results were. Suggested places for notations are in the daily report or bound field books.

Progress Meetings: Many projects require regularly scheduled weekly or bi-weekly progress meetings that include the contractor, project sponsor, and consultant inspectors. The purpose of these meetings is to facilitate communication, provide a forum for bringing forward issues, and review status of pending action items. The meetings should be summarized in a conference report that is incorporated in the project records.

Non-participating items: Local projects are often multi-funded with portions of the project funded with other funds. For example, a sewer may be constructed and paid with other Sewer

Revolving Fund (SRF) money, the sidewalk paid with Transportation Enhancement funds, and the roadway paving funded with municipal funds. All estimates, quantity calculations, and reimbursement requests shall clearly show the different portions of the project and what funds are paying for what items. It should be emphasized that if the non-participating work is part of the contract, the work is subject to all federal requirements.

Concurrent work: Concurrent work in the area of the project should be described in the contract and bidding documents. This should include any work such as other municipal or state transportation or utility projects that could affect the contractor's operations.

Contingency Items: Situations occasionally arise where an item of work is needed that cannot be addressed with existing items in the contract or the conditions are not known prior to construction. A contingency item may be included in the contract to provide the ability to do the specific item, typically by time, equipment, and materials up to a certain dollar limit with that dollar limit specified in the contract. The special provision for the contingency must be included in the contract documents with a specific item identified that will be addressed through the use of contingency item.

However, it is important to note that the use of contingency items is strongly discouraged. Every effort should be made to have the item of work addressed through standard items. If they are used to address a specific situation, then they are used only for that item. They should not be viewed as a general contingency item for the entire contract. NHDOT staff will be closely scrutinizing the use of contingency items during: 1) the design phase to determine if they are needed; and 2) the construction phase to ensure that they are used appropriately. If they are not used appropriately, then the work could be determined to be non-participating, i.e. not be eligible for federal participation.

Force Account work: Occasionally, project sponsors want to do work within the project limits that is related but not part of the federal-aid project. The project sponsor should strive to complete the work prior to the work by the contractor starting. The intent is to reduce the risk of conflicts between two parties working within the construction zone, confusion in the work zone traffic

control for the motorists, and claims resulting from affecting the project schedule. A Public Interest Finding (PIF) needs to be prepared by the project sponsor and approved by FHWA with concurrence from NHDOT for force account work to be performed. Refer to section 24 for more information on public interest findings.

Claims: Language outlining claims resolution procedures during construction needs to be included in contract documents. Local project sponsors should identify their different levels of authority and include them in the contract documents. The contract documents should also spell out the process and time requirements for submitting claims.

The contract should state that:

- If a contractor deems extra compensation is due for work or materials not clearly covered by the contract or for encountering conditions substantially different than represented by the contract or for work or materials ordered by the Engineer as an extra, the contractor shall notify the Engineer in writing of the specific intention to make a claim for such extra compensation prior to beginning the work on which the claim will be based.
- If such notification is not given and the Engineer not afforded proper “notice of intent” by the contractor for documenting an accurate account of the actual work and costs, then the contractor agrees to waive any claim for such compensation.
- The Contractor is not entitled to file a claim in accordance with the applicable section of the contract unless the Contractor has first provided timely and complete notice and fulfilled the requirements of the specification
- The Engineer should respond in a timely fashion.
- The process of appeal should be defined in the contract including the hierarchy of authorities for appeal.

The Engineer shall notify the NHDOT Project Manager of potential claim actions. The Engineer should get concurrence by NHDOT before issuing the decision. NHDOT’s concurrence would include authorization of any additional funds needed.

Prompt Payment and Retainage: Retainage; i.e., withholding a given percentage of the payment, from the contractor is not allowed. The NHDOT, in accordance with regulations of the U.S. Department of Transportation, 49 CFR 26, is required to ensure subcontractors are paid in a timely manner. The prompt pay requirement on NHDOT projects is twenty-one (21) calendar days. To monitor compliance, NHDOT's OFC Form 18 (Monthly Prompt Pay Certification) shall be completed by contractors receiving payment for satisfactory work performed; i.e., work that is completed in accordance with the contract, plans and specifications, and; after receipt of all required paperwork for progress and partial payments, including material certifications and payrolls. This prompt pay requirement shall be made part of all subcontracts and agreements

Final Inspection: At the completion of the project, a final inspection shall be scheduled. The final inspection should include representatives from the project sponsor, consultant contract administrator, contractor, NHDOT Project Manager or designee, NHDOT Highway Maintenance district office (if State highway involved), and FHWA. The project site will be thoroughly inspected for flaws, incomplete work and needed changes. A punch list will be produced of all items needed to complete the project. Once the consultant inspector has determined that all items on the

punch list have been addressed, the project is determined to be complete and ready to be certified and accepted by the project sponsor. The project sponsor shall issue a letter stating that the project was accepted and completed, with the date given and that the project work is turned over to the project sponsor for maintenance.

Availability of records: As noted above, the records for the project must be available for review by NHDOT and FHWA on-site at the project throughout the life of the project. This means that hard copies of items including: daily reports, bound field books, quantity book, payment requisitions, record book, record plans, certificates of compliance, buy America certificates, lab book with materials testing results, correspondence, certified payrolls, shop drawings, etc. should be readily available in hard copy. While much of the record keeping and communication may be done electronically, hard copies need to be made available.

If the project does not include a field office, then the consultant inspector needs to have the records organized and available in his/her vehicle.

It should be emphasized that inadequate records and documentation can result in ineligibility of items or the total project for federal reimbursement.

Resources:

The NHDOT Construction Manual is an excellent resource for processes and forms for construction oversight and inspection and can found at the following link:

<http://www.nh.gov/dot/org/projectdevelopment/construction/documents.htm>

The NHDOT Standard Specifications for Road and Bridge Construction is another excellent resource for contract administration requirements and item specifications and can be found at the following link:

<http://www.nh.gov/dot/org/projectdevelopment/highwaydesign/specifications/index.htm>

Non-Construction Procurement

After all parties have signed the local agreement and the initial notice-to-proceed is issued, sponsors may begin to incur non-infrastructure expenses described in the grant application and approved by NHDOT. (Any changes from what was described in the application must be approved in advance by NHDOT.)

Procurement shall follow State of New Hampshire requirements unless a Project Sponsor has adopted stricter standards:

- Competitive prices must be obtained for goods priced between \$500 and \$2,000. Prices may be obtained by telephone or by visiting Web sites. Sponsor shall provide documentation of the process used and prices obtained in the project record.
- For services costing up to \$1,000, three quotes must be obtained by telephone or by visiting Web sites. Three written quotes must be obtained for services costing \$1,000 to \$2,000. Sponsor shall provide documentation of the process used and the prices/quotes obtained in the project record.
- Goods and services costing more than \$2,000 shall be obtained through a competitive bid process. Bids shall be solicited by publishing written specifications in a newspaper of general circulation, or other electronic or print publication with wide distribution or readership in the area where the goods or services will be used. The Sponsor shall keep a copy of the advertisement that identifies the date(s) published and newspapers the ads appeared in.

Sponsors are cautioned that attempts to circumvent these standards by placing multiple small orders below the above-described amounts may be subject to extra scrutiny. The Sponsor may be required to return reimbursements or reimbursement may be jeopardized if it is determined that the standards have been circumvented.

RSA 36:49 authorizes municipalities to enter into contracts with Regional Planning Commissions (RPCs) for planning work, and RPCs are authorized to accept government grants. Services provided to sponsors by RPCs are handled as sub-grants.

Sponsors that obtain engineering, architectural and surveyor services from consultants must use the Qualifications Based Selection (QBS) process, as described in Section 13.

Maintenance Requirements

All Local Public Agency (LPA) projects carry maintenance obligations for the project sponsors, which are identified in the LPA project agreement. Specifically, Section I.C. states that:

The PROJECT SPONSOR shall provide or cause to provide for both the maintenance of the Project during construction and subsequent maintenance of all Project elements together with the maintenance of sidewalks, which includes winter snow and ice removal in accordance with the requirements of 23 CFR 1.27 and 28 CFR 35.133, once the work under this AGREEMENT is completed.

In this context, maintenance should generally be understood to require whatever effort is necessary to provide for the safe and efficient utilization of the completed project. This also includes correction of NHDOT/FHWA identified deficiencies within a reasonable period – typically 90 days.

For projects funded with TE or TAP funds there is the additional maintenance responsibility of monitoring the use, specifically to meet the funding requirement for non-motorized use only and not allowing motorized use.

It is important to note that there are consequences to sponsors for any project not being adequately maintained. It is therefore important to understand the expectations established in the LPA project agreement to prevent maintenance related issues from arising during or after a project's construction. These maintenance obligations translate into money and time for sponsors as well, since project maintenance is not considered eligible for LPA funds. This makes it especially important for the Project Sponsor to calculate the required costs of a lifetime of maintenance and to ensure that they have that ability for maintenance before accepting LPA funding.

During the Project:

The Project Sponsor must agree/commit to maintain project property in good operating order, in compliance with any applicable Federal laws as well as New Hampshire state laws. This includes roads, bridges, sidewalks, trails, structures, parking areas, as well as conservation easements and websites.

For Construction Projects:

Maintenance is expected on all construction projects during and after the project is complete. It is the responsibility of the Sponsor to see that maintenance is provided for seasonal conditions as well as longevity. NHDOT reserves the right to deny funding for future projects if a Sponsor does not act to correct a maintenance issue within 90 days of receiving a written notice from NHDOT.

For Non-infrastructure Projects:

LPA's are expected to provide maintenance for the life of the equipment or item purchased using federal monies. At the end of the useful life of equipment or items purchased they will be taken to the White Farm in Concord, N.H. and disposed by public auction. The New Hampshire Department of Administrative Services will set rules for disposal. LPA's are sub-recipients of NHDOT and will follow the same rules as a state agency.

Items such as websites must have a maintenance contract that includes hosting arrangements that can be extended for the first 5 years of the website. At the end of that time a written explanation of future plans for the site needs to be approved by NHDOT. Any electronics, hardware, or other tangible items of value that have met their useful life will be disposed of at public auction following the rules above.

Proof of insurance is required on any item purchased using federal funding for the life of the item. It needs to provide replacement value if the item is damaged or destroyed. Should the insurance lapse; the Sponsor is liable for reimbursing NHDOT or using the cash value of the loss toward a new replacement at the discretion of NHDOT.

The examples listed only represent a few of the possible scenarios regarding maintenance of your LPA project. Sponsors seeking to purchase other items, like passenger and transit vehicles through the CMAQ program, should speak with their NHDOT project manager for additional details regarding maintenance obligations for these items.

Potential Consequences:

Sponsors can expect that future inspections will take place to ensure that maintenance is being done correctly. In the event that maintenance is identified as lacking or deficient in some manner, NHDOT will notify the sponsor of the issue in writing. The notification will include identification of a period during which corrective action must be taken.

If no satisfactory corrective action is taken, consequences for the Sponsor include:

- Being declared ineligible for future federal funding.
- Repayment of the LPA program funds used for the project per section I-H of the Local Agreement.

Project Cancellation

There may be issues with any given LPA project that may result in the project's cancellation. This section has been developed to give Sponsors, consultants and other interested parties to LPA projects an understanding of:

- Why a project may be cancelled.
- What cancellation means for the project sponsor regarding potential repayment of federal funds.

Reasons for cancellation:

Projects may be cancelled for a variety of reasons, including:

- Issues that cause cost increases beyond the scope of a Sponsor's ability to provide matching funds
- Deterioration of community support for the identified project
- Issues with environmental hurdles (i.e. contamination) discovered after the project start
- Sponsor's failure to adhere to the terms of the LPA Project Agreement

If a project is cancelled, there will most likely be financial repayment obligations on the part of the sponsor. In the past, "Good Faith Efforts" demonstrated by the sponsor, supported by the Department and agreed to by FHWA may have been allowed to avoid repayment. However, that is no longer an acceptable process. The factor for determining whether a sponsor will be obligated to repay any or all federal funds reimbursed for the project is based on the stage of development the project is in when the project is cancelled and the reason for cancellation.

What follows is offered as general guidance on the issue of project cancellation and federal funds repayment obligations to the Sponsor.

To be clear – if a project is cancelled for breach of the Local Project Agreement, the Sponsor will have to repay all federal funds reimbursed on the project.

Engineering Study:

All LPA projects begin with an Engineering Study phase intended to:

- Identify a proposed action from an initial slate of possible alternatives that will be developed further in the more formal engineering design phases and the NEPA process.
- Determine whether the project initially appears to be feasible from a cost/proposed impacts/public support perspective.

The Engineering Study is discussed in further detail in Section 15 of the Manual. The Engineering Study is raised in this section to determine if the proposed project is possible within the available financial constraints. If the sponsor, NHDOT or both determines that the project does not appear to be feasible – the project may be cancelled at this point with less financial impact to the sponsor than later on in the design process.

Preliminary Design:

If a project is determined to be possible and advances into the formal Preliminary Design phase, there is greater risk of repayment of any federal funds reimbursed related to preliminary engineering efforts. The next critical point for determining risk is the conclusion of the NEPA process. If the NEPA process identifies a 'No Build' alternative as the preferred alternative, then the project may be cancelled with no repayment penalties accrued to the Sponsor. Both NHDOT and FHWA will need to concur with this decision. It is important to reinforce the point that a No Build alternative identified in the Preliminary Design phase of engineering design is not at all typical as most of the issues leading to this determination should have been fully investigated during the engineering study portion of the project.

Final Design and Beyond:

Once your project has received notice-to-proceed with Final Design, the project sponsor is now fully committed to Construction of a project. As the Final Design notice-to-proceed is not issued until the conclusion of the NEPA process, and Final Design requires there to be a supported 'build' alternative – the project is now fully under the auspices of the FHWA Order regarding the repayment of Preliminary Engineering Costs which may be found in Appendix 22.

Under the Order, sponsors of projects that fail to advance to construction within a period of 10 years from the first authorization of federal funds for engineering related to the project are required to refund all federal funds provided to the project. As the 10 year window of time is intended to ensure timely delivery of proposed projects utilizing federal funds, Sponsors and Consultants need to understand that a decision to cancel a project triggers the repayment provision, regardless of whether the 10 year threshold has been met.

Sponsors and other interested parties should also take note of the fact that the previous NHDOT LPA process rules identifying a 'good faith' standard have been superseded by the FHWA Order.

Specific questions regarding funding risk thresholds and project feasibility related to potential repayment penalties should be discussed with your NHDOT Project Manager.

Final Reimbursement and Project Closeout

The purpose of this section is to provide the additional documentation (refer to section 12 for information required for all reimbursements) that is required at Final Reimbursement and to describe the project closeout procedure. Project Closeout is a two part procedure, Part 1 – Final Reimbursement and Part 2 – Final Voucher. Each of these procedures has documentation and action items to be performed by both the project sponsor and by NHDOT.

Project Closeout Part 1 - Final Reimbursement

Sponsors should note that all final reimbursement requests cannot be processed for payment until all required documentation described below has been reviewed and approved by NHDOT. In order for a final reimbursement request to be processed the required documents and activities below must be provided. NHDOT will send out a letter to the project sponsor prior to the final project inspection with this required project closeout documentation (See Appendix 18 for sample letter).

For construction projects: Projects that involve any construction

Documentation to be completed and submitted by Project Sponsor

- Checklist entitled “Project Closeout Part 1 Final Reimbursement Submission (Construction Projects)” with portion completed by project sponsor. See Appendix 18 for Checklist.
- Completion and Acceptance letter from Sponsor with: (See Appendix 18 for sample letter)
 - Statement that all punch list items have been addressed from the final project inspection conducted by NHDOT’s Project Manager, Sponsor, Consultant and Contractor
 - Date that construction was completed and accepted by Sponsor
 - Affirmation statement that all applicable Environmental Commitments from the Commitments Memo for project have been fulfilled.
 - Statement that the project work is turned over to the Sponsor for maintenance
- Financial Summary showing completed project phase breakdown and funding, including participating and non-participating work (See Appendix 18 for sample Financial Summary)
- Representative photographs of project limits showing before and after construction. Photographs can be submitted as prints or in digital format on a CD. A marked up plan showing the photograph locations should also be submitted.
- As-built plans. Marked-up 11” x 17” contract drawings recording any changes made during construction are generally adequate to meet this requirement. (Additional survey work is not required.). For bridge projects, a Form 4 load rating form with supporting calculations and as-built plans are required in both a paper copy and electronic format. The Sponsor shall also include a TIF of the As-built plans and coordinate with the NHDOT project manager for final file formats.

- Completed project closeout forms (see Appendix 18).
 - Consent of Surety Company to Final Payment
 - Contractor’s Final Lien Waiver
 - Certificate of Final Completion of Work
- Materials Certification for Municipally Managed NHDOT Project completed by Municipal Official and Resident Engineer.

Documentation to be completed by NHDOT

Check that project sponsor has provided completed Single Audit Reports (SAR’s) for the project’s reimbursement period of federal expenditures in accordance with (OMB) Supercircular 2 CFR Part 200, Subpart F – Audit Requirements. If SAR’s were not required the Sponsor shall provide a letter stating that an audit report(s) in accordance with (OMB) Circular was not required. If the latest completed SAR is not available at final reimbursement, the Sponsor shall provide this report as soon as it is available, or letter stating the SAR was not required.

- Office of Federal Compliance (OFC) final payment release authorization. Typically this is a memorandum from OFC to the NHDOT Project Manager stating that it is ok to make final payment. Attached to this memorandum is all the required payrolls, labor, and EEO documentation received and reviewed by OFC. Also, refer to Section 22 for criteria required for OFC to provide this release authorization.
- Verify last project estimate was approved by FHWA.
- Verify no negative amount exists for any of the phases.
- Send final reimbursement letter to Sponsor and final reimbursement memo to Bureau of Finance and Contracts.
- Send Project Completion Form to Sponsor for signature and Checklist entitled “Project Closeout Part 2 Final Voucher”. See Appendix 18 for Checklist.

For projects involving procurement of vehicles: Projects that involve the acquisition of vehicles of any type require the following documentation:

- Copy of the Vehicle Purchase Order
- Copy of the paid invoice
- Proof-of-Payment (refer to section 12 for definition for proof of payment)
- Copy of the Vehicle Purchase Contract

For projects involving only purchasing easements:

- Sponsor shall submit a letter stating that all terms and conditions of the easement have been met. The letter also needs to include the book and page number where easement was recorded.

Project Closeout – Part 2 Final Voucher

When the Final Reimbursement is processed by NHDOT, the Sponsor will receive a Final Reimbursement letter from NHDOT. Attached to this letter will be a Project Completion form to be signed by the Sponsor and the Part 2 Checklist with the portion completed by the Sponsor. The Sponsor shall return these documents to NHDOT's Bureau of Planning & Community Assistance within 30 days of the date of the final reimbursement letter. (See Appendix 18 for sample of Project Completion form). Upon receipt of the Project Completion form from the Sponsor or at the end of the 30-day period, NHDOT's Bureau of Planning & Community Assistance will notify the Bureau of Finance & Contracts and Project Programming to initiate the project close out process and to request the Final Voucher date. It is important to note that at this notification date, no additional reimbursements will be allowed for that project.

Federally-funded projects can only be closed in the NHDOT financial systems when the federal obligations equal the expenditures (and all the expenditures have been billed). Project Programming accesses the financial systems and de-obligates the funds.

If a project exceeds its approved funding limits, the excess charges will be considered non-participating funds at 100% of the sponsor's cost. If a project requires funds to be de-obligated (federal participating expenses are less than the approved federal funds), Project Programming will seek FHWA approval within the financial system to de-obligate federal funds to equal expenditures.

Upon the reconciliation of federal participating project expenses, the project can be closed in the financial systems. Finance will establish the final voucher date and notify the Bureau of Planning & Community Assistance. The Bureau of Planning & Community Assistance will send a letter to the Project Sponsor to maintain all project and financial records pertinent to the development of the project for three (3) years from the date of final voucher. If there is a failure to maintain this documentation, NHDOT and/or the Federal Highway Administration could take an action up to and including requesting a refund of all reimbursed project costs.

LPA Planning Projects

Some Local Public Agency (LPA) projects may not involve construction, but are eligible planning projects that may or may not lead to a later construction project. Examples of these types of projects are:

- Scenic Byways Corridor Management Plans
- Safe Routes to Schools start-up planning projects and travel plans
- Some types of Statewide Planning & Research (SPR) projects
- Other miscellaneous federally-funded (TCSP, earmark, TIGER) planning projects

These projects differ from the “typical” LPA projects that feature project engineering design, permitting, and construction. This section has been developed in order to appropriately guide fund recipients through a project development process better suited to their planning projects.

Starting Your Project

Following the execution of an LPA project agreement, the project sponsor will develop a general project schedule as outlined in Section 7 of this manual. For planning projects, the critical step that accompanies the project-scoping meeting is the development of a project schedule by the project sponsor. Each sponsor will be required to complete the following steps in order to receive a notice-to-proceed with LPA planning projects:

- *Identify objective and final product.* The application for funding that was developed for the project will serve as the basis for this element. The expectation is that the objective is reinforced or clarified by the scoping meeting, but not changed significantly from the original application. The final product should also be discussed to reinforce what the expectations are of both NHDOT and the project sponsor. Clear understanding of the expected final product is critical to the second scoping related element (below).
- *Break final product into pieces and identify deliverables.* The expected deliverable should be broken up into smaller pieces – in this case most likely chapters or plan sections. These deliverables will then be given delivery dates in the project schedule. The breakdown of the project deliverable will allow for a thoughtful discussion between the NHDOT and the project sponsor regarding accomplishing the expected project on time and on budget.

Develop a Schedule

As noted in Sections 6 and 7 of this manual, all project sponsors must develop a proposed schedule for review by NH Department of Transportation (NHDOT) staff prior to any notice-to-proceed being issued for their respective projects. This requirement also applies to planning projects.

As mentioned previously, planning project schedules must identify specific deliverable dates for the project. It is also recommended that project sponsors allow for a minimum three-week review period by NHDOT for each deliverable. Project sponsors should note that work may not begin on

the next deliverable until the requisite review process is concluded. Again, all project schedules must incorporate review and comment by NHDOT on the deliverables.

As stated in Section 7, failure of the project sponsor to meet deliverable deadlines may impact the availability/timeliness of funding for future project-related efforts.

Scope, Fee and Independent Government Estimate (IGE)

As part of the project schedule development, the project sponsor will also be identifying the scope of work for this project. At the time the schedule is submitted for NHDOT review, the sponsor will also be submitting a proposed scope and a task matrix. The scope of work submitted should match the project scope from the approved program's application. However, there are instances when the application funds approved differ from the funds requested. In these cases, the scope of work will need to be revised to be compatible with the approved funds. Any change to the project scope outside of what was identified in the application must be pre-approved by the NHDOT project manager.

Special Note for projects utilizing a hired, outside consultant:

Those planning projects that intend to utilize the services of an outside professional **other than engineer, architect, or surveyor** should follow the procurement process outlined in Section 28 – Non-Construction Procurement. Additionally, planning projects should also follow the process regarding contracting as outlined on pages 2-3 of Section 14 – Contract Requirements for Project Design.

Independent Government Estimate (IGE)

In order to establish a baseline budget for negotiation purposes, all planning projects will be required to complete an IGE prior to scope and fee negotiations. For more information on IGEs, please see Section 14 of this manual. For projects that will utilize consultants, the IGE will be handled through the process outlined above.

For projects where the project sponsor intends to complete the work described in the scope, NHDOT will prepare the IGE. For those projects where a third-party consultant will conduct the work, or part of their work described in the scope, the sponsor will complete the IGE in accordance with the process outlined in Section 14 of this manual.

Prior to NHDOT providing approvals or any notice to proceed on the scope and fee, the sponsor will need to provide the NHDOT project manager with:

- *The scope of work for all tasks required.* This item typically consists of a written description of each major task to be completed as part of the overall project scope.
- *Task matrix/cost breakdown form.* This form is typically a spreadsheet with task descriptions on left side and the various labor classifications along the top. Specific individuals and titles should be identified in the matrix, and not generic titles.
- *Task descriptions.* This form should correspond back to the schedule of tasks developed already as part of the project schedule.

NHDOT will then assign estimated hours per task by personnel and identify an overall estimate for the project. Upon NHDOT's completion of the IGE, the project sponsor will then provide the completed scope and fee in the similar format to the blank matrix provided NHDOT. These items will serve as the basis for negotiation and ultimate approval of the contracted scope and fee to accomplish the scope the LPA program funds were awarded for.

Other items to keep in mind

- Scenic Byways program-funded, corridor management plans must address all 14 of the required elements identified by the national program and on the NH Scenic Byways programs website located here: <http://www.bywaysonline.org/grants/>
- Safe Routes to School (SRTS) program-funded planning projects must address the "5 E's". More details on the "5 E's" of the SRTS program may be found in Section 2 of this manual.
- Plans must include some level of public involvement. The amount and type is something that the sponsor should discuss with the NHDOT project manager, and will generally follow what was identified in the funding application.
- Plans must include objective data that informs any strategies or other next steps/recommendations made by the plan. If appropriate data is not already available, the sponsor should discuss options for obtaining such data with the NHDOT project manager.
- Plans must take into account other established/legally adopted plans in effect at the time the LPA project is underway. Sponsors should keep in mind that no plan exists in a vacuum, and as such, opportunities to build upon or incorporate existing plans should be utilized. Plans to keep in mind include:
 - Municipal Plans
 - Regional Plans
 - Regional Transportation Plans
 - NH Ten Year Transportation Plan
 - Corridor Studies
 - Circulation Studies
 - Access Management Plans

Closeout

Planning projects are completed and closed out a bit differently than the process outlined in Section 31, which relates primarily to projects featuring construction elements. A checklist for closing out planning projects is included in Appendix 18.

Questions?

Sponsors who have questions regarding the approach to completing planning projects should contact their NHDOT project manager.

Appendix 1



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



January 5, 2017

Victoria F. Sheehan
Commissioner

SENT VIA EMAIL

William Cass, P.E.
Assistant Commissioner

Tad Putney, Town Administrator
Town of Brookline
P.O. Box 360, 1 Main Street
Brookline NH 03033

Re: Transportation Alternatives Program Application Number: 16-10TAP

Dear Mr. Putney:

The New Hampshire Department of Transportation (NHDOT) is pleased to inform you that your application 16-10TAP(2 segments: Construct Sidewalk from Route 130 to the recently created rail trail off South Main Street and Construct a 60-foot pedestrian bridge over the Nissitissit River near the Town Beach, plus approximately 100 feet of sidewalk.) has been approved by the Commissioner to use Transportation Alternatives Program (TAP) funds in the amount of \$580,000.00 .

Your application selection was based on recommendations submitted by the Transportation Alternatives Program Scoring Committee, as well as staff consideration of budget constraints (4 funding categories by population) as required by FHWA, and equity to top regional priorities.

The total cost of your project is \$725,000.00 and the Town of Brookline will be responsible for a match in the amount of \$145,000.00.

All funded TAP projects will be submitted to Governor and Council for approval in 2017. After Governor and Council approval the Department will send you a municipal agreement that will need to be signed by the Local Public Agency (LPA) sponsor prior to starting work on the project. The Department expects that your project will begin within 3 months of signing. Upon signing the municipal agreement the first step will be to contact the Department and set up a project scoping meeting. This is all detailed in the Department's LPA Manual and can be downloaded from our main web page at <http://www.nh.gov/dot/>.

Congratulations on being selected for Transportation Alternatives Program funding. We look forward to working with you on this project.

Sincerely,

Thomas Jameson, P.E.
Program Manager

Cc: Peter Stamnas, P.E.
Director of Project Development

Appendix 2

logged 6/27/16
LOI-6



**TOWN OF
BROOKLINE, NEW HAMPSHIRE
SELECTBOARD**

**P.O. BOX 360 – 1 Main Street
BROOKLINE, NH 03033-0360**

Telephone (603) 673-8855, ext. 213
Fax (603) 673-8136

Selectboard@brookline.nh.us

<http://www.brookline.nh.us>

June 20, 2016

Mr. Thomas Jameson, P.E.
TAP Program Manager
NHDOT Bureau of Planning & Community Assistance
7 Hazen Drive, P.O. Box 483
Concord, NH 03302-0483

RECEIVED
DEPARTMENT OF
TRANSPORTATION

JUN 24 2016

BUREAU OF
Planning and Community Assistance

Re: Transportation Alternatives Program – Letter of Intent

Dear Mr. Jameson:

Please accept this letter on behalf of the Town of Brookline providing our interest in applying for Transportation Alternatives Program (TAP) funding. Both of the project areas noted below were identified as desired improvements in the Town's 2009 Sidewalk and Trail Connection Plan.

The Town wishes to construct a five-foot wide asphalt sidewalk along the portion of South Main Street that runs from Route 130 to our newly revitalized railtrail. The proposed project would be approximately 2,300 feet in length and include a 35-foot pedestrian bridge. The project limits are intended to remain within the Town's/State's right-of-way.

Additionally, we wish to construct a pedestrian bridge over the Nissitissit River, which would have some wetlands impacts on Mason Road at our town beach. This bridge would address a significant safety issue due to the narrow width of the current vehicular bridge at this location. The project limits are intended to remain within the Town's/State's right-of-way.

We are not aware of any impacts on historic resources along either project segment.

Please see the attached map for details.

We estimate the project will cost approximately \$665,000. The Town will be requesting 80% federal TAP funds in the amount of \$532,000.

This project meets TAP eligibility criteria for: "construction, planning and design of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults and individuals with disabilities to access daily needs."

Mr. Thomas Jameson

June 20, 2016

Page 2

The contact person for the application process is:

Tad Putney

Town Administrator

P.O. Box 360

Brookline, NH 03033

Thank you for your time and considerations.

Sincerely,

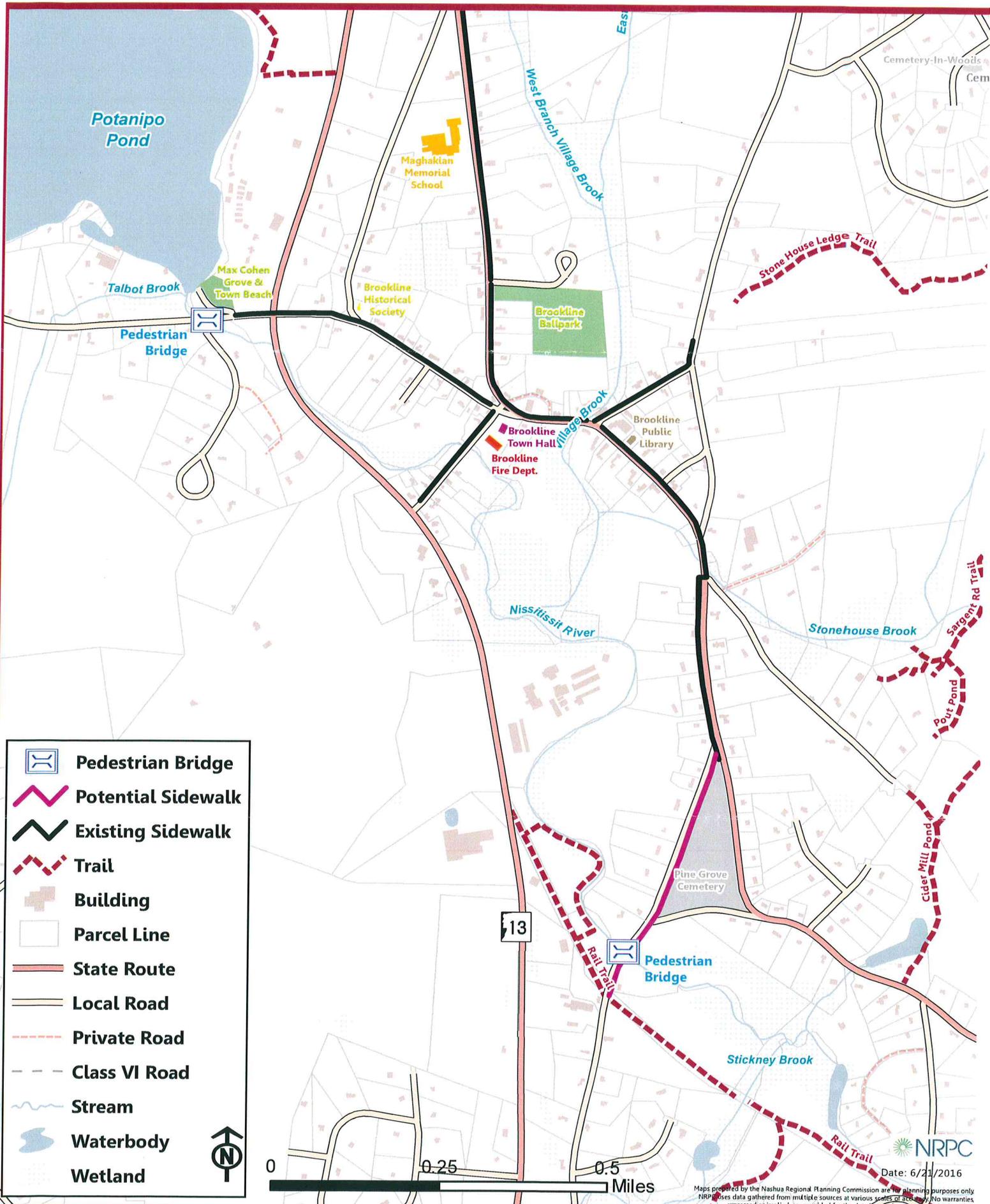
A handwritten signature in cursive script that reads "Darrell Philpot". The signature is written in dark ink and is positioned above the printed name and title.

Darrell Philpot

Chairman

Attachment - Map

Brookline Proposed Sidewalk and Bridge



Appendix 3

The Attorney General's Office at the Department of Justice, Transportation and Construction Unit, has approved this template for use in municipally-managed projects.

[NAME OF PROGRAM]
[CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM /
TRANSPORTATION ENHANCEMENT PROGRAM]
PROJECT AGREEMENT
FOR

[PROJECT SPONSOR NAME]
STATE VENDOR #: _____
STATE PROJECT #: _____
FEDERAL PROJECT #: _____

THIS AGREEMENT, executed in *triplicate*, is made and entered into this ____ day of _____, 20__, between the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, hereinafter called the "DEPARTMENT", and the [PROJECT SPONSOR NAME] of [city/town], hereinafter called the "PROJECT SPONSOR".

WITNESSETH that,

WHEREAS, the DEPARTMENT and the PROJECT SPONSOR have determined that a project to _____ in the [city/town of ____] is an eligible project for funding under the [Name of Program] created by the **Intermodal Surface Transportation Efficiency Act of 1991, (ISTEA)**; and

WHEREAS, the DEPARTMENT has established [Name of Program**DELETE the word "Program"] Project #_____ (the "Project") for the aforesaid project in the amount of _____ dollars (\$_____) with _____ percent (____%) of that cost coming from Federal Highway funds, such amount being _____ dollars (\$_____), and the remaining _____ percent (____%) of that cost coming from the PROJECT SPONSOR, such amount being _____ dollars (\$_____); and

WHEREAS, the PROJECT SPONSOR has submitted an Application (xx-xxxx) to sponsor the Project (the "Application") and the DEPARTMENT has accepted the Application; and

WHEREAS, the Application, by reference, is hereby made a part of this AGREEMENT; and

WHEREAS, the PROJECT SPONSOR desires to act as Sponsor and Manager of the Project; and

WHEREAS, the DEPARTMENT desires to cooperate with the PROJECT SPONSOR in accomplishing the Project;

NOW, THEREFORE, in consideration of the above premises and in further consideration of the agreements herein set forth by and between the parties hereto, it is mutually agreed as follows:

I. DUTIES AND RESPONSIBILITIES OF THE PROJECT SPONSOR:

- A. The PROJECT SPONSOR shall comply with all Federal and State of New Hampshire laws and rules, regulations, and policies as applicable under the Federal-aid Highway Program for Federal Aid Construction Contracts.

- B. The PROJECT SPONSOR shall manage the design, environmental study, right-of-way acquisition and construction of the Project. This management is described in the current version of the DEPARTMENT's document titled "Local Public Agency Manual for the Development of Projects", as it may be amended from time to time, and, by reference, is hereby made a part of this AGREEMENT.
- C. The PROJECT SPONSOR shall provide or cause to provide for both the maintenance of the Project during construction and subsequent maintenance of all Project elements together with the maintenance of sidewalks, which includes winter snow and ice removal in accordance with the requirements of 23 CFR 1.27 and 28 CFR 35.133, once the work under this AGREEMENT is completed. **[Unless agreed otherwise at Project completion, the DEPARTMENT's maintenance responsibility shall be no greater than that which exists within the proposed Project limits on ____ prior to the start of construction.] (This section needed if State has current maintenance responsibility** Should operational adjustments be necessary, the PROJECT SPONSOR agrees that no changes will be made without prior approval of the DEPARTMENT and the Federal Highway Administration.
- D. The PROJECT SPONSOR shall submit monthly progress reports and invoices to the DEPARTMENT for reimbursement of its share of the amounts paid to engineering, environmental and/or right-of-way consultants and construction contractors for the performance of the work set forth in the Application or agreed upon at the scoping meeting. The invoice structure shall include details of work completed consistent with the Scope of Work as defined in the Application, as well as backup information to support the charges. The PROJECT SPONSOR shall certify that the invoices properly represent payment for work that has been completed and paid for by the PROJECT SPONSOR.
- E. The PROJECT SPONSOR is required to maintain all project and financial records pertinent to the development of the Project for three (3) years beyond the date of the DEPARTMENT's final voucher. The DEPARTMENT will send a letter to the PROJECT SPONSOR with the date of this approval. If there is a failure to maintain this documentation, NHDOT and/or Federal Highway Administration could take an action up to and including requesting a refund of all reimbursed project costs.
- F. The PROJECT SPONSOR shall defend, indemnify and hold harmless the DEPARTMENT and its officials, agents and employees from and against any and all claims, liabilities or suits arising from (or which may be claimed to arise from) any act or omission of the PROJECT SPONSOR or its subcontractors in the performance of this AGREEMENT. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State of New Hampshire or the DEPARTMENT, which immunity is hereby reserved. This covenant shall survive the termination of this AGREEMENT.
- G. Non-Discrimination:
1. The PROJECT SPONSOR agrees that it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d—2000d-4 (referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, US Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Non-discrimination in Federally-Assisted Programs of The Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964" (referred to as the "REGULATIONS"), the Federal-aid Highway Act of 1973, and other pertinent

directives, to the end that no person shall on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the PROJECT SPONSOR receives Federal financial assistance extended by the State of New Hampshire. This AGREEMENT obligates the PROJECT SPONSOR for the period during which Federal financial assistance is extended.

2. The PROJECT SPONSOR hereby gives assurance as required by subsection 21.7(a)(1) of the REGULATIONS that it will promptly take any measures necessary to effectuate this AGREEMENT, including but not limited to the following specific assurances:
 - a. That each “program” and each “facility” as defined in subsections 21.23(e) and 21.23(b) of the REGULATIONS will be conducted or operated in compliance with all requirements of the REGULATIONS.
 - b. That the PROJECT SPONSOR shall insert the following notification in all solicitations for negotiated agreements or bids for work or material made in connection with this Project: *The PROJECT SPONSOR hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, or disability in consideration for an award.*
 - c. That the PROJECT SPONSOR shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DEPARTMENT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The PROJECT SPONSOR shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DEPARTMENT-assisted contracts. The DEPARTMENT's DBE program, as required by 49 CFR part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this AGREEMENT. Upon notification to the PROJECT SPONSOR of its failure to carry out its approved program, the DEPARTMENT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*
 - d. That the PROJECT SPONSOR shall include the following assurance in each contract signed with a contractor and each subcontract the prime contractor signs with a subcontractor: *The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DEPARTMENT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of the contract or such other remedy, as the recipient deems appropriate.*

3. The PROJECT SPONSOR shall insert a copy of the required provisions of Federally-assisted construction contracts in accordance with Executive Order 11246, Equal Employment Opportunity, and 41 CFR Part 60-4, Affirmative Action Requirements, in each contract entered into pursuant to this AGREEMENT. Required Federal contract provisions can be obtained through the DEPARTMENT's Labor Compliance Office (271-6612) or Online at: <http://www.nh.gov/dot/org/administration/ofc/documents.htm>

- H. If there is a default of any nature to this AGREEMENT, the PROJECT SPONSOR shall be required to reimburse the DEPARTMENT and/or the Federal Highway Trust Fund for all funds expended under this Project.

II. DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT:

- A. The DEPARTMENT shall review the Project engineering plans, environmental documents and contract documents applicable to the Federal Highway Administration and State of New Hampshire requirements for a Federally-funded project and submit appropriate documentation to the Federal Highway Administration to receive Federal approval.
- B. The DEPARTMENT shall reimburse its share to the PROJECT SPONSOR after receipt and approval of properly documented invoices that have been certified by the PROJECT SPONSOR as properly representing work that has been completed and paid for by the PROJECT SPONSOR.
- C. The DEPARTMENT shall use its best efforts to obtain authorization of the Project from the Federal Highway Administration.

III. IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE DEPARTMENT AND THE PROJECT SPONSOR:

- A. That the PROJECT SPONSOR will not incur any Project costs nor enter into any agreement with any third party, including but not limited to consultants, contractors, or engineers until such time that it receives a written notice to proceed from the DEPARTMENT to do so.
- B. That the maximum amount of funds available for this Project for reimbursement under this AGREEMENT from the DEPARTMENT shall be as set forth in paragraph 4 of page 1. As the scope of the Project is finalized, should the costs for the Project exceed the amount budgeted, the DEPARTMENT agrees to review Project costs for consideration of additional funding. Neither the DEPARTMENT nor the Federal Highway Administration will be responsible for any expenses or costs incurred by the PROJECT SPONSOR under this AGREEMENT in excess of the above amounts unless the DEPARTMENT expressly authorizes additional funding prior to the work being performed.
- C. That the PROJECT SPONSOR shall invoice the DEPARTMENT for incurred costs on a monthly basis and the DEPARTMENT will process these invoices for payment in an expeditious manner.

- D. That the PROJECT SPONSOR agrees to commence the Project within three (3) months after the date of this AGREEMENT and substantially complete the Project within _____ (__) years after the date of the first notice to proceed date given by the DEPARTMENT, unless earlier terminated as provided herein. The PROJECT SPONSOR may apply to the DEPARTMENT for an extension. Failure to meet either deadline without good cause may cancel the DEPARTMENT's participation in this Project at its discretion. Any remaining funds will be forfeited. The PROJECT SPONSOR is responsible for informing and coordinating a new Project completion date that will need to be approved by the DEPARTMENT if any condition arises that may result in either deadline being unattainable.

- E. That the PROJECT SPONSOR will attend a meeting with the DEPARTMENT's representative after signing this AGREEMENT to discuss the Project's scope, budget and schedule. The PROJECT SPONSOR will subsequently provide a schedule showing project milestones with dates. Failure to meet these dates could delay funding for construction.

- F. That this AGREEMENT is contingent upon the appropriation of sufficient funds from the State of New Hampshire Legislature and/or the Federal Highway Administration. If sufficient funds are not appropriated, the DEPARTMENT may terminate this AGREEMENT upon thirty (30) days' written notice to the PROJECT SPONSOR. Such termination shall relieve the DEPARTMENT and the PROJECT SPONSOR from obligations under this AGREEMENT after the termination date.

**NEW HAMPSHIRE DEPARTMENT
OF TRANSPORTATION**

PROJECT SPONSOR NAME

By: _____
 Commissioner
 Department of Transportation

By: _____
 Title:
 Project Sponsor Name

Authorized to enter into Agreement as
 approved by Governor & Council on
 _____.

Appendix 4

Appendix 4

Requirements, page 2

Sample Request for Audit Reports, pages 3-6

Sample Single Audit Report Not Required from Subrecipient, page 7

Sample Schedule of Expenditures of Federal Awards, pages 8-9

Sample Schedule of Findings and Questioned Costs, pages 10-11

Per the Code of Federal Regulations all pass-through entities must follow the guidelines outlined under CFR 200.331 and provide all the requested documentation including a copy of their Annual Financial Report (AFR). In addition per CFR 200.501 Pass-through entities that expend \$750,000 or more are required to have a single or program-specific audit conducted and must provide a copy of this Single Audit Report (SAR).

1. Requirements for Annual Financial Reporting (AFR):

- An AFR is completed once each fiscal year in September for all pass-through entities.
- Provided by all towns that have active LPA projects with federal payments, regardless of how much federal aid is received

2. Requirements for Single Audit Reporting (SAR):

- A SAR is completed once each fiscal year in September
- Towns with \$750,000 or more in federal aid
- Federal aid does not include the town match
- Looking for audit findings with active projects and federal payments in a particular year
- Prepared in accordance with the Office of Management and Budget (OMB) Supercircular 2 CFR Part 200, Subpart F – Audit Requirements.

TO: RECIPIENTS OF FEDERAL MONEY**RE: REQUEST FOR AUDIT REPORTS**

You are receiving this letter because you currently have at least one active municipally-managed, federally-funded project through the New Hampshire Department of Transportation. Federal single audit reports are required when the total federal expenditures by a “sub-recipient”, i.e. a municipality or non-profit, in a single fiscal year are \$750,000 or greater. Total means federal expenditures from all federal agencies. These single audit reports are required to be prepared in accordance with the Office of Management and Budget (OMB) Supercircular 2 CFR Part 200, Subpart F – Audit Requirements.

If as a sub-recipient, your municipality or non-profit has total federal expenditures of \$750,000/year, or more during the fiscal year, please provide us with a copy of the report upon its completion. A copy of your municipality’s Annual Audit Report for the year should also be included.

If as a sub-recipient, your municipality or non-profit has less than \$750,000/year total federal expenditures at the end of the year please provide us with:

- A letter stating that an audit report in accordance with (OMB) Supercircular 2 CFR Part 200, Subpart F – Audit Requirements was not required; and
- A copy of your municipality’s Annual Audit Report for the year.

Please note that the above materials only need to be provided once for each fiscal year, and not for each project. Also, please note that this requirement will continue to apply should you receive federal funds in future years.

If you have any questions regarding these documents, please contact Theresa Christiansen at 271-2108.

Sincerely,

William E. Watson, Jr., P.E.
Administrator
Bureau of Planning and Community Assistance
Telephone: (603) 271-3344
Fax: (603) 271-8093

Date

Contact, Title

Town of _____

Street Name

Town, NH Zip

Re: Town Name **SECOND REQUEST FOR AUDIT REPORTS**

Dear Ms. _____:

You are receiving this letter because there has been no response to the original letter sent on Date. In accordance with the Office of Management and Budget (OMB) Circular A-133 having at least one active municipally-managed, federally-funded project through the New Hampshire Department of Transportation requires "sub-recipients" to file a Federal Single Audit Reports and/or Annual Audit Report.

Please provide the requested Audit Reports below within 30 days from the date of this letter. Noncompliance may result in a loss of federal funding.

- You are a sub-recipient, in which your municipality or non-profit had total federal expenditures in a single fiscal year of \$750,000 or greater. "Total" means federal expenditures from **all** federal agencies. Please provide a copy:
 - Federal Single Audit Report
 - Annual Audit Report
- You are a sub-recipient, in which your municipality or non-profit had less than \$750,000/year total federal expenditures, please provide:
 - A letter stating that an audit report in accordance with (OMB) Circular A-133 was not required
 - A copy of your Annual Audit Report.

Please note that the above materials do not need to be submitted for every project. Only one copy of this material is required for each fiscal year. Also, please note that this requirement will continue to apply should you receive federal funds in future years.

Please do not hesitate to call Theresa Christiansen at 271-2108 if you have any questions.

Sincerely,

William E. Watson Jr., P.E.

Administrator

Bureau of Planning and Community Assistance

Telephone: (603) 271-3344

WEW/tmc

To: City and Town Officials of New Hampshire
 From: New Hampshire Department of Transportation
 Bureau of Planning and Community Assistance
 Date: February 26, 2016

Every year the New Hampshire Department of Transportation (NHDOT) solicits specific data from the State's municipalities to facilitate and coordinate program and project communications with public officials, including reports and updated roadways.

1. Municipal Single Audit Report

If the municipality receives federal aid for a transportation project, please provide a copy of the Single Audit Report in accordance with A133 Federal Requirements for the same year as their annual report that we are receiving. If the municipality has not received \$750,000 in total federal funds, from any source in the year, and an A133 single audit report is not required, please provide a letter stating that and provide a copy of the municipal financial report.

2. Municipal Streets and Highways

This section requests information relative to reclassifying, accepting, and/or discontinuing streets or highways in your community in the past year. This information is necessary to adjust the individual municipality's Class IV and Class V highway mileage that is used in calculating a portion of Block Grant Aid disbursement as provided in accordance with RSA 235:23. Updated mileage provided before **8/26/2016** will be reflected in your State Fiscal Year 2017, 7/1/16-6/30/17 disbursements.

A map is included for your review of current inventory, along with a Road Inventory Collection form to be used and returned back to the NHDOT to communicate changes. It is critical that this information accurately reflects local governing body decisions to street changes/additions/deletions. We also recommend that you keep documentation locally in case of a request for details from us at a later point in time. Once updates are received, the GIS section will update Town road inventory data. Please send questions to the GIS section via email GISMaps@dot.state.nh.us. We appreciate your efforts in providing accurate information.

For road name changes, please contact Emergency Services, as they now coordinate this data:

| | |
|-----------|--|
| Contact | Emergency Services Field Representative* |
| Email | daetabase@e911.nh.gov |
| Telephone | (603) 527-2069 |

*Please ask to be put in touch with the appropriate Field Representative for your municipality.

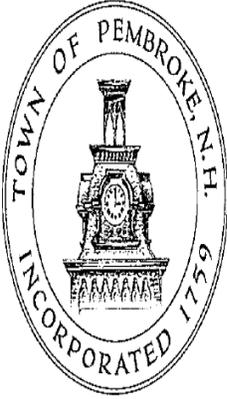
3. Municipal Officials Listing

A listing as last updated, is included for your review. Following your Annual Meeting, please note any changes or position changes, or changes in the office address, hours, fax/phone numbers, e-mail addresses and/or website. A directory of municipal officials is created from this information and is posted on NHDOT's web site (www.nhdot.com). Once on web site, click the following links: Doing Business with DOT, then Municipalities, then City/Town Officials Directory. Any changes throughout the year can be submitted to Bureau46@dot.state.nh.us. Your efforts to keep this information up to date are appreciated.

Sincerely,



William E. Watson, P.E.
Administrator



TOWN OF PEMBROKE
TOWN ADMINISTRATOR'S OFFICE
311 Pembroke Street, Pembroke, NH 03275
Tel: 603-485-4747 Fax: 603-485-3967

November 2, 2016

Dawn M. Pulica
Bureau of Planning & Community Assistance
NH Department of Transportation
7 Hazen Drive
Concord, NH 03302-0483

This letter will serve as notice that the Town of Pembroke was not required to have a single audit in 2015, as we had less than \$750,000 in total federal expenditures..

David M. Jodoin
Pembroke Town Administrator/Tax Collector

CITY OF NEW HAMPSHIRE
 Schedule of Expenditures of Federal Awards
 For the Fiscal Year Ended June 30, 2009

| Federal Grantor/ Pass-Through Grantor/ Program Title | Federal Catalog Number | Federal Expenditures |
|---|------------------------------|-------------------------|
| U.S. DEPARTMENT OF AGRICULTURE | | |
| Passed Through the New Hampshire Department of Education National School Lunch Program | 10.555 | \$ 2,053,752 |
| Total U.S. Department of Agriculture | | <u>2,053,752</u> |
| U.S. DEPARTMENT OF EDUCATION | | |
| Passed Through the New Hampshire Department of Education | | |
| Adult Basic Education | 84.002 | 25,483 |
| Title I | 84.010 | 3,294,305 |
| SPED 94-142 | 84.027 | 2,633,988 |
| Secondary Program Improvement - Perkins Voc Ed | 84.048 | 298,851 |
| Preschool | 84.173 | 83,075 |
| Safe and Drug Free Schools | 84.186 | 91,471 |
| Twenty First Century Program | 84.287 | 391,883 |
| Innovative Education Program Strategies (Title V) | 84.298 | 38,396 |
| Education Through Technology | 84.318 | 4,093 |
| Reading First | 84.357 | 420,467 |
| Enhancing English Language Learning | 84.365 | 128,718 |
| Math/Science (Title IIB) | 84.366 | 1,689 |
| Improving Teacher Quality | 84.387 | 940,189 |
| Writing CTE | 84.397 | 14,870 |
| Serve America - Project Research | 84.004 | 11,839 |
| Direct Grants | | |
| Javits Gifted and Talented Students | 84.206 | 284,318 |
| Smaller Learning Communities | 84.215 | <u>823,109</u> |
| Total U.S. Department of Education | | 9,465,124 |
| U.S. DEPARTMENT OF COMMERCE | | |
| Direct Grants | | |
| Economic Adjustment Assistance Grant | 11.307 | <u>488,099</u> |
| Total U.S. Department of Commerce | | 488,099 |
| U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT | | |
| Direct Grants | | |
| Community Development Block Grant | 14.218 | 838,467 |
| HOPWA Grant | 14.241 | 509,531 |
| EDI-Special Project Grants | 14.246 | 88,321 |
| Lead Grant | 14.900 | <u>938,214</u> |
| Total U.S. Department of Housing and Urban Development | | 2,374,523 |
| U.S. DEPARTMENT OF JUSTICE | | |
| Passed Through the State Attorney General's Office | | |
| Violence Against Women Grant | 16.586 | 60,940 |
| Bulletproof Vest Partnership | 16.607 | 4,793 |
| Direct Grants | | |
| Justice Assistance Grant | 16.738 | <u>193,227</u> |
| Total U.S. Department of Justice | | 258,960 |

(continued)

(continued)

| Federal Grantor/ Pass-Through Grantor/ Program Title | Federal Catalog Number | Federal Expenditures |
|--|------------------------------|-------------------------|
| U.S. DEPARTMENT OF TRANSPORTATION | | |
| Passed Through the State Department of Safety | | |
| Speed Control & NH Clique Seatbelt 2006 | 20.600 | 4,892 |
| DWI Roadblock 2006 | 20.601 | 3,047 |
| Passed Through the State Department of Transportation | | |
| Highway Planning & Construction | 20.205 | 24,246 |
| Passed through State Department of BPW | | |
| Public Transportation Research | 20.514 | 785,761 |
| Direct Grants | | |
| Federal Transit Capital & Operating Assistance | 20.507 | 1,343,024 |
| Total U.S. Department of Transportation | | <u>2,160,772</u> |
| ENVIRONMENTAL PROTECTION AGENCY | | |
| Direct Grants | | |
| EPA Grant Assistance | 66.606 | 637,866 |
| Brownfield Grant - Environmental | 66.618 | 81,069 |
| Total Environmental Protection Agency | | <u>718,935</u> |
| U.S. DEPARTMENT OF HOMELAND SECURITY | | |
| Direct Grants: | | |
| FEMA Fire Prevention & Safety | 97.044 | 153,504 |
| Passed Through the State Department of Homeland Security | | |
| Homeland Security Exercise and Evaluation | 97.006 | 114,988 |
| Public Assistance Grant | 97.036 | 224,917 |
| Homeland Security Grant 2007 | 97.042 | 5,358 |
| First Responder | 97.073 | 14,338 |
| Total U.S. Department of Homeland Security | | <u>513,105</u> |
| U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES | | |
| Passed Through the State Department of Health and Human Services | | |
| Grants for Supportive Services and Senior Centers | 93.044 | 65,116 |
| TB Grant | 93.116 | 34,888 |
| Immunization Outreach | 93.266 | 69,309 |
| Bioterrorism | 93.283 | 398,799 |
| HIV Prevention | 93.940 | 66,968 |
| Sexually Transmitted Diseases Control Grants | 93.977 | 34,866 |
| Child Health Services | 93.984 | 7,632 |
| Total U.S. Department of Health and Human Services | | <u>697,775</u> |
| Total Federal Expenditures | | <u>\$ 18,730,965</u> |

This schedule was prepared on the modified accrual basis of accounting.
See Independent Auditors' Report on Schedule of Expenditures of Federal Awards.
State identifying numbers were not available for the pass-through grants listed above.

CITY OF NEW HAMPSHIRE
 Schedule of Findings and Questioned Costs
 For the Year Ended June 30, 2009

SECTION I - SUMMARY OF AUDITORS' RESULTS

Financial Statements

Type of auditors' report issued: Unqualified

Internal control over financial reporting:

- Material weakness(es) identified? yes no
- Significant deficiencies identified that are not considered to be material weakness(es)? yes none reported

Noncompliance material to financial statements noted? yes no

Federal Awards

Internal control over major programs:

- Material weakness(es) identified? yes no
- Significant deficiencies identified that are not considered to be material weakness(es)? yes none reported

Type of auditors' report issued on compliance for major programs: Unqualified

Any audit findings disclosed that are required to be reported in accordance with section 510(a) of Circular A-133? yes no

Identification of major programs:

| <u>CFDA Number(s)</u> | <u>Name of Federal Program or Cluster</u> |
|-----------------------|--|
| 10.555 | National School Lunch Program |
| 14.218 | Community Development Block Grant |
| 14.900 | Lead Grant |
| 20.507 | Federal Transit Capital & Operating Assistance |
| 20.514 | Public Transportation Research |
| 66.606 | EPA Grant Assistance |
| 84.010 | Title I |
| 84.027 | SPED 94-142 |
| 84.215 | Smaller Learning Communities |
| 84.367 | Improving Teacher Quality |

Dollar threshold used to distinguish between type A and type B programs: \$ 561,926

Auditee qualified as low-risk auditee? yes no

SECTION II - FINANCIAL STATEMENT FINDINGS

None.

SECTION III - FEDERAL AWARDS FINDINGS AND QUESTIONED COSTS

None.

SECTION IV - SCHEDULE OF PRIOR YEAR FINDINGS

None.

Appendix 5

PROJECT SPONSOR'S LETTERHEAD

Project Manager's Name
Bureau of Planning & Community Assistance
NH Department of Transportation
7 Hazen Drive (PO Box 483)
Concord, NH 03302-0483

RE: PROJECT NAME AND NUMBER
Project Description
REIMBURSEMENT REQUEST #

Dear Project Manager:

Enclosed is an invoice regarding work/services completed during the period of _____ to _____, along with the appropriate proof of payment. We have reviewed it and believe it accurately reflects the work or services performed.

An itemized summary of all submitted invoices is also enclosed, along with the monthly progress report of the activities completed during this period.

We are requesting reimbursement in the amount of \$___ (\$Total Amount @ __%). If you have any questions, please contact _____ at phone number.

Respectfully submitted,

Sponsor Name

Enclosures

CONSULTANT HEADING
INVOICE

Sponsor Name
Address

Invoice #
Page 1 of 3

RE: PROJECT NAME AND NUMBER
Billing/Task Summary

For professional services completed during the period of _____ to _____.

| Task | Budget Amount | Billed to Date | Total Prior Invoices | Current Invoice | Percent Complete |
|-----------------------------|---------------|----------------|----------------------|-----------------|------------------|
| 1. Engineering Study | | | | | |
| 2. Preliminary Design | | | | | |
| 3. ROW/Easement | | | | | |
| 4. Permits | | | | | |
| 5. Final Design | | | | | |
| 6. Bid Phase | | | | | |
| 7. Construction Engineering | | | | | |
| Expenses Incurred | | | | | |
| Totals | | | | | |
| TOTAL INVOICE AMOUNT | | | | \$ | |

NHDOT Reimbursement of 80% = \$
Sponsor Match of 20% = \$

This invoice is true and accurate and properly reflects the scope of work performed.

Consultant signature

CONSULTANT HEADING

Hourly Cost Breakdown

Invoice #
Page 2 of 3

| Task | Project Engineer | Survey Manager | Junior Engineer | Technical Researcher | Administration |
|----------------------------|------------------|----------------|-----------------|----------------------|----------------|
| Initial Project Meeting | | | | | |
| Preliminary Site Plan | | | | | |
| Utility Evaluation | | | | | |
| Resource Review Meetings | | | | | |
| Survey | | | | | |
| Preparation of Engr. Study | | | | | |
| | | | | | |
| Total Hours | | | | | |
| Direct Labor Rate | | | | | |
| TOTAL DOLLAR AMOUNT | | | | \$ | |

CONSULTANT HEADING

Invoice #
Page 3 of 3

Actual Cost Breakdown

| Task | Direct Labor | Overhead | Profit | Outside Consultants* | TOTAL |
|-----------------------------|--------------|----------|--------|----------------------|-------|
| 1. Engineering Study | | | | | |
| 2. Preliminary Design | | | | | |
| 3. ROW/Easement | | | | | |
| 4. Permits | | | | | |
| 5. Final Design | | | | | |
| 6. Bid Phase | | | | | |
| 7. Construction Engineering | | | | | |
| Expenses Incurred | | | | | |
| | | | | | |
| TOTALS | | | | | |

Transportation (xx miles/day @ .50 per mile x days = \$
 Misc. printing based on .xx per s.f. = \$
 Mailings = \$ _____
 Total Expenses Incurred = \$

*Outside Consultants:
 Task – xx hrs. @ \$xx per hr.

PROJECT STATUS REPORT
FOR
PROJECT NAME and NUMBER

Tasks completed during the period of _____ to _____:

- Meetings with regarding
- Research on ROW issues
- Preparation for Public Meeting dated

| | |
|---------------------------------------|-------------------------------------|
| <u>Tasks scheduled for completion</u> | <u>Estimated Time of Completion</u> |
|---------------------------------------|-------------------------------------|

- | | |
|--|---------|
| • Acquire permits for | xx days |
| • Preliminary grading and design | xx days |
| • Awaiting approval for Contract Amendment # | xx days |

Immediate Action Items

Status

The biggest hurdle this month was Much of the time this month was spent
The plan was presented at a Public Meeting to solicit feedback.

Schedule Summary

| | | |
|--------------|---------------------------------|---------------------------------|
| <u>Phase</u> | <u>Original Completion Date</u> | <u>Proposed Completion Date</u> |
|--------------|---------------------------------|---------------------------------|

Appendix 6

Emergency Relief Manual

Located on the U.S. Department of Transportation

Federal Highway Administration Website can be found at:

<https://www.fhwa.dot.gov/reports/erm/er.pdf>

Last FHWA update May 31, 2013

Checked for update on 2/14/2017

Appendix 7

PROJECT CLOSEOUT

PART 1 FINAL REIMBURSEMENT SUBMISSION

(PLANNING PROJECTS)

Project Name: _____

State Number: _____

Federal Number: _____

| |
|------------------------|
| Program: _____ |
| Application #: _____ |
| Project Manager: _____ |

CHECKLIST TO BE FILLED OUT BY PROJECT SPONSOR AND RETURNED TO NHDOT WITH FINAL REIMBURSEMENT REQUEST

Documents required for processing final reimbursement

Project closeout forms

Checklist Completed By: _____

- Bound copy of completed Plan.
- Electronic PDF of Plan submitted via email or on a CD.
- Financial summary showing funding breakdown by phase.
 - Both participating and non-participating work must be shown
- Final reimbursement request, documents and completed checklist sent to NHDOT.

Cover letter includes:

 - Amount requested for reimbursement.
 - Statement that invoices have been reviewed and that they accurately reflect the work performed or the goods and/or services received.
 - Date the Plan was completed and accepted.
 - Statement of ownership.
 - Normal invoice back-up information (invoices, proof of payment, etc.).

CHECKLIST TO BE FILLED OUT BY NHDOT FOR FINAL REIMBURSEMENT PROCESSING

Financial checks for final reimbursement

Checklist Completed By: _____

- Check that Sponsor has provided the latest complete single audit report (SAR) in accordance with the Office of Management and Budget (OMB) Supercircular 2 CFR Part 200, Subpart F.
- Verify last estimate was approved by FHWA.
- Verify no negative amounts exist for any of the phases.
- Final Project Closeout letter sent to Sponsor with Project Completion Form and checklist.
- Final reimbursement memo sent to Finance & Contracts.

APPENDIX 8

Preliminary Scope of Services

(Owner, Contact Person, Project, Project Location)

The scope of services for each project should include the following information in general terms and be limited to one page:

- Identification and involvement of groups such as building committees, boards, citizen groups, etc.
- Description of the requirements for meetings with the above groups.
- Description of studies, surveys, or preliminary feasibility work which may be relevant, useful and available to the firms to be interviewed.
- Requirements for further feasibility planning prior to design and construction.
- Project outline and anticipated general requirements, such as demolition, renovation, new construction, energy, environmental, land use, waste management, site selection, and other factors, as appropriate.
- Anticipated project start and finish time frame.
- Approval process / involvement of groups.
- Other requirements, for example, referendums, public meetings and/or hearings, etc.

Schedule of Activities

(Owner, Project)

DATE

- _____ 1. A preliminary scope of services/needs is developed by the Owner.
- _____ 2. A request for Letters of Qualifications is advertised.
- _____ 3. Letters of Qualifications due. *(Allow a minimum of 10 days for the firms to submit their materials. Before the next action date, references should be reviewed.)*
- _____ 4. A short list of approximately 3 to 5 firms is developed for subsequent interviews. *Selection should be based on qualifications, references, and compatibility with Owner's project.*
- _____ 5. Selected firms are contacted by phone advising of the date for interview and pre-interview site tour, along with criteria to be discussed at the interview. (See Model Form 7b)
- _____ 6. Memo is mailed to unsuccessful firms informing them of who will be interviewed and expressing appreciation for their interest. *(See Model Form 7a)*
- _____ 7. Site/facilities are toured *(date, time and location)*. *Tours should be scheduled at least 10 days prior to the date of the interviews to allow for preparation.*
- _____ 8. Scheduled interviews are conducted. *Firms are ranked according to qualifications.*
- _____ 9. Scope of services is developed jointly with the Owner and the highest ranked firm, and a contract is negotiated.
- _____ 10. Memo is mailed to all firms interviewed indicating the results of the selection process and expressing appreciation for their involvement.
- _____ 11. Post-selection requirements, (public hearing, referendum, as applicable).

Request for *Letter of Qualifications*

To: *(List all firms in alphabetical order)*

From: *(Owner, Contact Person)*

Re: Request for Letters of Qualifications

Your firm is invited to submit your Letter of Qualifications for *(architectural / engineering / surveying) services related to (name of proposed project)*.

Project description: *(provide a brief description)*.

Preliminary requirements are based on studies performed by *the (name of committee or organization)*.

Enclosed are the following:

1. A list of information to be included with your Letter of Qualification.
2. A general definition of the preliminary scope of services.
3. A schedule of dates and requirements for the selection process.

A tour of the facility / site will be arranged for firms that are selected for interview.

Your Letter of Qualifications must be received no later than *(time, day, date)* and shall be addressed to:

(Name and Title)

(Address)

Requirements for *Letters of Qualifications*

(Owner, Project)

Please include the following information in your Letter of Qualifications:

1. Name, address, brief history and description of firm.
2. Résumés of key personnel to be assigned to this project.
3. Related projects / areas of expertise / experience.
 - a) Description of other projects designed by this firm similar to this project.
 - b) Include reference contact information.
4. Description of budgeting, cost and quality control procedures.
5. A brief description of the firm's approach to planning, designing and implementing the project.
6. You are invited to include a maximum of one page of information not covered above, which you feel may be useful.

Letters of Qualifications

Evaluation Process

(The following sample is provided for your use. It is suggested that rating scales be consistent with those used for the interview evaluation. Rating factor: 1 to 5, with 5 being the best.)

Firm Name: _____
(Architectural, Engineering, Surveying)

Rating:

1. Firm's history and resource capability to perform required services. _____
2. Evaluation of proposed personnel. _____
3. Related experience. _____
4. Budget, cost-control experience. _____
5. Familiarity with local area and construction practices. _____
6. Firm's perception of project requirements and project approach. _____
7. Quality control procedures. _____
8. Reference check. _____

Grand Total _____

(You may wish to consider weighting some of the evaluation factors.)

Letters of Qualifications Evaluation Process – Tally Sheet

For use by the review committee to compile the evaluation results of all Letters of Qualifications submitted.

| | Firms | | | | | | | | | |
|---|--------------|---|---|---|---|---|---|---|---|----|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Reviewer 1 | — | — | — | — | — | — | — | — | — | — |
| Reviewer 2 | — | — | — | — | — | — | — | — | — | — |
| Reviewer 3 | — | — | — | — | — | — | — | — | — | — |
| Reviewer 4 | — | — | — | — | — | — | — | — | — | — |
| Reviewer 5 | — | — | — | — | — | — | — | — | — | — |
| Reviewer 6 | — | — | — | — | — | — | — | — | — | — |
| Totals | | | | | | | | | | |
| | — | — | — | — | — | — | — | — | — | — |
| <i>Highest total score is highest ranked firm. Establish ranking for all firms.</i> | | | | | | | | | | |
| Ranking | | | | | | | | | | |
| | — | — | — | — | — | — | — | — | — | — |

Reference Check Form

Sample questions to be asked of references provided in the firm's Letter of Qualifications.

Firm Name: _____
(Architectural, Engineering, Survey)

Project Reference: _____

Person Contacted: _____

1. What was your project?
2. When was it completed?
3. What did the firm do for you on this project?
4. Who was the chief staff person assigned to work with you?
5. Were you satisfied with this person's work?
6. Was the project started and completed as scheduled?
7. Did the firm achieve the project's goals?
8. Did the firm demonstrate good problem solving skills?
9. Were budget and cost control measures handled effectively?
10. Did you and the design team work well together?
11. Would you hire the firm again for another similar project?
12. What is your overall evaluation of the firm based on your experience?

Memo to Firms

Not Selected for an Interview

To: *(List firms not asked to interview – in alphabetical order)*

From: *(Owner, Contact Person, Address)*

Re: Status of the Selection Process

The *(committee or board)* would like to express their appreciation to you and your firm for submitting your Letter of Qualifications.

After careful consideration of all firms who submitted their qualifications, ___ (#) firms have been selected for interviews.

For you information, the firms selected for further consideration are:

(List in alphabetical order)

- 1.
- 2.
- 3.
- 4.
- 5.

While you firm was not selected for an interview, we appreciate your interest in our project and the time spent in the preparation of your submission.

Memo to Firms

Selected for an Interview

To: *(List firms asked to interview – in alphabetical order)*

From: *(Owner, Contact Person, Address)*

Re: Status of the Selection Process

The *(committee or board)* would like to express their appreciation to you and your firm for submitting your Letter of Qualifications. The firms listed above have been selected for interviews.

Enclosed are the following:

1. List of criteria to be used in the evaluation process.
(Items on Form 8)
2. A copy of *(name of studies or reports)* compiled by *(name of committee of group)* for your information and review.

Each firm will be allowed ___ minutes to present their qualifications and to answer questions. At the completion of the interviews, the committee will rank the firms interviewed in accordance with their determination of which firm is most competent and compatible for the project. The highest ranked firm will enter into discussions with the Owner regarding required scope of professional services and contract negotiations. If contract terms cannot be reached, negotiations will be terminated and the firm ranked second will be invited in for scope of services discussions and contract negotiations.

Interviews will be held on *(date)*, at *(location)*.

The order and time of interviews is:

Firm A: *(Time)*
Firm B: *(Time)*
Firm C: *(Time)*
Firm D: *(Time)*
etc.

A tour of the site/facility has been arranged for *(date, time)*. Please send your firm's representative to this tour.

Interview Process

Issues and Score Sheet

This interview criteria list is for use by Interviewers and may be provided to firms prior to interviews for their information:

| Category | Points Awarded | Possible Points |
|--|-------------------|--------------------|
| 1. Grasp of Project Requirements (firm's analysis, preparation and interest) | _____ | _____ |
| 2. Design Approach/Methodology (firm's creativity and problem solving) | _____ | _____ |
| 3. Key Personnel and Roles (experience and professional skills) | _____ | _____ |
| 4. Pertinent Experience of Firm (related completed projects) | _____ | _____ |
| 5. Pertinent Experience of Individuals (related completed projects) | _____ | _____ |
| 6. Consultant/In-House Resources (range of support expertise, 3CAD) | _____ | _____ |
| 7. Technical Management/Quality Control (cost and quality control, field work) | _____ | _____ |
| 8. Responsiveness to Owner's Concerns (personal chemistry, communications) | _____ | _____ |
| 9. Method of Contraction (lump sum, actual cost, etc.) | _____ | _____ |
| 10. Proposed Schedule for the Work (realistic, major milestones included) | _____ | _____ |
| 11. Other Relevant Issues (other issues presented by firm) | _____ | _____ |
| GRAND TOTAL | _____ | _____ |

Notes:

Group Interview Evaluation Form

For use by chairperson to compile all scores of interviewers.

Combined Group Totals

| | Firm A | Firm B | Firm C | Firm D |
|--------------------|--------|--------|--------|--------|
| Interviewer 1 | _____ | _____ | _____ | _____ |
| Interviewer 2 | _____ | _____ | _____ | _____ |
| Interviewer 3 | _____ | _____ | _____ | _____ |
| Interviewer 4 | _____ | _____ | _____ | _____ |
| Interviewer 5 | _____ | _____ | _____ | _____ |
| Interviewer 6 | _____ | _____ | _____ | _____ |
| Interviewer 7 | _____ | _____ | _____ | _____ |
| Interviewer 8 | _____ | _____ | _____ | _____ |
| Grand Total | _____ | _____ | _____ | _____ |
| Ranking | _____ | _____ | _____ | _____ |

Memo to Firms

After Interview

To: *(All firms interviewed – in alphabetical order)*

From: *(Owner, Contact Person, Address, Project)*

Re: Status of the Selection Process

The Selection process for professional services for the above named project has been completed.

Our objective has been to select the most qualified firm to perform this service. The *(committee or board)* has chosen *(Firm #1 name)* as the best-qualified firm to assist us in this project.

We have now entered into contract negotiations with *(Firm #1 name)*. The *(committee or board)* expresses their appreciation for you interest, time and effort spent on our behalf.

Design Professional Performance Evaluation

After Completion of Services

This can be very helpful in the selection of design professionals. A properly performed performance evaluation contributes to the building of a relationship of mutual trust between the owner and the design professional.

1. Immediately after project completion, two or three key people from the owner's staff independently complete this evaluation form, then meet to discuss and reach a consensus on a composite evaluation.
2. When consensus is achieved, a copy of the evaluation is sent to the design professional and a meeting scheduled to discuss the various points on the evaluation.
3. This discussion must be candid and without rancor. The owner must be open to allowing the design professional to explain extenuating circumstances that may have contributed to any apparent poor showing. Similarly, the design professional must accept responsibility if the firm's services fell short in any areas.
4. Once agreement is reached on the evaluation, both parties sign the form in the spaces provided.
5. A copy is given to the design professional and a copy placed in the owner's project file.

Name of Firm:

Project :

Location:

1. Did the project meet the program requirements?
2. Was the project completed on time?
3. Was the project completed within the budget?
4. Were the construction documents adequate?
5. Were the change orders the result of a revision of the scope of work or incomplete construction documents?
6. Did the design professional relate satisfactorily with the owner and the contractor(s) on the project?
7. Did the design professional handle the project administration in a complete and efficient manner?
8. Would you retain the design professional again on a future project?
9. Overall performance rating? (excellent, good, fair, poor) Comments:

Owner

Firm

APPENDIX 9

Appendix 9

Sample Consultant Contract

Date

Consultant name and address

Project Sponsor name

Address

Re: Proposal for Engineering Design Services
Sidewalk and Streetscape Amenities

Dear Project Sponsor:

Consultant name is pleased to submit our proposal for engineering design services for the above referenced project. The proposal includes the scope of work and fee for the preparation of a Baseplan Survey, Engineering Study, Preliminary Design, Right-of-Way/Easement Coordination, Permitting, Final Design, and Bidding Process Assistance. The proposal also includes the scope of work for Construction Engineering services. A separate contract amendment will be required to provide the fee for construction engineering and any scope revisions to this proposal with regard to construction engineering. All work will be prepared in accordance with "Local Public Agency Manual for the Development of Projects" (LPA Manual) latest version, produced by the New Hampshire Department of Transportation.

PROJECT DESCRIPTION

Provide project description.

SCOPE OF WORK

See attached scope of work for the project.

ENGINEERING COST BREAKDOWN (FEE)

See attached fee for the project.

DESIGN SERVICES

1 Engineering Study – October 2010 – January 2011

- 1.1 Using the completed conceptual plan by Project Sponsor we will coordinate our due diligence to focus on the corridor area. We will also meet with the Project Sponsor to become aware of any input/concerns at the Town level. Once we understand any resulting site issues, we will meet with you to resolve those matters in the best interest of the project.
- 1.2 (If necessary) contract with a geotechnical engineer to identify problematic subsurface conditions, including unsuitable material and ledge; assist you to determine the scope of geotechnical recommendations required.
- 1.3 Prepare preliminary layout, grading and landscape studies using the previously completed conceptual plan to identify the overall design of the corridor. Evaluate the impact of project changes on existing stormwater patterns and known subsurface utilities.
- 1.4 Confirm the routing, capacity, and potential impacts to sub-surface drainage systems. Camera evaluation to identify degraded conditions is recommended but not included at this time.
- 1.5 (If necessary) contract with a structural engineer and geotechnical engineer to perform a Structure Study for the bridge across the ---- Pond outlet to the --- River.
- 1.6 Contract with an electrical engineer to assist in the planning, design and estimating costs for proposed site lighting.
- 1.7 Meet with NHDOT Bureau of Environment – Department of Natural Resources to review environmental conditions and receive feedback in terms of project design considerations and permitting.
- 1.8 Meet with NHDOT Bureau of Environment – Department of Cultural Resources to review historical elements or significant cultural resources within the project area and receive feedback in terms of project design considerations and permitting.
- 1.9 Perform a full detailed topographic and right-of-way survey for the corridor area, this will include roadway centerline grades, rim and inverts of subsurface drainage systems, location of utilities within the corridor both overhead and below grade, corners and thresholds of all storefronts along the corridor, top and bottom of existing curb and location and type of existing site amenities. We will contact the Town Police Department to coordinate access to drainage structures and associated restrictions on parking when performing the field survey. As part of the R.O.W. study, personal property located within the right-of-way will be

identified for relocation or coordination with the NHDOT to ascertain options. Easement coordination will be addressed within a separate phase.

- 1.10 Based upon the information gathered in Items 1.1-1.9, prepare detailed Concept plans focused upon location of proposed improvements. These plans will depict the building footprints along or within the right-of-way, vehicular driveways, on street parking, pedestrian plazas, walkways, landscape areas, and amenities.
- 1.11 Submit the detailed concept plans to the Project Sponsor for review. Refine the plans as required to address comments to obtain approval by Project Sponsor.
- 1.12 Attend meetings during the Engineering Study Phase including:
 - One public local concerns meeting to obtain public comments on project
 - Monthly project update meetings with Project Sponsor to discuss progress
 - One public meeting for presentation of preferred alternative
- 1.13 Attend meetings and conduct research with outside organizations as necessary to determine regulatory applicability of any permits necessary to construct the project.
- 1.14 Submission of 3 copies of the Concept Plans and Engineering Study to Project Sponsor and 3 copies to NHDOT outlining alternatives reviewed, opinion of probable project costs, design considerations and criteria, environmental and cultural design considerations, permitting requirements, and identification of preferred alternative.
- 1.15 Submission of proposal to NHDOT for potential roadway reconstruction as necessary to construct the initial phase of the project. The acceptance or rejection of this proposal will form the final basis for preliminary design phase. Alternatives of describing potential proposal impacts to the project's completion will be thoroughly detailed within the Engineer's Study & Report submitted to the NHDOT.

2 Preliminary Design Phase – February 2011 – April 2011

- 2.1 Based upon comments obtained from Engineering Study, refine the site documents to further address the scope and nature of site work in coordination with required documentation for NHDOT acceptance.
- 2.2 Attend meetings during the Preliminary Design Phase Including:
 - Monthly project update meetings as required with Project Sponsor to discuss progress.

2.3 Prepare AutoCAD site drawings suitable for Local, NHDOT and additional permitting agencies (as required) review and approvals including the following: (Documents will not be submitted for permits until approved by NHDOT).

- Existing Conditions Plan
- Demolition Plan
- Grading and Drainage Plans
- Utilities Plans
- Planting Plans
- Construction Detail Sheets

2.4 Prepare an Opinion of Probable Cost, to the extent practical using item number, nomenclature, description, materials, and construction requirements, which are contained in the Standard Specifications for Road and Bridge Construction, State of NHDOT latest edition.

2.5 Submit Detailed Plans and Opinion of Cost estimates NHDOT for review and approval.

3 Right-of-Way/Easement Coordination Phase (If Necessary/Concurrent with Preliminary Design Phase) – February 2011 – April 2011

3.1 As part of the R.O.W. study, personal property located within the right-of-way will be identified for relocation or coordination with the Project Sponsor/NHDOT to ascertain options.

3.2 Provide draft R.O.W. Purchase Plans for review by Project Sponsor/NHDOT. (Limited to 4 R.O.W. Relocations/Easements.)

3.3 Meet with Project Sponsor/NHDOT representatives and project abutters to discuss easements and relocation requirements as necessary. (Limited to 4 meetings.)

3.4 Submit Final R.O.W. Purchase Plans to Project Sponsor/NHDOT.

3.5 Upon approval of Purchase Plans by Project Sponsor/NHDOT, submit materials to Project Sponsor who will be responsible for property appraisals, individual abutter agreements and easement recording. (Execution of documents requires legal support and will be completed by Project Sponsor).

3.6 Submit Registry plans, recorded deeds, and easements to Project Sponsor/NHDOT.

4 Permitting Phase – May 2011 – June 2011

4.1 Upon Approval from NHDOT, submit AutoCAD site drawings (if necessary) for review and approvals including the following:

- Existing Conditions Plan
 - Demolition Plan
 - Grading and Drainage Plans
 - Utilities Plans
 - Planting Plans
 - Construction Detail Sheets
- 4.2 Submit applications for required permits including NHDOT Bureau of Environment, Department of Natural Resources, and Department of Cultural Resources. Complete the environmental documentation process and tracking summary for an anticipated Programmatic Categorical Exclusion (PCE).
- 4.3 (If necessary) contract with an archaeological consultant to complete a Phase 1A Archaeological Assessment.
- 4.4 (If necessary) contract with an historic preservation consultant to complete the Section 106 review of potential impacts to historic properties.
- 4.5 (If necessary) prepare a permit application required by the NH Shoreland Protection Act, based on proximity to ---- Pond.
- 4.6 (If necessary) prepare a permit application required by the NH Rivers Management & Protection Program, based upon ---- Pond possibly considered as a tributary to the ---- River.
- 4.7 In accordance with PCE Criteria, we assume that:
- Air Quality permitting is not required.
 - We will contact NH Natural Heritage Inventory and U.S. Fish & Wildlife, we assume no endangered species present in project area, and further investigations are not required.
 - Project is not located in a flood hazard area.
 - Noise studies/ permits are not required.
 - No public park land, recreation area, wildlife/waterfowl refuge nor significant historic will be impacted by the project.
 - NH Wetland Bureau permits will not be required.
 - Other issues or concerns (excessive contaminated soils, impacts upon scenic roads, substantial public opposition, etc.) which may disqualify the project from PCE designation will not arise.
 - NHDES Alteration of Terrain Permit not required.
- 4.8 Submit copies of all applications to NHDOT. All application fees will be paid by Project Sponsor.

5 Final Design – July 2011 – August 2011

- 5.1 Prepare Layout/Staking Plans at the scale of 1"=20', or equivalent, providing layout information for the roadway, pedestrian walks, and miscellaneous site improvements.
- 5.2 Prepare Grading and Drainage Plans at the scale of 1"=20', or equivalent, including existing and proposed contours, surface drainage patterns, drainage structures, storm drain pipes and sizes, and erosion/sedimentation control measures.
- 5.3 Prepare Utilities Plans at the scale of 1"=20', or equivalent, including all on-site utility service connections and installations as required by the project. Off-site utility connections, if necessary, are not included. Plans will show the location and photometrics for all proposed site lighting, light fixture selection, and site electrical distribution design will be provided.
- 5.4 Prepare Detailed Planting Plans at the scale of 1"=20', or equivalent, including the quantity and location of all proposed plantings, plant schedules, and installation details.
- 5.5 Prepare Construction Details for all site improvements, including utilities, roads, curbing, pedestrian pavement areas, site furniture, and other miscellaneous site construction elements.
- 5.6 Prepare specifications for site civil and landscape improvements in a format consistent with the overall project specifications.
- 5.7 Attend meetings during the Final Design Phase.

This includes monthly progress meetings with Project Sponsor.
- 5.8 Submit Final Plans and opinion of probable cost estimate to NHDOT for review and approval.

6 Bidding Phase – September 2011

- 6.1 Upon approval of Final Design Documents prepare Bidding and Project Manual for submission and approval to NHDOT
- 6.2 Provide final opinion of project cost estimate for review and approval to NHDOT.
- 6.3 Using the approved final cost opinion, establish a project budget, and determine bid alternatives for the competitive bid process form.
- 6.4 Develop Bid Form to be included in the final bid documents.

- 6.5 Submit (3) copies of the final plans and certification of clearance of property rights, utility impacts and permit application status reports/approvals to NHDOT for approval. The submission will include complete bid documents and final estimate.
- 6.6 Upon NHDOT approval assist the Project Sponsor with advertising the work for bids, also submitting a copy of the advertisement to the NHDOT.
- 6.7 Attend Pre-Bid Meeting for the project.
- 6.8 Manage the bid process and address RFI or clarification requests from contractors during the bid process.
- 6.9 After a bid period of at least 3 weeks bids will be received, opened, and catalog noting the apparent low bidder.
- 6.10 Attend bid opening meeting for the project.
- 6.11 Submit report of pre-bid meeting attendants, clarifications and addendums addressed during the bid process, catalog of bids received noting the apparent low bidder to NHDOT for approval of award.
- 6.12 Upon receipt of NHDOT approval for award of the contract to the low bidder the Project Sponsor will enter into a construction contract with the awarded bidder.
- 6.13 Submit copies of the signed contract to NHDOT.

7 Construction Phase –May 2012 – July 2012

- 7.1 Attend Pre construction meeting with Project Sponsor, NHDOT, and Contractor to address specific site elements and safety requirements, contact information, and coordinate requirements.
- 7.2 Provide submittal review, shop drawing review, and review of samples for Division 2 items.
- 7.3 Assign a near full time construction inspector to the site during construction to ensure that the Division 2 work is in compliance with the contract documents. We will conduct site visits 5 days per week, with a field report completed after each visit, and we assume the construction period to be 12 weeks. Construction inspection by PE and incorporate duties as described in the LPA Manual
- 7.4 Coordinate site issues during construction as they arise.
- 7.5 Upon completion of the project, compile close-out documentation including; As-built plans provided by the selected contractor, letter of certification that all construction has been completed as designed and according to all Federal and

State guidelines, copy of final and completed punch-list, before, during and after photos.

7.6 Follow-up with the NHDOT through project closeout.

Fee Schedule

Our understanding of the project at this time is general in nature, and it is difficult to predict how the project will proceed within the design team and approval agencies. Based on past experience, however, we have generated an estimated fee schedule for your consideration. We will revisit this schedule during each phase and will discuss any changes to the fee schedule, if necessary.

DESIGN SERVICES FEE SUMMARY (Refer to Engineering Cost Breakdown for a detailed breakdown of manhours, direct labor, indirect costs, profit, expenses, etc.)

| | <u>Total</u> |
|--|--------------|
| 1 Engineering Study Phase | \$0 |
| 2 Preliminary Design Phase | \$0 |
| 3 Right-of Way/Easement Coordination Phase | \$0 |
| 4 Permitting Phase | \$0 |
| 5 Final Design Phase | \$0 |
| 6 Bidding Phase | \$0 |
| 7 Construction Phase | \$0 |
| <hr/> | |
| Total Basic Design Fee | \$0 |
| <hr/> | |
| Total Estimated Reimbursable Expenses | |
| 1.1-6.1 \$0 | |
| 7.1 \$0 | \$0 |
| | |
| TOTAL FEE ESTIMATE | \$0 |

Services Not Included

Off-site Traffic Improvements (Survey and Design)
Other services not specifically included herein

Authorization

If the terms of this agreement are acceptable to you, please sign below as an authorization to proceed. We look forward to working with you as the project moves forward.

Sincerely,

CONSULTANT.

ACCEPTED and AUTHORIZED

By: _____

By: _____

By: _____

Representing: _____

Title: _____

Date: _____

Cost Breakdown

CONSULTANT
Address

Project: _____
Project No.: _____
PM: _____
Date: _____

| Task Outline | Estimated Labor | | | | | | | | | | | |
|--|-----------------|--------------------|---------------|----------------------|------------------------|----------------------|-----------------|----------------|--------|--------------------|--------|--------------|
| | Principal LA | Sr. Survey Manager | Site Surveyor | Technical Researcher | Sr. Project Manager/LA | Sr. Project Engineer | Junior Engineer | Site Inspector | CAD | Special Consultant | Admin | Direct Labor |
| 6.1 Prepare Bidding & Project Manual | | | | | 6.00 | 5.00 | 5.00 | 2.00 | | | 5.00 | |
| 6.2 Final Opinion of Cost | | | | | | | | | | | | |
| 6.3 Establish project budget set alternates | | | | | 5.00 | | | | | | | |
| 6.4 Bid Form Creation | | | | | | | | | | | 5.00 | |
| 6.5 Submit copies of Final Plans to NHDOT | | | | | | | 2.00 | | | | 3.00 | |
| 6.6 Advertise for for work | | | | | | | | | | | 2.00 | |
| 6.7 Pre-Bid Meeting | | | | | 10.00 | | 12.25 | 8.00 | | | | |
| 6.8 Management of Bid Process /RFI response | | | | | 5.00 | | | | | | | |
| 6.9 Bid period - | | | | | | | | | | | | |
| 6.10 Bid opening meeting | | | | | 3.00 | | | | | | | |
| 6.11 Submit report of pre-bid materials to NHDOT | | | | | 2.00 | | | | | | 2.00 | |
| 6.12 Construction Contract | | | | | | | | | | | | |
| 6.13 Submit Copies of Contract to NHDOT | | | | | | | | | | | 2.00 | |
| | 0.00 | 0.00 | 0.00 | 0.00 | 31.00 | 5.00 | 19.25 | 10.00 | 0.00 | | 19.00 | |
| 7.0 Construction Phase | | | | | | | | | | | | |
| 7.1 Pre Construction meeting | | | | | | | | | | | | |
| 7.2 Submittal review | | | | | | | | | | | | |
| 7.3 Full Time Inspector | | | | | | | | | | | | |
| 7.4 Coordination of site issues | | | | | | | | | | | | |
| 7.5 Compile close out documentation | | | | | | | | | | | | |
| 7.6 Follow-up with NHDOT up to closeout | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | | 0.00 | |
| TOTAL HOURS | 50.00 | 38.00 | 178.00 | 58.00 | 357.75 | 56.00 | 229.50 | 10.00 | 142.00 | | 105.00 | |

Cost Breakdown

CONSULTANT
Address

Project: _____
Project No.: _____
PM: _____
Date: _____

| Task Outline | Estimated Labor | | | | | | | | | | |
|--------------|-----------------|--------------------|---------------|----------------------|------------------------|----------------------|-----------------|----------------|-----|--------------------|-------|
| | Principal LA | Sr. Survey Manager | Site Surveyor | Technical Researcher | Sr. Project Manager/LA | Sr. Project Engineer | Junior Engineer | Site Inspector | CAD | Special Consultant | Admin |

PROJECT TOTAL

Direct Labor OH Profit Consult * Total

| | | | | | | |
|-----|---|------------|------------|------------|------------|------------|
| 1.0 | Engineering Study | | | | | |
| 2.0 | Preliminary Design Phase | | | | | |
| 3.0 | Right of Way/Easement Coordination | | | | | |
| 4.0 | Permitting Phase | | | | | |
| 5.0 | Final Design Phase | | | | | |
| 6.0 | Bidding Phase | | | | | |
| 7.0 | Construction Phase | | | | | |
| | Totals | \$0 | \$0 | \$0 | \$0 | \$0 |
| | Reimbursables: | | | | | |
| | Transportation (102 miles/day) @ .50 per mile x 98 days (increase of 8) | | | | | \$0 |
| | Misc Printing based on .35 per s.f. | | | | | \$0 |
| | Mailings (standard rates) | | | | | \$0 |
| | Communications | | | | | \$0 |
| | Miscellaneous | | | | | \$0 |
| | Total Reimbursables | | | | | \$0 |
| | Total Fee, Consultants, & Reimbursables | | | | | \$0 |
| | * Note: Consultants: | | | | | |
| | 1.1 Engineering Study Consultant (68hrs @ \$125) | | | | | \$0 |
| | 4.1 Permitting Phase (72hrs @\$125) | | | | | \$0 |
| | Total Consultants | | | | | \$0 |



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** Updated Engineering
and Design Related Services Guidance

Date: July 20, 2011

From: David A. Nicol
Director, Office of Program Administration

In Reply Refer To:
HIPA-20

To: Division Administrators

This memorandum is to inform you of updates to the FHWA's question and answer guidance regarding the procurement, management, and administration of engineering and design related services using Federal-aid highway program (FAHP) funding.

The purpose of these updates is to clarify the statutory and regulatory requirements and the policies of the FHWA associated with the use of these consultant services in the delivery of FAHP funded projects. These updates address or reflect:

- Prior changes in Federal laws;
- Relationship and applicability among various regulatory requirements;
- Recommendations from national audits and reviews;
- Guidance provided to State departments of transportation and local public agencies through stewardship and oversight of the FAHP; and
- Guidance and best practices from the *AASHTO Guide for Consultant Contracting* and *AASHTO Uniform Audit & Accounting Guide For Audits of Architectural and Engineering (A/E) Consulting Firms*.

Issuance of the updated guidance is intended to enhance the understanding of the applicable laws and regulations, increase consistency with these requirements, and support the advancement of consultant service programs. To this end, we ask that you familiarize yourself with the updated guidance and utilize it in future project or program actions or reviews involving consultant services funded with FAHP funding. Also, please notify your partner agencies of the updated guidance so that they may evaluate their consultant services policies and procedures to ensure consistency with applicable Federal laws and regulations.

These questions and answers will be updated as needed to reflect clarifications that may be appropriate in support of administering the FAHP. The updated question and answer guidance is available at: <http://www.fhwa.dot.gov/programadmin/consultant.cfm>. If you have any questions or need any additional information, please contact Mr. Scott Wolf at scott.wolf@dot.gov or (202)366-1332

Procurement, Management, and Administration of Engineering and Design Related Services - Questions and Answers

Last Updated July 20, 2011

Introduction

This web page provides guidance that supplements Federal laws and regulations relating to the procurement, management, and administration of engineering and design related services using Federal-aid highway program (FAHP) funding. As Federal laws and regulations governing these service contracts are complex, the purpose of the guidance is to clarify the statutory and regulatory requirements of the Federal Highway Administration (FHWA) associated with the use of engineering and design related consultant services.

Definitions

Unless indicated otherwise, the questions and answers pertain to engineering and design related service contracts (as defined in 23 U.S.C. 112(b)(2)(A) and 23 CFR 172.3) using FAHP funding and directly related to an ultimate construction project. Unless otherwise specified, the definition of the terms provided within the definition section of the referenced Federal laws and regulations (23 U.S.C. 101, 40 U.S.C. 1102, 23 CFR 172.3, and 48 CFR 31.001) are applicable to these questions and answers.

While several regulatory requirements and policies contained within these questions and answers are applicable to design-build, public private partnerships, and other innovative project-delivery methods, this guidance is not intended to address these methods. For additional information regarding design-build contracting, please visit the FHWA Design Build web site at: <http://www.fhwa.dot.gov/construction/cqit/desbuild.cfm>. Information on other innovative contracting methods may be obtained at: <http://www.fhwa.dot.gov/construction/cqit/sep14.cfm>.

Acronyms

AASHTO – American Association of State Highway and Transportation Officials
CASB – Cost Accounting Standards Board
CE – Categorical Exclusion
CFR – Code of Federal Regulations
CPA – Certified Public Accountant
DBE – Disadvantaged Business Enterprise
DOT – Department of Transportation (or equivalent State highway agency)
FAHP – Federal-aid highway program
FAR – Federal Acquisition Regulation
FHWA – Federal Highway Administration
FONSI – Finding of No Significant Impact
GAGAS – Generally Accepted Government Auditing Standards
NEPA – National Environmental Policy Act
ROD – Record of Decision
U.S.C. – United States Code

Questions and Answers

The guidance is provided in the form of questions and answers that have been categorized as noted below. The statutory and regulatory bases, as well as references to other resource material, are provided where appropriate within each specific question and answer. The references to related questions and answers, statutory and regulatory provisions, and supporting information contained in each response are intended to enhance understanding and provide further clarification of Federal requirements and FHWA policies associated with the use of engineering and design related consultant services.

- I. **Competitive Negotiation/Qualifications Based Selection Procurement Procedure**
 - II. **Other Procurement Procedures**
 - III. **Indirect Cost Rates and Audits**
 - IV. **Compensation (Payment) Methods**
 - V. **Contract Negotiation**
 - VI. **Contract Administration**
 - VII. **Disadvantaged Business Enterprise (DBE) Considerations**
 - VIII. **Conflicts of Interest**
 - IX. **Other Considerations**
-

I. Competitive Negotiation/Qualifications Based Selection Procurement Procedure

1. What is the competitive negotiation procurement procedure? (Posted 7-20-11)

Competitive negotiation (as specified in 23 U.S.C. 112(b)(2)(A) and 23 CFR 172.5(a)(1)) is based on qualifications based selection procedures (as specified in 40 U.S.C. 1101-1104 (Brooks Act)) and is the primary method of procurement for engineering and design related services using FAHP funding.

The Brooks Act requires the selection of engineering and design related services on the basis of demonstrated competence and qualifications for the type of professional services required and negotiation of a fair and reasonable compensation. The qualifications based selection procedures prescribed in the Brooks Act require public announcement/advertisement of all requirements for the desired services (as specified in 40 U.S.C. 1101 and 23 CFR 172.5(a)(1)) (See Competitive Negotiation Question & Answer No. 6). The Brooks Act further requires evaluation of current statements of qualifications, performance data, and statements regarding the proposed project or services submitted by prospective consulting engineering firms. Contracting agencies shall then select and rank a minimum of three firms based on demonstrated competence and qualifications in accordance with the established/advertised criteria (as specified in 40 U.S.C. 1103) (See Competitive Negotiation Question & Answer Nos. 7-10).

Upon completion of the qualifications based evaluation and ranking of proposals, the contracting agency initiates negotiations with the most highly qualified firm to arrive at a fair and reasonable compensation for the solicited services which considers the scope, complexity, professional nature, and estimated value of the services to be rendered (as specified in 40 U.S.C. 1104). If the contracting agency and most highly qualified firm are unable to negotiate a fair and reasonable contract, the agency may formally terminate negotiations and undertake negotiations with the next most qualified firm, continuing the process until an agreement is reached (See Contract Negotiation Question & Answer No.1).

2. When must competitive negotiation/qualifications based selection (Brooks Act) procedures be used for procuring engineering and design related services? (Posted 7-20-11)

In general, competitive negotiation/qualifications based selection procedures must be followed when procuring engineering and design related services using FAHP funds where those services are directly related to a construction project (as specified in 23 U.S.C. 112(b)(2)(A) and 23 CFR 172.5(a)(1)). Small purchase/simplified acquisition and noncompetitive procedures are the only two alternative procurement methods that may be utilized under limited conditions applicable to each method. For additional guidance regarding these procurement methods, please reference the Other Procurement Procedures Section.

3. What are engineering and design related services? (Posted 7-20-11)

Engineering and design related services are defined as: program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services (as specified in 23 U.S.C. 112(b)(2)(A) and 23 CFR 172.3). The Brooks Act further defines architectural and engineering related services as professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed, approved, or logically/justifiably performed by a person licensed, registered, or certified as an engineer or architect to provide the services (as specified in 40 U.S.C. 1102(2)).

4. Are competitive negotiation/qualifications based selection (Brooks Act) procurement procedures required for FAHP funded consultant services that are not directly related to a construction project or not considered engineering and design related, such as for planning studies? (Posted 7-20-11)

Generally, no under applicable Federal laws and regulations. When procuring property and services under a Federal grant, States and local public agencies must use their own procurement policies and procedures (as specified in 49 CFR 18.36(a)), except if a Federal statute or regulation has more specific requirements in conflict with State policies and procedures (as specified in 49 CFR 18.4).

Thus, the applicable procurement requirements for the subject services is generally dependent upon the definition of engineering and the procurement code within State and local laws, regulations, policies, and procedures. If the services in question require qualifications based selection under State and local requirements, compliance with these requirements and use of qualifications based selection procedures is required as a condition for participation of Federal-aid funding in the services.

It is important to note that planning studies or other services which are not included in the definition of engineering and design related services (See Competitive Negotiation Question & Answer No. 3), or are not directly related to a construction project, will generally not require procurement through a qualifications based selection process under Federal laws and regulations pertaining to the FAHP. Planning studies, for example, are typically based on a regional or corridor assessment of a facility or network (not project specific) where subsequent engineering and project development services for a specific project must be undertaken prior to letting the project for construction. Although generally not required in those situations under Federal laws and regulations, State and local licensing and procurement laws and regulations may require use of qualifications based selection procedures to procure these services.

The determining factor for the required use of competitive negotiation/qualifications based selection procedures is whether the services being procured are related to a specific construction project (subject to the provisions of 23 U.S.C. 112(a)) and/or whether the services require work to be performed, provided by, or under the direction of a registered engineer or architect (as specified in 40 U.S.C. 1102(2)). If a planning study is to determine the need for improvements within a corridor, conduct travel demand studies, or to obtain information on costs for planning and programming processes, the consultant may not need to be procured under a qualifications based selection process. If a planning study involves development and consideration of detailed alternatives in a corridor or any activities or analyses that pertain to development and furtherance of a specific project, the consultant may need to be procured under a qualifications based selection process. The answer lies within the details of the scope of services needed and the applicable State and local laws, regulations, policies, and procedures.

5. If there is no FAHP funding participating in an engineering and design related services contract, are the Federal competitive negotiation/qualifications based selection (Brooks Act) procurement procedures still applicable? (Posted 7-20-11)

No, Federal laws and regulations for procuring, managing, and administering engineering and design related services contracts are specific to the use of FAHP funds for the engineering and design related services.

If FAHP funds are not participating in an engineering and design related services contract, the contracting agency may procure the services in accordance with its own established policies and procedures which reflect applicable State and local laws. However, the costs of consultant service contracts that utilize only State or local funding which were not procured, negotiated, or administered in accordance with applicable Federal laws and regulations would not be eligible to apply toward the non-Federal share of costs for subsequent phases (e.g., construction) of a FAHP funded project. More information on non-Federal match requirements may be found at:
<http://www.fhwa.dot.gov/legsregs/directives/policy/memonfmr20091229.htm>.

6. Under competitive negotiation/qualifications based selection (Brooks Act) procurement procedures, do engineering and design related services contracts have to be solicited by public announcement/advertisement? (Posted 7-20-11)

Yes, in order to assure that in-state and out-of-state consulting firms are given a fair opportunity to be considered for award of an engineering and design related services contract, the contracting agency must solicit services by public announcement/advertisement and identify all requirements that consulting engineering firms must fulfill along with all other factors to be used in evaluating proposals (as specified in 40 U.S.C. 1101 and 23 CFR 172.5(a)(1)).

The solicitation should include the evaluation criteria with its weighting/relative importance that will be used to rate the firms for their competency and qualifications to perform the type of work requested. The solicitation should provide a clear and precise statement of the work to be performed, estimated schedule to accomplish the services, and method of compensation/payment. The solicitation must also allow sufficient time for firms to prepare and submit a proposal in response to the solicitation.

State-imposed conditions unrelated to performance of the contract or contractor that limit qualified firms from fairly competing or provide advantages to certain classes of potential firms are inconsistent with the competitive negotiation/qualifications based selection process, the guiding principle of Federal laws and regulations applicable to procurement of engineering and design related consultant services. Applicable Federal laws and regulations do not permit any State or local requirements that limit competition except those related directly to the qualifications of consulting firms to perform the work in a competent and responsible manner.

7. Under competitive negotiation/qualifications based selection (Brooks Act) procurement procedures, may price be an evaluation criterion during the advertisement and selection phase? (Posted 7-20-11)

No, as competitive negotiation procurement is to be based on demonstrated competence and qualifications for the type of professional services desired (as specified in 40 U.S.C. 1101).

As such, price shall not be used as a criterion in the evaluation and ranking/selection of the most highly qualified firm (as specified in 23 CFR 172.5(a)(1)). All price/cost related items which include, but are not limited to direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as an evaluation criterion under competitive negotiation/qualifications based selection procedures.

8. Under competitive negotiation/qualifications based selection (Brooks Act) procurement procedures, may an in-State preference be used in the advertisement and selection phase? (Posted 7-20-11)

No, as an in-State preference does not assess the qualifications of potential service providers and application would limit competition.

The intent of a competitive negotiation/qualifications based selection (Brooks Act) process is to develop a wide pool of potential service providers to select from and selection must be based on qualifications. Therefore, the use of in-State preference as a criterion is prohibited. Through public advertisement, in-State and out-of-State firms must be given a fair opportunity to be considered for award of a FAHP funded engineering and design related services contract (as specified in 23 CFR 172.5(a)(1)). (See Competitive Negotiation Question & Answer No. 6)

9. Under competitive negotiation/qualifications based selection (Brooks Act) procurement procedures, may a local office presence be an evaluation criterion during the advertisement and selection phase? (Posted 7-20-11)

Yes, a local office presence may be utilized as a nominal evaluation criterion where appropriate in assessing the qualifications of firms to perform the solicited services.

Although a locality factor is not directly a qualification factor, a small locality criterion of no more than ten (10) percent of the total evaluation criterion may be used. This criterion cannot be based on political boundaries and should be used on a project-by-project basis for projects where a need has been established for a consultant to provide a local presence. Further, if a firm currently outside the locality area indicates as part of its proposal that it will satisfy that criteria in some manner, such as establishing a local project office, that commitment should be considered to have satisfied the local presence criterion. The intent is to only apply this evaluation criterion on projects where a local presence will add value to the quality and efficiency of the project provided that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project, available to compete for the services.

To maintain the integrity of a competitive negotiation/qualifications based selection procurement, the total of all allowable non-qualifications based evaluation criterion (local presence and/or Disadvantaged Business Enterprise (DBE) participation) should not exceed ten (10) percent of the total evaluation criteria. (See DBE Considerations Question and Answer No. 2 regarding DBE participation as an evaluation criterion)

10. May a contracting agency require that a consultant performing engineering work have a State Professional Engineer license to work in that State? (Posted 7-20-11)

Yes, as licensure as a Professional Engineer serves as a means to validate the competence and qualifications to perform the desired engineering and design related services.

While such a requirement is based on the licensing and procurement laws of a State, the requirement to hold a license as a Professional Engineer is directly related to the qualifications of a consultant to perform the desired engineering and design related services. Furthermore, licensure as a Professional Engineer serves as a means to protect the public interest of the State in employment of professional engineers familiar with State procedures and requirements and satisfying professional liability standards of the State.

Similarly, a consultant may also be required to maintain any State business permits to practice/provide engineering services in a State as required by State laws and regulations.

11. May a contract be modified to add engineering and design related services that were not included in the advertised scope of services and evaluation criteria of the announcement/advertisement from which a qualification based evaluation and selection were conducted? (Posted 7-20-11)

No, as the addition of work not included in the advertised scope of services and evaluation criteria would be contrary to the intent of the competitive negotiation/qualifications based selection (Brooks Act) process to publicly announce all requirements and ensure qualified firms are provided a fair opportunity to

compete and be considered to provide the prescribed services (as specified in 23 U.S.C. 112(b)(2)(A) and 23 CFR 172.5(a)(1)).

Any modification of a contract to add work beyond the publicly advertised scope of work the consultant submitted a proposal in response to and was deemed qualified to perform would in effect circumvent the qualification based evaluation and selection process. Only work included within the original advertised scope of services and evaluation criteria of the solicitation from which a consultant was selected based on qualifications to perform may be incorporated into a contract. Necessary or desired services which are outside of the advertised scope from which the qualifications based selection was conducted should be procured under a new advertisement, accomplished with in-house contracting agency staff, or performed under an existing on-call contract which allows for the desired services, necessary qualifications, costs, and schedule.

Examples:

If a consulting firm was selected to conduct an environmental assessment of a project and the advertised scope and evaluation criteria related to only environmental work, the contract could not be modified to include design tasks. However, if the scope and selection criteria also included design elements for evaluation and ranking of consultants, then it would be permissible to modify the contract to include the design elements advertised.

If a consulting firm was selected to complete the design of a roadway and the advertised scope and evaluation criteria included only geometric, drainage, and other roadway design elements, the contract could not be modified to include the design of a bridge unless structure/bridge design was included in the advertised scope and evaluation criteria from which the consultant was selected based on qualifications to perform.

II. Other Procurement Procedures

- 1. In addition to competitive negotiation/qualifications based selection (Brooks Act) procedures, what other procedures are allowed for the procurement of engineering and design related services funded with FAHP funding? (Posted 7-20-11)**

In addition to competitive negotiation/qualifications based selection, small purchase/simplified acquisition and noncompetitive procedures may be utilized under limited conditions applicable to each method (as specified in 23 CFR 172.5(a)(2)-(3)). (See Other Procurement Procedures Question & Answer Nos. 2 and 5)

- 2. What are small purchase/simplified acquisition procedures and when may this procurement method be utilized for engineering and design related services funded with FAHP funding? (Posted 7-20-11)**

Small purchase procedures (as specified in 23 CFR 172.5(a)(2)) involve contracts with total costs below the lesser of the Federal simplified acquisition threshold (currently established at \$150,000) or the State's established threshold (See Other Procurement Procedures Question & Answer No. 3). Small purchase/simplified acquisition procedures for engineering and design related services do not have to follow a competitive negotiation/qualifications based selection (Brooks Act) process (See Competitive Negotiation Question & Answer Nos. 1-2) given the amount of contract award, however, the contracting agency should take steps to ensure that an adequate number of qualified firms be considered. The FHWA considers three sources as the minimum number to meet the adequate number of sources requirement.

For small purchase procurements, State and local public agencies must follow the State's laws, regulations, and procurement procedures which are not in conflict with applicable Federal laws and regulations (as specified in 23 CFR 172.5(a)(2) and 49 CFR 18.4 and 18.36(a)). Project phases and contract requirements should not be broken down into smaller components merely to permit the use of small purchase procedures (as specified in 23 CFR 172.5(a)(2)).

When Federal-aid funds are awarded directly to a grantee other than a State, such as a city or a county, the provisions of 49 CFR 18.36(b)-(i) apply. The subsequent procurement, management, and administration of these services must comply with these provisions. Section 49 CFR 18.36(d) also requires that price and rate quotations shall be obtained from an adequate number of sources for small purchase/simplified acquisition procedures.

3. What is the small purchase/simplified acquisition threshold amount? (Posted 7-20-11)

The maximum total cost of a contract for services procured under small purchase/simplified acquisition procedures shall be the lesser of the Federal simplified acquisition threshold (currently established at \$150,000 as specified in 48 CFR 2.101) or a State's established threshold.

Small purchase procedure provisions (as specified in 23 CFR 172.5(a)(2)) reference the Federal simplified acquisition threshold fixed in 41 U.S.C. 403(11) which specifies \$100,000 as the maximum threshold. A Final Rule (75 FR 53129) issued on August 30, 2010, and effective on October 1, 2010, raised the Federal simplified acquisition threshold established in 48 CFR 2.101 of the FAR from \$100,000 to \$150,000 to account for inflation using the Consumer Price Index as required in statute. Although revisions to the threshold amount specified within 41 U.S.C. 403(11) have not yet been issued, the amended FAR implements Federal statute and carries the full force and effect of law. In order to extend the same flexibility of Federal contracting for small purchases to recipients and sub-recipients as intended in 23 CFR 172, FHWA shall consider the \$150,000 simplified acquisition threshold established in 48 CFR 2.101 as the maximum threshold for use on FAHP funded engineering and design related contracts. FHWA anticipates proposing a conforming change to 23 CFR 172 to reference this FAR provision.

4. What happens if a contract modification causes a small purchase contract to exceed the Federal simplified acquisition threshold or a lesser State established threshold? (Posted 7-20-11)

The full amount of any contract modification or amendment that would cause the total contract amount to exceed the Federal simplified acquisition threshold (currently established at \$150,000), or a lesser State established threshold (See Other Procurement Procedures Question & Answer No. 3), would be ineligible for FAHP funding. The FHWA reserves the right to withdraw all FAHP funding from a contract if it is modified or amended above the applicable established simplified acquisition threshold.

For small purchase procurements, State and local public agencies must follow the State's laws, regulations, and procedures which are not in conflict with applicable Federal laws and regulations (as specified in 23 CFR 172.5(a)(2) and 49 CFR 18.4 and 18.36(a)-(b)). Project phases and contract requirements should not be broken down into smaller components merely to permit the use of small purchase procedures (as specified in 23 CFR 172.5(a)(2)).

5. What are noncompetitive procedures and when may this procurement method be utilized for engineering and design related services funded with FAHP funding? (Posted 7-20-11)

Noncompetitive procurement (as specified in 23 CFR 172.5(a)(3)) may only be used under limited circumstances. Contracting agencies desiring to use this procurement method must first submit a formal request and justification to the FHWA for approval, prior to utilizing this procurement method for FAHP funded services. Circumstances under which a contract may be awarded by noncompetitive procurement procedures are limited to the following: the service is only available from one source, there is an

emergency which will not permit the time necessary to conduct competitive negotiations, or after solicitation of a number of sources, competition is determined to be inadequate.

In addition to FHWA approval for participation of FAHP funding in a noncompetitive procurement, State and local public agencies must follow the State's laws, regulations, and procedures which are not in conflict with applicable Federal laws and regulations (as specified in 49 CFR 18.4 and 18.36(a)).

6. **For FAHP funded engineering and design related services with total estimated contract costs exceeding the established small purchase/simplified acquisition threshold and which do not satisfy noncompetitive procurement requirements, may a contracting agency use its own procurement procedures that are different from the competitive negotiation/qualification based selection (Brooks Act) procedures? (Posted 7-20-11)**

No, competitive negotiation/qualifications based selection procedures must be utilized to procure these engineering and design related services (as specified in 23 U.S.C. 112(b)(2)(A) and 23 CFR 172.5(a)(1)).

On November 30, 2005, an amendment to 23 U.S.C 112(b)(2) was enacted into law in section 174 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 ("the FY 2006 Appropriations Act"). Section 174 removed existing provisions of law providing equivalent or alternative procedures to the Brooks Act and required that engineering and design contracts be awarded in the same manner as a contract for architectural and engineering services is negotiated under the Brooks Act. As a result, State and local public agencies are no longer entitled to procure engineering and design related service contracts with FAHP funding using either "alternative" or "equivalent" procedures that were permitted prior to the amendment.

Please note that several provisions contained within 23 CFR 172 currently reference alternative or equivalent procedures. However, these provisions, which were last revised in 2002, were superseded with the aforementioned 2005 changes in law. FHWA anticipates issuing a notice of proposed rulemaking (NPRM) to remove all references to these alternative or equivalent procedures.

III. **Indirect Cost Rates and Audits**

Note that the States of Minnesota and West Virginia are granted exceptions from the audit and indirect cost rate requirements established in 23 U.S.C. 112(b)(2)(B)-(E) (See 23 U.S.C. 112(b)(2)(F)). However, the allowability of consultant costs remains governed by the FAR cost principles (48 CFR 31) applicable to commercial, for-profit organizations (as specified in 49 CFR 18.22(b)).

1. **Are audits required for FAHP funded engineering and design related services contracts? (Posted 7-20-11)**

No, audits are not required by Federal law or regulation for specific engineering and design related services contracts funded in whole or in part with FAHP funds.

However, contracting agencies must provide assurance that any indirect cost rate considered for acceptance and use in its contracts has been developed in accordance with the FAR cost principles (as specified in 23 U.S.C. 112(b)(2)(B), 23 CFR 172.7(a), and 48 CFR 31). A contracting agency may determine, in accordance with its established risk assessment process/risk management framework (See Indirect Cost Rates and Audits Question & Answer No. 3) and its approved written policies and procedures (as specified in 23 CFR 172.9(a)), when an audit is required and the scope of the audit to be performed. When contracting agency procedures call for audits of contracts or subcontracts, these audits shall be performed to test compliance with the requirements of the cost principles contained in the FAR.

2. Are pre-negotiation/pre-award audits or reviews allowed for FAHP funded engineering and design related services contracts? (Posted 7-20-11)

Yes, contracting agencies may perform pre-negotiation/pre-award audits or reviews and the costs to perform those audits or reviews are eligible for Federal-aid participation.

A contracting agency may determine, in accordance with its established risk assessment process/risk management framework and its approved written policies and procedures (as specified in 23 CFR 172.9(a)), when a pre-negotiation/pre-award audit is required and the scope of the audit to be performed. In some cases, a contracting agency may have to perform a pre-negotiation audit to ensure that the consulting firm has an acceptable accounting system, has adequate and proper justification for the various rates charged to perform work, and is aware of cost eligibility and documentation requirements. Costs of project related audits performed in accordance with GAGAS and benefiting Federal-aid highway projects are eligible for Federal participation (as specified in 23 CFR 140.803).

3. What does a contracting agency audit risk assessment process/risk management framework consist of? (Posted 7-20-11)

The primary objective of contracting agency evaluation and acceptance of consulting firm indirect cost rates is to ensure such rates are developed in accordance with the FAR cost principles (as specified in 48 CFR 31). A risk management framework may be employed by a contracting agency to provide reasonable assurance that consulting firm costs, including those stemming from indirect cost rates, are established in accordance with the FAR cost principles.

A contracting agency risk management framework may include, but is not limited to, the following tools: FAR compliant audits (which may result in cognizant approved indirect cost rates), desk reviews, reliance on work performed by other State DOTs (in accepting an indirect cost rate for use in their respective State), or other procedures, as appropriate. The scope of a risk management framework may include pre-award and post-award audits, where appropriate. The framework should consider the following risk criteria: dollar thresholds; history/reputation of the consulting firm; the number of States in which the consulting firm does business; audit frequency; experience of the CPA firm performing audits on the consulting firm's indirect cost rate; responses to the consulting firm's internal control questionnaire; and/or other risk criteria, as deemed appropriate.

An audit risk assessment process/risk management framework employed by a contracting agency should be established as a component of the contracting agency's approved written policies and procedures (as specified in 23 CFR 172.9(a)).

4. What are the Federal requirements for use and application of Indirect cost rates of a consulting engineering firm on FAHP funded engineering and design related services contracts? (Posted 7-20-11)

Contracting agencies shall accept cognizant approved indirect cost rates established in accordance with the FAR cost principles (as specified in 48 CFR 31) for a consulting firm's applicable one-year accounting period, if such rates are not currently under dispute (as specified in 23 U.S.C. 112(b)(2)(C) and 23 CFR 172.7(b)). Contracting agencies shall apply accepted (cognizant approved) indirect cost rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment; and the rate shall not be limited by administrative or de facto ceilings of any kind (as specified in 23 U.S.C. 112(b)(2)(D) and 23 CFR 172.7(b)).

Note that the States of Minnesota and West Virginia are granted exceptions from the audit and indirect cost rate requirements established in 23 U.S.C. 112(b)(2)(B)-(E) (as specified in 23 U.S.C. 112(b)(2)(F)).

However, the allowability of consultant costs remains governed by the FAR cost principles (48 CFR 31) applicable to commercial, for-profit organizations (as specified in 49 CFR 18.22(b)). (See Indirect Cost Rates and Audits Question & Answer No. 5 for sub-consultant audit requirements and Nos. 17-32 for additional discussion regarding acceptance, use, and application of indirect cost rates)

5. Do the cognizant audit requirements (as specified in 23 U.S.C. 112(b)(2)(C)-(D)) apply to sub-consultant indirect cost rates? (Posted 7-20-11)

No, the cognizant audit requirements do not apply to sub-consultant indirect cost rates.

Prime consultants, who were selected under a competitive negotiation/qualifications based selection (Brooks Act) procurement process, frequently hire sub-consultants to perform specialty work. Sub-consultants hired by the prime consultant do not fall under the requirements of 23 U.S.C. 112(b)(2)(C)-(D). As such, sub-consultant indirect cost rates would not be subject to establishment via cognizant agency audit. However, subcontracts must comply with the FAR cost principles (as specified in 23 U.S.C. 112(b)(2)(B), 48 CFR 31, and 49 CFR 18.22(b)). Should a sub-consultant have a cognizant approved indirect cost rate, a contracting agency may choose to accept and apply that rate. As required with all procurements for property and services under a Federal grant, State and local public agencies must follow all State and local laws, regulations, policies, and procedures which are not in conflict with applicable Federal laws and regulations (as specified in 49 CFR 18.4 and 18.36(a)).

Although an audit of an indirect cost rate of a sub-consultant on a FAHP funded contract is not required, State and local public agencies are not precluded from prescribing sub-consultant audit requirements in their laws, policies, and/or procedures. As such, and in accordance with a State's established audit risk assessment process/risk management framework, the requirement to audit or require sub-consultants to prepare an audit may be incorporated as an acceptable policy and/or procedure of a State or local public agency consultant services program. Such policies and procedures, which are subject to approval by FHWA (as specified in 23 CFR 172.9(a)), may be warranted to ensure sub-consultant costs are properly accumulated and allowable in accordance with the FAR cost principles. Care should be taken by contracting agencies to avoid placing an undue burden on small firms as a result of such policies and procedures.

6. What is a "cognizant agency"? (Posted 7-20-11)

The term "cognizant agency" means any Federal or State agency that has conducted and issued an audit report of a consulting firm's indirect cost rate established in accordance with the FAR cost principles (48 CFR 31) (as defined in 23 CFR 172.3). When providing a cognizant indirect cost rate approval, a cognizant agency may either perform an audit and issue an audit report or review work papers related to an audit performed by a CPA and then issue a cognizant letter of concurrence. A cognizant agency may be any of the following: (1) Federal agency; (2) The Home State DOT (the State where the consulting firm's accounting and financial records are located); or (3) A Non-Home State DOT to whom the Home State has transferred cognizance in writing for the particular indirect cost rate audit of a consulting firm. (See Indirect Cost Rates and Audits Question & Answer Nos. 7-9)

7. Can a local public agency or some other non-State recipient or sub-recipient of FAHP funding be a cognizant agency? (Posted 7-20-11)

No, the law requires the cognizant agency to be either a Federal or State government agency (as defined in 23 CFR 172.3).

8. What is a "cognizant approved indirect cost rate"? (Posted 7-20-11)

The term "cognizant approved indirect cost rate" refers to the indirect cost rate established by an audit performed in accordance with GAGAS to test compliance with the FAR cost principles (as specified in 48 CFR 31) and accepted by a cognizant Federal or State agency.

9. How is a cognizant approved indirect cost rate established? (Posted 7-20-11)

Cognizant approved rates may be established by any one of the following methods:

1. A cognizant agency performs an indirect cost rate audit and issues an audit report, or contracts with and directs the work of a CPA who performs the indirect cost rate audit and issues an audit report.
2. A Non-Home State auditor or CPA working under the Non-Home State's direction performs an indirect cost rate audit and issues an audit report, and the Home State issues a cognizant letter of concurrence. If the Home State does not accept the indirect cost rate audit performed by another State, the Home State will have 180 days from receipt of the audit report to issue a cognizant approved rate; otherwise, the Non-Home State audit report will be used to establish a cognizant approved rate for the one-year applicable accounting period.
3. An indirect cost rate audit performed by an independent CPA (not part of the engineering consultant's organization) hired by the consulting firm will be used to establish a cognizant approved rate if one of the following conditions is met:
 - i. The Home State reviews the CPA's audit report and related workpapers, and the Home State issues a cognizant letter of concurrence with the audit report.
 - ii. A Non-Home State reviews the CPA's audit report and related workpapers and issues a letter of concurrence with the CPA's report, which is then accepted by the Home State. If the Home State does not accept the Non-Home State's review, the Home State will have 180 days from receipt of the Non-Home State letter of concurrence to complete a review of the CPA audit report and either concur with it, modify it, or reject it due to a material error requiring re-submittal; otherwise the CPA audit report with which the Non-Home State has concurred will be used to establish the cognizant approved rate for the 1-year applicable accounting period.

10. How will a contracting agency know if a consulting engineering firm has a cognizant approved Indirect cost rate? (Posted 7-20-11)

In the consulting firm's cost proposal, the firm is responsible for providing the contracting agency with its indirect cost rate along with evidence of cognizant approval, if cognizance has been established. Additionally, a State DOT may consult with DOTs in other States where the firm is located or where the firm has worked for the past year to ascertain whether cognizant approval of indirect cost rates has been provided. However, if audited cost or rate data pertaining to a consulting engineering firm is shared between contracting agencies (as specified in 23 U.S.C. 112(b)(2)(E) and 23 CFR 172.7(d)), notice must be given to the affected firm. (See Indirect Cost Rates and Audits Question & Answer No. 11)

11. Must contracting agencies obtain permission from consulting engineering firms prior to sharing audit information with one another in complying with the cognizant audit requirements? (Posted 7-20-11)

No, FAHP fund recipients and subrecipients may share audit information about a consulting firm with other recipients and subrecipients provided advance notice is given to the firm for each use or exchange of information (as specified in 23 U.S.C. 112(b)(2)(E) and 23 CFR 172.7(d)) to assist in complying with requirements for acceptance of indirect cost rates. The notification should include the name of the requesting contracting agency, the name, title, and contact information of the agency official requesting the audit information, and the proposal/project name, number, or other identification information.

However, audit information shall not be provided to other consultants or any other government agency for a purpose unrelated to compliance with FAHP requirements without the written permission of the affected

consulting firm. If prohibited by law, audit information may not be shared under any circumstance, but should a release be required by law or court order, such release of audit information shall make note of the confidential nature of the data (as specified in 23 CFR 172.7(d)).

12. What may potentially trigger a cognizant Indirect cost rate approval? (Posted 7-20-11)

A consulting engineering firm that has had an indirect cost rate audit performed by a CPA firm or an agency contracting with the consulting engineering firm may request approval from a cognizant agency (See Indirect Cost Rates and Audits Question & Answer No. 6) or the cognizant audit agency may choose to provide approval as part of its audit risk assessment process/risk management framework (See Indirect Cost Rates and Audits Question & Answer No. 3).

13. What factors should a consulting engineering firm or contracting agency consider in procuring CPA services to perform an indirect cost rate audit? (Posted 7-20-11)

In accepting annual indirect cost rates as part of its risk assessment process/risk management framework and approved procurement policies and procedures, some contracting agencies require CPAs to conduct audits on overhead schedules that are prepared and submitted by consulting engineering firms. A best value determination that takes into account cost, experience, past performance, and proficiency should govern the selection of a CPA firm to perform an indirect cost rate audit. Procurement of CPA services by a contracting agency must follow State laws, regulations, policies, and procedures related to the procurement of such services (as specified in 49 CFR 18.36(a)).

There are many factors for a consulting engineering firm or contracting agency to consider in selecting a CPA to perform an indirect cost rate audit to test compliance with the FAR cost principles (as specified in 48 CFR 31). The following list, although not comprehensive, provides important factors for consideration. Consulting firms and contracting agencies are encouraged to use competition and qualifications in the solicitation, evaluation, and selection of CPA related services. The CPA should:

- Meet all GAGAS requirements, including requirements for adequate continuing professional education (CPE) in governmental auditing,
- Have received favorable peer review reports,
- Be well versed in and pursue continuing education on GAGAS, the FAR cost principles (48 CFR 31), Cost Accounting Standards (CAS), related laws and regulations (e.g., the Internal Revenue Code, the Federal Travel Regulation, 23 U.S.C. 112, and 23 CFR 172), and the guidelines and recommendations set forth in the AASHTO Uniform Audit & Accounting Guide,
- Have adequate experience in applying GAGAS,
- Have a working knowledge of the consulting engineering industry, including common operating practices, trends, and risk factors,
- Be well versed in job-cost accounting practices and systems used by consulting engineering firms,
- Assign direct supervisory staff to the engagement who have prior experience performing overhead audits designed to provide assurance regarding compliance with the FAR cost principles,
- Have experience performing audits to test compliance with the FAR cost principles and have knowledge of Government procurement with regard to various types of contracts and contract payment terms affecting the development and/or application of an allowable overhead rate, and
- Design and execute an audit program that meets the AICPA's professional standards, as well as the specific testing recommendations described in the sample CPA Workpaper Review Program provided in Appendix A of the AASHTO Uniform Audit & Accounting Guide.

14. What work should be performed by a State DOT to accept an audit performed by a CPA firm (hired by the consulting engineering firm or contracted and directed by the State DOT) and issue a

cognizant letter of concurrence making the indirect cost rate cognizant approved? (Posted 7-20-11)

Regardless of who contracted for the work of the CPA firm, the State DOT should perform a review of the CPA's workpapers, using the Review Program for CPA Audits of Consulting Engineers' Indirect Cost Rates identified in Appendix A of the AASHTO Uniform Audit & Accounting Guide, in order to issue a cognizant letter of concurrence, making the rate cognizant approved. Inquiries, discussions, or other information provided by the CPA firm may be useful, but are not an acceptable substitute to a review of the CPA's workpapers.

15. Are consulting engineering firms required to certify the allowability of costs used to establish indirect cost rates for FAHP funded engineering and design related services contracts? (Posted 7-20-11)

To ensure overall compliance with cost principles of the FAR (as specified in 23 U.S.C. 112(b)(2)(B)-(D), 23 CFR 172.7(b), and 49 CFR 18.22(b)), FHWA's policy is that an indirect cost rate proposal should not be accepted and no agreement should be made by a contracting agency to establish final indirect cost rates for application to FAHP funded engineering and design related services contracts, unless the costs have been certified by an official of the consulting firm as being allowable in accordance with the applicable FAR cost principles (as specified in 48 CFR 31).

The policies, procedures, requirements, and forms implemented to address FHWA's cost certification policy are specific to each contracting agency and subject to FHWA approval (as specified in 23 CFR 172.9(a)). (See *FHWA Order 4470.1A* and *Indirect Cost Rates and Audits Question & Answer No. 16*)

16. Are consulting engineering firms required to certify that "all known material transactions or events affecting the firm's ownership, organization and indirect cost rates have been disclosed" for FAHP funded engineering and design related services contracts? (Posted 7-20-11)

No. However, this language was included in the example contractor cost certification provided for illustrative purposes in Appendix A of *FHWA Order 4470.1A - FHWA Policy for Contractor Certification of Costs in Accordance with Federal Acquisition Regulations (FAR) to Establish Indirect Cost Rates on Engineering and Design-related Services Contracts*. Although included in the example cost certification provided with the Order, this sample language was not prescribed within the directive itself.

A contracting agency may choose to include this sample language in its cost certification requirements, but if used, additional clarifying language may be necessary related to the definition of "material", as well as to the time period covered under such certification. This type of statement may be better placed in an internal control questionnaire as the subject language is effectively an element of an assessment of internal controls with respect to changes in a firm's ownership and organizational structure and subsequent development of its indirect cost rate(s).

17. Are States required to perform cognizant approvals of indirect cost rates? (Posted 7-20-11)

No, States are not required to perform cognizant approvals of indirect cost rates. However, States are encouraged to perform cognizant audits or issue cognizant letters of concurrence since this will ultimately lead to a more efficient indirect cost rate approval process across all States.

Contracting agencies must accept indirect cost rates established in accordance with the FAR cost principles (48 CFR 31) by a cognizant Federal or State agency, if such rates are not under dispute (as specified in 23 U.S.C. 112(b)(2)(C) and 23 CFR 172.7(b)). There is no statutory or regulatory requirement for issuance of a cognizant approved rate, only acceptance and application of an established cognizant approved rate, if one exists.

However, if a cognizant approved rate does not exist, contracting agencies must provide assurance that any indirect cost rate considered for acceptance and use in its contracts has been developed in accordance with the FAR cost principles (as specified in 48 CFR 31). A contracting agency may determine, in accordance with its established risk assessment process/risk management framework (See Indirect Cost Rates and Audits Question & Answer No. 3) and its approved written policies and procedures (as specified in 23 CFR 172.9(a)), when an audit is required and the scope of the audit to be performed. When contracting agency procedures call for audits of contracts or subcontracts, these audits shall be performed to test compliance with the requirements of the cost principles contained in the FAR (as specified in 23 U.S.C. 112(b)(2)(B) and 23 CFR 172.7(a)).

Contracting agencies should also require a consulting firm to certify the allowability of costs used to establish an indirect cost rate prior to acceptance and application to engineering and design related services contracts. (See Indirect Cost Rates and Audits Question & Answer Nos. 15-16)

18. May a State accept and use an Indirect cost rate submitted by a consulting engineering firm if such rate has not received cognizant approval? (Posted 7-20-11)

Yes, a State may accept an indirect cost rate audit performed by a CPA firm or another State if a cognizant approved rate does not exist.

If a cognizant approved rate does not exist, contracting agencies must provide assurance that any indirect cost rate considered for acceptance and use in its contracts has been developed in accordance with the FAR cost principles (as specified in 48 CFR 31) as evaluated through an established risk assessment process/risk management framework (See Indirect Cost Rates and Audits Question & Answer No. 3) and its approved written policies and procedures (as specified in 23 CFR 172.9(a)). When contracting agency procedures call for audits of contracts or subcontracts, these audits shall be performed to test compliance with the requirements of the cost principles contained in the FAR (as specified in 23 U.S.C. 112(b)(2)(B) and 23 CFR 172.7(a)).

Contracting agencies should also require a consulting firm to certify the allowability of costs used to establish an indirect cost rate prior to acceptance and application to engineering and design related services contracts. (See Indirect Cost Rates and Audits Question & Answer No. 15-16)

19. What should a contracting agency do if an audit of a consulting engineering firm has not been performed to establish an indirect cost rate for the applicable one-year accounting period? (Posted 7-20-11)

A contracting agency may perform its own audit or other evaluation of the consulting firm's indirect cost rate. A contracting agency may alternatively establish a provisional indirect cost rate and subsequently adjust contract costs based upon an audited final rate. The process employed by a contracting agency for providing assurance of compliance with the FAR cost principles must be consistent with the established risk assessment process/risk management framework (See Indirect Cost Rates and Audits Question & Answer No. 3) and its approved policies and procedures (as specified in 23 CFR 172.9(a)).

20. When a cognizant approved indirect cost rate exists, may a contracting agency use an Indirect cost rate other than the one established by the cognizant agency? (Posted 7-20-11)

No, unless the rate is currently under dispute (as specified in 23 CFR 172.7(c)). (See Indirect Cost Rates and Audits Question & Answer Nos. 28-30)

Contracting agencies shall use and apply a cognizant approved indirect cost rate established in accordance with the FAR cost principles (as specified in 48 CFR 31) for the purposes of contract

estimation, negotiation, administration, reporting, and contract payment, and the rate shall not be limited by administrative or de facto ceilings of any kind (as specified in 23 U.S.C. 112(b)(2)(C)-(D) and 23 CFR 172.7(b)).

Federal agencies can and do perform cognizant agency audits for indirect cost rate establishment and may not share their audit background information. In some cases, the cognizant agency may provide several rates, representing the various cost pools and business segments of the firm under audit. The result is still a cognizant approved indirect cost rate and must be used, as long as the audit was performed in accordance with GAGAS to ensure compliance with the FAR cost principles, covers the business segment applicable to contracts administered under the FAHP, and represents an equitable distribution of allowable costs to the benefiting cost objective (contract).

A contracting agency may accept an indirect cost rate lower than the cognizant approved rate, but only if voluntarily offered by a firm. (See Indirect Cost Rates and Audits Question & Answer No. 21)

If a consulting firm does not currently have a field indirect cost rate or does not propose such a rate for a field-based contract, it may be appropriate to negotiate the use of a field indirect cost rate to reflect an equitable distribution of allowable costs to a field-based contract (as specified in 48 CFR 31.203(f)). (See Indirect Cost Rates and Audits Question & Answer No. 27)

21. May a contracting agency request or negotiate a lower indirect cost rate than was established by a cognizant approved audit? (Posted 7-20-11)

No, a contracting agency shall not request or start negotiations of a lower indirect cost rate than was established by a cognizant approved audit (as specified in 23 U.S.C 112(b)(2)(C)-(D)).

However, a consulting firm may wish to voluntarily offer a lower rate than was established by a cognizant approved audit. As such, a contracting agency is free to accept a lower rate if offered by a consulting firm on its own volition. A lower indirect cost rate may be accepted and used only if offered/submitted voluntarily by a consulting firm as part of a cost proposal during contract negotiations. A consulting firm's offer of a lower indirect cost rate shall not be a condition or qualification to be considered for the work or contract award (as specified in 23 CFR 172.7(b)). (See Contract Negotiation Question & Answer Nos. 3 and 4)

22. May a contracting agency adjust or modify a consulting engineering firm's cognizant approved indirect cost rate, such as through disallowance of certain cost items? (Posted 7-20-11)

No, unless such rate is currently in dispute. The allowability of a consulting engineering firm's costs is governed by the FAR cost principles (48 CFR 31) (as specified in 23 U.S.C. 112(b)(2), 23 CFR 172.7, and 49 CFR 18.22(b)).

Contracting agencies are not permitted to place limitations on indirect cost rates established in accordance with applicable FAR cost principles and must apply the firm's cognizant approved indirect cost rate for estimation, negotiation, administration, and payment of contracts for engineering and design related services that utilize FAHP funding and directly relate to a construction project (as specified in 23 U.S.C. 112(b)(2)(C)-(D) and 23 CFR 172.7(b)).

Exclusion of cost elements that are allowable under the FAR cost principles from calculation or application of the indirect cost rate effectively places a ceiling on the firm's rate, and is in direct conflict with 23 U.S.C. 112(b)(2)(D).

For firms required to submit a CASB Disclosure Statement, contracting agencies may not request reclassifications between direct and indirect cost elements. Consulting firms required to comply with the CAS must disclose their cost accounting practices in writing and follow them consistently (as specified in

41 U.S.C. 422). Therefore, any such request/requirement to reclassify costs between direct and indirect cost categories may cause a CAS compliant consulting firm to be in violation of Federal statutes.

A contracting agency shall not request or start negotiations of a lower indirect cost rate than was established by a cognizant approved audit, but may accept a lower rate only if voluntarily offered by a consulting engineering firm. (See Indirect Cost Rates and Audits Question & Answer No. 21)

If a consulting firm does not currently have a field indirect cost rate or does not propose such a rate for a field-based contract, it may be appropriate to negotiate the use of a field indirect cost rate to reflect an equitable distribution of allowable costs to a field-based contract (as specified in 48 CFR 31.203(f)). (See Indirect Cost Rates and Audits Question & Answer No. 27)

23. Are State and local income taxes an allowable cost item in accordance with the FAR cost principles for inclusion in the development of a consulting engineering firm's indirect cost rate for application on FAHP funded engineering and design related services contracts? (Posted 7-20-11)

Yes, in accordance with 48 CFR 31.205-41(a)(1), required Federal, State, and local taxes paid by a consulting firm are allowable except as provided in paragraph (b) of the same part which expressly disallows Federal income and excess profits taxes. While Federal income taxes are expressly disallowed, State and local income taxes are not specifically identified as disallowed within the FAR cost principles. As such, the FHWA has determined these types of taxes are allowable cost items and therefore must be accepted as allowable by a contracting agency when submitted in a consulting firm's indirect cost rate proposal for application to FAHP funded engineering and design related services contracts.

Exclusion of cost elements that are allowable under the FAR cost principles from calculation or application of the indirect cost rate effectively places a ceiling on the firm's rate, and is in direct conflict with 23 U.S.C. 112(b)(2)(D).

When procuring property and services under a Federal grant, States and local public agencies must use their own procurement procedures, except if a Federal statute or regulation has more specific requirements in conflict with State procedures (as specified in 49 CFR 18.4 and 18.36(a)-(b)). When FAHP funds are involved and State or local procedures are in conflict with Federal requirements, the Federal requirements prevail. As such, even if State and local income taxes are disallowed under State or local laws and regulations, these taxes must be treated as allowable for participation of FAHP funding in the contract.

24. May a contracting agency use a definition of compensation that differs from the FAR to determine what costs are to be allowed under compensation? (Posted 7-20-11)

No, compliance with the FAR cost principles (48 CFR 31) is required in the procurement, management, and administration of engineering and design related service contracts that utilize FAHP funding (as specified in 23 U.S.C. 112(b)(2), 23 CFR 172.7, and 49 CFR 18.22(b)).

The allowability of contract costs is governed by the FAR cost principles. As such, deviations from the definition of compensation and how total compensation is calculated, and more importantly, deviation from the basis for disallowance of associated costs as specifically provided for in the FAR cost principles is not permitted on contracts utilizing FAHP funding.

Consistent with the reasonableness provisions contained in the FAR cost principles (as specified in 48 CFR 31.201-3 and 31.205-6(b)(2)), a contracting agency may limit or benchmark total compensation. (See Chapter 7 of the AASHTO Uniform Audit & Accounting Guide)

25. What is the Benchmark Compensation Amount (BCA) and how does it apply to compensation on FAHP funded engineering and design related services contracts? (Posted 7-20-11)

An engineering consultant is permitted to charge reasonable compensation to FAHP funded contracts as either a direct cost, indirect cost, or a combination of both (as specified in 48 CFR 31.205-6). The BCA is a statutory limitation on allowable total compensation for senior executives which may be charged to FAHP funded contracts (as specified in 48 CFR 31.205-6(p)). While the BCA is established based on the compensation of executives of publicly-owned U.S. corporations with annual sales over \$50 million for the fiscal year, it applies to the compensation of executives of firms at all sales levels, regardless of whether the firm is publicly or privately held.

The BCA must not be construed as an entitlement or guaranteed amount which may be claimed and charged to a FAHP funded contract. Instead, individual elements of compensation must be reviewed for allowability in compliance with the FAR cost principles. Compensation is reasonable if the aggregate of each measureable and allowable element sums to a reasonable total (as specified 31.205-6(b)(2)). (See Chapter 7 of the AASHTO Uniform Audit & Accounting Guide)

26. May a consulting engineering firm choose to develop a national (company-wide), a State/regional/branch, or a business segment/discipline indirect cost rate(s)? (Posted 7-20-11)

Yes. The consulting firm decides on the rate structure and it is up to the consulting firm to propose an indirect cost rate(s). There may be multiple rates for a single firm; however, once the firm develops its indirect cost rate(s), the rate(s) must be consistently and fairly applied. Regardless of the consulting firm's organization, consistency in allocating costs to cost objectives is critical.

While a firm may choose its accounting practices, those practices must meet applicable Federal requirements, including the FAR cost principles and applicable cost accounting standards. Specifically, a firm's indirect cost rate structure must result in an allocable distribution of indirect costs to the benefiting cost objectives on the basis of relative benefits received (as specified in 48 CFR 31.201-4).

27. If engineering and design related services require establishment of a field office or performance of services in an office provided by the contracting agency, may the contracting agency require establishment of a field indirect cost rate? (Posted 7-20-11)

For projects where the consulting firm employees do not work out of their established home or branch offices, some of the indirect costs incurred by the home or branch office may not equitably benefit the field-based contract. The purpose of a field rate is to pay the consulting firm for the fringe benefits, project employee management, and home/branch office administrative support provided to the field employees. Negotiation and application of a field rate, where appropriate to ensure only allocable indirect costs are charged to a contract, is not an administrative or de-facto ceiling (prohibited in 23 U.S.C. 112(b)(2)(D) and 23 CFR 172.7(b)). Rather, it may help to achieve an appropriate allocation of costs to the project, based on the benefits received.

If a consulting engineering firm has a cognizant approved field indirect cost rate, the contracting agency may require its use on a field-based contract. If a consulting firm does not currently have a field indirect cost rate or does not propose such a rate for a field-based contract, it may be appropriate to negotiate the use of a field indirect cost rate to reflect an equitable distribution of allowable costs to the contract (as specified in 48 CFR 31.203(f)). However, a contracting agency may not unilaterally require establishment of a field indirect cost rate as part of a solicitation/advertisement for field-related services, pre-award audit process, or for a consulting firm to become pre-qualified to perform field-related services. Application of any field rate must remain consistent with the firm's CASB Disclosure Statement, if applicable.

Regardless of the consulting firm's organization, consistency in allocating costs to benefiting cost objectives is critical. While a firm may choose its accounting practices, those practices must meet

applicable Federal requirements. Indirect cost rate proposals must reflect an equitable distribution of allowable costs to the benefiting contract(s) in accordance with the FAR cost principles. Once a consulting firm has an established field rate, the rate must be consistently applied across all business segments and disciplines, as appropriate. For consistent cost accounting application, a single company-wide rate should not be used when home and field office indirect cost rates have been established and are in use.

28. What parties may dispute a cognizant approved indirect cost rate, and under what conditions may a rate be disputed? (Posted 7-20-11)

Except in the case of error or the failure to follow GAGAS, in which case the contracting agency may raise concerns, only the consulting firm may dispute the established cognizant approved indirect cost rate. If either an error is discovered in the established indirect cost rate, or if GAGAS were not followed in the establishment of the rate, any contracting agency may dispute the rate (as specified in 23 CFR 172.7(c)). The term "error" does not refer to differing and legitimate interpretations of the FAR cost principles (as specified in 48 CFR 31). Errors may consist of complete misinterpretation or misapplication of the FAR cost principles or simple mathematical errors of calculation.

29. What steps may be included in a dispute resolution process for a disputed cognizant approved indirect cost rate? (Posted 7-20-11)

The cognizant agency, consulting firm, and its CPA/auditor, as applicable, should work together to resolve any issues. Involvement of the FHWA Division Office in discussions with the parties to a dispute may be a final step in dispute resolution, if necessary. In resolving such disputes, the FHWA Division Office may, at times, consult with FHWA Headquarters, as deemed necessary.

States may choose to employ dispute resolution policies and procedures to establish the dispute resolution processes within their respective jurisdictions. Such processes likely will include provisions for appeal within the State DOT audit organization, within the State DOT chain of command, and, as stated, to the local FHWA Division Administrator. Those policies and procedures may either be referenced or specifically cited within the provisions of a State's written procurement policies and procedures approved by FHWA (as specified in 23 CFR 172.9(a)), and/or they may be referenced specifically within the contract document itself.

States should work to develop a level of confidence in the audit work performed by other States. In the case where a contracting agency believes that there are obvious errors in the calculation of the cognizant indirect cost rate, or that GAGAS may not have been followed in the performance of the audit, that contracting agency should contact the cognizant agency to discuss its concerns. The contracting agency's objection to the cognizant approved rate must be based upon objective criteria and a reasonable factual basis.

30. How may an indirect cost rate be obtained if the cognizant approved rate is under dispute? (Posted 7-20-11)

If a cognizant approved indirect cost rate is under dispute (See Indirect Cost Rates and Audits Question & Answer No. 28), the contracting agency does not have to accept the rate. A contracting agency may perform its own audit or other evaluation of the consulting firm's indirect cost rate for application to a specific consultant contract, until or unless the dispute is resolved. A contracting agency may alternatively establish a provisional indirect cost rate and subsequently adjust contract costs based upon an audited final rate. The process employed by a contracting agency for providing assurance of compliance with the FAR cost principles must be consistent with the established risk assessment process/risk management framework and its approved policies and procedures (as specified in 23 CFR 172.9(a)).

31. How long is an audited indirect cost rate valid? (Posted 7-20-11)

One year. The one-year applicable accounting period means the annual accounting period for which financial statements are regularly prepared for the consulting engineering firm (as defined in 23 CFR 172.3). However, once an indirect cost rate is established for a contract, it may be extended beyond the one-year applicable accounting period provided all concerned parties agree (as specified in 23 CFR 172.7(b)). Extension of the one-year applicable accounting period shall be only on a contract-by-contract basis where all concerned parties agree and shall not be a condition of contract award or requirement of the contract.

32. What happens if a cognizant approved indirect cost rate expires during the contract period? (Posted 7-20-11)

In general and in accordance with the FAR cost principles (as specified in 48 CFR 31.203(e)), a new indirect cost rate should be established by a cognizant agency. However, once an indirect cost rate is established for a contract, it may be extended beyond the one-year applicable accounting period provided all concerned parties agree (as specified in 23 CFR 172.7(b)). Extension of the one-year applicable accounting period shall be only on a contract-by-contract basis where all concerned parties agree and shall not be a condition of contract award or requirement of the contract.

IV. Compensation (Payment) Methods

1. What compensation methods are allowed for FAHP funded engineering and design related services contracts? (Posted 7-20-11)

Lump sum, cost plus fixed-fee, cost per unit of work, and specific rates of compensation payment methods may be used. A single contract may contain different payment methods as appropriate for compensation of different elements of work. The payment method(s) used to compensate the consulting engineering firm for all work required should be specified in the original contract and any subsequent contract modifications.

Compensation based on a "cost plus a percentage of cost" payment method whereby fee/profit increases with actual costs incurred or a "percentage of construction cost" payment method whereby compensation increases with the cost of project construction shall not be used (as specified in 23 CFR 172.5(c)). These payment methods provide no incentive for effective cost control by the consulting engineering firm.

2. What are the differences between the "specific rates of compensation" payment method and the prohibited "cost plus a percentage of cost" payment method? (Posted 7-20-11)

The "specific rates of compensation" payment method provides for reimbursement for consultant services on the basis of direct labor hours at specified fixed hourly rates (including direct labor costs, indirect costs, and fee (profit)) plus any other direct expenses/costs, subject to an agreement maximum amount. The "specific rates of compensation" payment method should only be used when it is not possible at the time of procurement to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. Use of this payment method requires close monitoring by the contracting agency to ensure efficient methods and cost controls are employed by the consultant.

While the inclusion of fee (profit) in the loaded hourly rate(s) established for a contract allows the fee earned to be based on the labor hours worked on the project, this is not considered a "cost plus a

percentage of cost" payment method. A key distinction for the "specific rates of compensation" payment method is that indirect costs and fee must be recovered as a component of the established, fixed hourly billing rates for labor hours worked. Payment of fee as a separate percentage based on actual labor and indirect costs incurred creates a "cost plus a percentage of cost" arrangement whereby the consultant's fee is increased automatically with increases in either direct labor or overhead costs.

Both the "specific rates of compensation" and "cost plus a percentage of cost" payment methods could in theory render the same total compensation for services performed, however the prohibited "cost plus a percentage of cost" method allows the fee earned by the consultant to increase over the performance period of the contract with increases in the cost of direct labor and/or overhead. The "specific rates of compensation" method establishes a loaded, fixed hourly rate up front which will not change for the duration of the contract and provides reimbursement to the consultant based on the labor hours worked. The "cost plus a percentage of cost" method establishes fee percentages up front which are then applied to actual labor and indirect costs incurred by the consultant over the life of the project.

For example, should a consultant's direct salary rates increase during the performance period of a contract, compensation under the "specific rates of compensation" payment method would not change. Whereas under the "cost plus a percentage of cost" method, as the actual direct labor or indirect cost rates increase, so does the associated fee recovered by the consultant. Under both methods, the more labor hours a consultant works, the more fee that is earned by the consultant, subject to an established total contract maximum amount. However, only under the "cost plus a percentage of cost" method, does the fee earned increase with increases in the cost of the labor hours worked.

Since the cost plus a percentage of cost method provides no incentive for cost control, it is prohibited from use on engineering and design related services funded with FAHP funding (as specified in 23 CFR 172.5(c)).

While the establishment of fixed hourly rate(s) and a maximum contract amount provide some cost control for the contracting agency under the "specific rates of compensation" payment method, consultants still have minimal incentive for efficiency. As such, this payment method is the least preferred allowable payment method and its use on contracts or for components of contracts generally should be limited to only smaller, basic tasks where it is difficult at the time of procurement to estimate the extent or duration of the work. If the scope of work and/or level of effort for the desired services become better defined, a more traditional "lump sum" or "cost plus fixed-fee" payment method should be employed.

Federal laws and regulations for use and application of cognizant approved indirect cost rates still apply in the development of the fixed hourly rate(s) for the "specific rates of compensation" method. Additionally, since financial risk to the consultant is minimal under the "specific rates of compensation" payment method, the fee component of the fixed hourly rate(s) should be commensurate with that limited risk. As with other payment methods, the fee should be based on the anticipated scope and complexity at the time of contract negotiation. (See Contract Negotiation Question & Answer No. 2)

V. Contract Negotiation

1. Under competitive negotiation/qualifications based selection (Brooks Act) procurement procedures, what are the requirements for negotiation of a contract? (Posted 7-20-11)

Upon completion of a qualifications based evaluation and ranking of proposals, the contracting agency initiates negotiations with the most highly qualified consulting engineering firm to arrive at a fair and reasonable compensation for the solicited services which considers the scope, complexity, professional nature, and estimated value of the services to be rendered (as specified in 23 U.S.C. 112(b)(2)(A), 40 U.S.C. 1104, and 23 CFR 172.5(a)(1)).

The primary objective in negotiation is to reach agreement on a price which is fair and reasonable to the contracting agency while providing the consulting firm the greatest incentive for efficient and economical performance. A successful negotiation will result in a fair and reasonable price for the contracting agency and fair and reasonable compensation for the consulting firm. The focus of negotiations should be on improving identification of the scope/tasks to be performed, the level of effort to complete those tasks, the experience and classifications of staff required/assigned to complete those tasks (which collectively result in total direct labor costs), other direct contract costs, and fixed fee.

Following ranking and selection, the contracting agency and most highly qualified consulting firm will typically meet to establish a detailed understanding of the scope, services to be provided, and responsibilities for project development, deliverables, schedules, and other important facets of a project. Once a detailed, mutual understanding of the scope has been made, the most highly qualified consulting firm will prepare a complete cost proposal to perform the services and the contracting agency will prepare/refine an independent estimate. The contracting agency independent estimate becomes the basis for ensuring the consultant services are obtained at a fair and reasonable cost and will be used as the basis for negotiations.

Prior to receipt of the consulting firm's cost proposal, the contracting agency will prepare/refine an independent estimate of the work to be performed on the contract. This independent estimate should consider the person-hours and classifications to complete project tasks (which collectively result in total direct labor costs), other direct contract costs, and fixed fee. As required by Federal laws and regulations and to allow for a fair and reasonable negotiation of costs, the contracting agency must use and apply the consulting firm's approved indirect cost rate for estimation, negotiation, and administration of the contract (See Indirect Cost Rates and Audits Question & Answer Nos. 4 and 17-32 and Contract Negotiation Question & Answer Nos. 3 and 4).

As the allowability of costs is determined by the FAR cost principles, a contracting agency may limit or benchmark consulting firm direct salary rates only if a contracting agency has performed an assessment of the reasonableness of proposed direct salary rates consistent with the FAR cost principles (as specified in 48 CFR 31.201-3 and 31.205-6(b)(2)). To ensure a fair and reasonable negotiation of costs, the consulting firm's actual direct salary rates or those established via this assessment for particular employees or classes of employees must be used in the negotiation and administration of the contract. If an assessment of reasonableness in accordance with the FAR has not been performed, the consulting firm's actual direct salary rates must be applied to the contract without limitations. Limitations or benchmarks on direct salary rates which do not consider the factors prescribed in the FAR cost principles are contrary to qualifications based selection procedures (as specified in 23 U.S.C. 112(b)(2)(A), 40 U.S.C. 1104(a), and 23 CFR 172.5(a)(1)), which require fair and reasonable compensation considering the scope, complexity, professional nature, and value of the services to be rendered. (See Contract Negotiation Question & Answer No. 5)

The most highly qualified consulting firm will submit a complete cost proposal which proposes the firm's person-hours and classifications to complete project tasks, direct contract costs, and fixed fee and applies the firm's direct salary rates and approved indirect cost rate. Overall cost or bottom line price alone are not justification to terminate negotiations with a firm, as the contracting agency must make a good faith effort to negotiate the scope, level of effort, and reasonable price with the highest rated firm. If the contracting agency and the most highly qualified firm are unable to negotiate a fair and reasonable contract, the contracting agency may formally terminate negotiations and undertake negotiations with the next most qualified firm, continuing the process until an agreement is reached (as specified in 40 U.S.C. 1104(b)).

If the programmed funding or contracting agency budget are not adequate to accommodate the cost of the contract once a firm's approved cognizant indirect cost rate and direct salary rates are applied to the agreed/negotiated scope, person-hours, and classifications, then the contracting agency should consider reducing, clarifying, and/or re-negotiating the details of the scope (e.g., tasks, schedules, deliverables, assumptions), person-hours, or classifications for completing tasks. Arbitrary reduction or capping of indirect cost rates or direct salary rates is not permitted under Federal laws and regulations. Failure to

negotiate in good faith by focusing on only overall cost or bottom line price, without regard for the scope of work and associated level of effort, is contrary to the intent of the qualifications based selection process.

It may become necessary to re-advertise for the desired services if the scope or other parameters of the project are modified from the original announcement/advertisement during the course of negotiations. It also may be necessary to re-advertise for the desired services if the project's scope is modified and there is not sufficient funding programmed or available for the project. Additionally, all actions and decisions made throughout the procurement and negotiation process should be adequately documented and maintained to demonstrate compliance with applicable Federal laws and regulations (as specified in 49 CFR 18.42).

2. How should fixed fee be established or negotiated on FAHP funded engineering and design related services contracts? (Posted 7-20-11)

The establishment of the fixed fee should be project specific and shall consider scope, complexity, and professional nature of the services to be rendered (as specified in the 40 U.S.C. 1104(a)). Other considerations may include the size and type of contract as well as the duration and degree of risk involved in the work. Fixed fees in excess of fifteen (15) percent of the total direct and indirect costs of the contract may be justified only when exceptional circumstances exist.

3. May a contracting agency utilize statewide average indirect cost rates in the estimation, negotiation, administration, and payment of FAHP funded engineering and design related services contracts? (Posted 7-20-11)

Contracting agencies shall use and apply a consultant's cognizant approved indirect cost rate, or an accepted rate established in accordance with the FAR cost principles (as specified in 48 CFR 31), for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and the rate shall not be limited by administrative or de facto ceilings of any kind (as specified in 23 U.S.C. 112(b)(2)(C)-(D) and 23 CFR 172.7(b)). Use of a statewide average indirect cost rate in the analysis of contract costs or the negotiation and administration of the contract creates an arbitrary limitation which does not comply with Federal requirements.

A contracting agency may use a statewide average indirect cost rate to estimate overall project costs to initially scope or program a project and to serve as an indicator of the level of effort moving forward. However, 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 (See Indirect Cost Rates and Audits Question & Answer No. 4 and 17-32), in preparing/revising an independent cost estimate to be used in negotiating and administering contracts or contract amendments in accordance with the aforementioned Federal laws and regulations.

4. May a contracting agency question the reasonableness of Indirect cost rates for use and application to FAHP funded engineering and design related services contracts? (Posted 7-20-11)

Reasonableness is determined during the audit or other evaluation of the indirect cost rate, conducted in accordance with GAGAS, and following the AASHTO Uniform Audit & Accounting Guide, and risk assessment process/risk management framework (See Indirect Cost Rates and Audits Question & Answer No. 3). Contracting agencies shall use and apply a cognizant approved indirect cost rate established in accordance with the FAR cost principles (as specified in 48 CFR 31) for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and the rate shall not be limited by administrative or de facto ceilings of any kind (as specified in 23 U.S.C. 112(b)(2)(C)-(D) and 23 CFR 172.7(b)). (See Indirect Cost Rates and Audits Question & Answer Nos. 17-32 for a detailed

discussion of the use of indirect cost rates other than as established through the cognizant approval process or when such rates are under dispute (as specified in 23 CFR 172.7(c))

A contracting agency shall not request or start negotiations to obtain a lower indirect cost rate than was established by a cognizant approved audit (as specified in 23 U.S.C 112(b)(2)(C)-(D)). A lower indirect cost rate may be used only if offered/submitted voluntarily by a consulting firm as part of a cost proposal during contract negotiations. A consulting firm's offer of a lower indirect cost rate shall not be a condition or qualification to be considered for the work or contract award (as specified in 23 CFR 172.7(b)). (See Indirect Cost Rates and Audits Question & Answer No. 21)

5. When advertising for services, estimating and negotiating contract costs and terms, or administering a contract, may a contracting agency request/establish limitations of a consulting engineering firm's direct salaries and wages? (Posted 7-20-11)

State and local public agency recipients of Federal grants are required to apply the FAR cost principles to determine the allowable costs for personal services contracts with commercial, for-profit entities (as specified in 49 CFR 18.22(b)). Limitations or benchmarks on consulting firm direct salaries and wages may be acceptable only if a contracting agency has performed an assessment of the reasonableness of proposed direct salary rates and established the limitations in accordance with the reasonableness provisions of the FAR cost principles (as specified in 48 CFR 31.201-3 and 31.205-6(b)(2)).

This assessment of reasonableness should include a variety of factors. In addition to the provisions specified in 48 CFR 31.201-3, in determining the reasonableness of compensation for particular employees or job classes of employees, a contracting agency must consider factors determined to be relevant by the contracting office. Factors that may be relevant include, but are not limited to, conformity with compensation practices of other firms: (i) of the same size; (ii) in the same industry; (iii) in the same geographic area; and (iv) engaged in similar non-government work under comparable circumstances.

An assessment consistent with the FAR cost principles for determining the reasonableness of direct salary costs would permit contracting agencies to establish direct salary compensation limitations or benchmarks based upon the objective consideration of the compensation factors discussed above. This assessment would be used to determine what is reasonable for the subject work to be performed based on the classification, experience, and responsibility of the employee performing the work, taking into consideration the factors identified above.

To ensure a fair and reasonable negotiation of costs, the consulting firm's actual direct salary rates or those established via this assessment for particular employees or classes of employees must be used in the negotiation and administration of the contract. If an assessment of reasonableness in accordance with the FAR has not been performed, contracting agencies must use and apply the consulting firm's actual direct salary rates in preparing or revising the independent cost estimate to be used in negotiating or administering contracts or contract amendments.

Limitations or benchmarks on direct salary rates which do not consider the factors prescribed in the FAR cost principles are contrary to qualifications based selection procedures (as specified in 23 U.S.C. 112(b)(2)(A), 40 U.S.C. 1104(a), and 23 CFR 172.5(a)(1)), which require fair and reasonable compensation considering the scope, complexity, professional nature, and value of the services to be rendered. Additionally, if limitations or benchmarks on direct salary rates are too low, their use is likely to limit the number of consulting firms and the qualifications of the firms which submit proposals to perform work on projects. Furthermore, as a consulting firm's indirect cost rate is applied to direct labor costs, any direct labor limitations or benchmarks not supported by the FAR cost principles have the effect of creating an administrative or de facto ceiling on the indirect cost rate, contrary to FAHP requirements (as specified in 23 U.S.C. 112(b)(2)(D) and 23 CFR 172.7(b)).

6. **Does the method used to procure engineering and design related services influence the ability for a State or local public agency to limit/benchmark a consulting engineering firm's indirect cost rate or the direct salary or total compensation of employees on contracts? (Posted 7-20-11)**

Yes, subject to State laws, policies, and approved procedures, State and local public agencies may be able to place a limitation or benchmark on a consulting firm's indirect cost rate when using the small purchase procedures or noncompetitive negotiation (e.g., emergency procurement) procurement methods (See Other Procurement Procedures Question & Answer Nos. 2-5) for engineering and design related services contracts that utilize FAHP funding. Regardless of the procurement method utilized, State and local public agencies may establish limitations or benchmarks on consultant direct salary rates provided the limitations are established in accordance with the reasonableness provisions of the FAR cost principles (as specified in 48 CFR 31.201-3 and 31.205-6(b)(2)). (See Contract Negotiation Question & Answer No. 5)

Small purchase and non-competitive negotiation procurement methods are not required to follow a qualifications-based selection process (as specified in 23 U.S.C. 112(b)(2)(A), 40 U.S.C. 1101-1104, and 23 CFR 172.5(a)(1)) and therefore are not required to comply with the indirect cost rate provisions specified in 23 U.S.C. 112(b)(2)(C)-(E). For these procurement methods, the State or local public agency must complete the procurement in accordance with its own State or local laws, regulations, policies, and procedures provided that these requirements are not in conflict with applicable Federal laws and regulations (as specified in 49 CFR 18.4 and 18.36(a)). When the State or local policies or procedures are in conflict with Federal requirements, the Federal requirements prevail where use of Federal funds is involved.

As such, State and local public agencies may negotiate indirect cost rates in accordance with applicable State and local laws, regulations, policies, and procedures when procuring engineering and design related services contracts under small purchase or non-competitive negotiation procedures.

7. **May a contracting agency limit/benchmark a consulting engineering firm's indirect cost rate or direct salary rates on engineering and design related service contracts that do not utilize FAHP funding? (Posted 7-20-11)**

Yes, subject to State laws, policies, and procedures, State and local public agencies may place a limitation on or benchmark a consulting firm's indirect cost rate and direct salary rates if the engineering and design related services contract does not utilize FAHP funding.

The reasonableness provisions of the FAR cost principles (as specified in 48 CFR 31.201-3 and 31.205-6(b)(2)) for determination of allowable costs for personal services of commercial, for-profit entities (as specified in 49 CFR 18.22(b)) apply only when any Federal grant funds are involved. Additionally, the indirect cost rate provisions of 23 U.S.C. 112(b)(2)(C)-(E) apply only when FAHP funding is participating on engineering and design related service contracts that directly relate to a highway construction project subject to the provisions of 23 U.S.C. 112(a).

However, as with other project expenditures that do not comply with Federal requirements, the cost of consultant service contracts that utilize only State or local public agency funding which were not procured, negotiated, or administered in accordance with applicable Federal and State laws and regulations would not subsequently be considered as eligible for the purpose of meeting the non-Federal share of costs for subsequent phases of a FAHP funded project. More information on non-Federal match requirements may be found at: <http://www.fhwa.dot.gov/legregs/directives/policy/memofmr20091229.htm>.

8. **May a contracting agency require discount payment terms (e.g. 2% 10 Net 30) on FAHP funded engineering and design related services contracts? (Posted 7-20-11)**

No, a requirement for a unilateral discount from a consulting firm's negotiated compensation due to early payment would be in violation of Federal laws and regulations applicable to engineering and design related services contracts utilizing FAHP funding and directly related to a construction project.

Given the ability for most contracting agencies to promptly pay invoices via electronic methods, required discount payment terms would essentially provide the contracting agency an arbitrary discount beyond the negotiated fair and reasonable compensation. A required discount of a firm's invoiced amount, if paid within an established time frame, essentially creates an arbitrary reduction of the negotiated fair and reasonable compensation required by the Brooks Act (as specified in 40 U.S.C. 1104(a)); creates an arbitrary ceiling on the firm's approved indirect cost rate required to be applied to contract negotiation and payments (as specified in 23 U.S.C. 112(b)(2)(D) and 23 CFR 172.7(b)); and creates an arbitrary reduction of direct salary/wage rates which does not provide consideration of the reasonableness provisions of the FAR cost principles (as specified in 48 CFR 31.201-3 and 31.205-6(b)(2)). (See Contract Negotiation Question & Answer Nos. 1, 4, and 5)

As such, a contracting agency may not require or request discount payment terms via a solicitation/request for proposal, during the subsequent evaluation and selection process, as a negotiation point, or through standardized contract documents/templates. However, if a consulting firm, in the interest of its own financial management of the contract, voluntarily offered a discount payment term in its price proposal during negotiations, the contracting agency could accept the discount payment terms provided the firm's offer is not a condition or qualification to be considered for the work or contract award. FAHP funding participation would then be limited to the Federal share of the discounted payments actually made by the contracting agency.

9. **Once a FAHP funded engineering and design related services contract has been negotiated, signed, and becomes binding, may a contracting agency request or require a consulting firm to reduce fees or overall contract costs? (Posted 7-20-11)**

Unilateral modifications to the pricing of FAHP funded engineering and design related services contracts without engaging in good faith negotiations with the consulting firm are contrary to applicable Federal laws and regulations.

An arbitrary reduction of fees or overall contract costs is inconsistent with qualifications based selection procedures (as specified in 23 U.S.C. 112(b)(2)(A), 40 U.S.C. 1104(a), and 23 CFR 172.5(a)(1)) for negotiation of fair and reasonable compensation considering the scope, complexity, professional nature, and estimated value of the services to be rendered. Reductions to overall contract costs also creates a de facto ceiling on a firm's approved indirect cost rate required to be applied to contract negotiations and payment (as specified in 23 U.S.C. 112(b)(2)(D) and 23 CFR 172.7(b)) and creates an arbitrary reduction of direct salary/wage rates which does not provide consideration of the reasonableness provisions of the FAR cost principles (as specified in 48 CFR 31.201-3 and 31.205-6(b)(2)). (See Contract Negotiation Question & Answer Nos. 1, 2, 4, and 5)

In order to reduce expenditures associated with existing FAHP funded engineering and design related services contracts, a contracting agency may cancel or delay a contract as permitted within the provisions of the contract, re-negotiate the terms of the contract, or terminate the project.

VI. **Contract Administration**

1. **What record keeping and retention requirements apply to a contracting agency for the procurement (solicitation, evaluation, selection, and contract negotiation) of a consulting engineering firm for FAHP funded engineering and design related services? (Posted 7-20-11)**

FAHP funding recipients and sub-recipients must maintain adequate and readily accessible project performance and financial records, supporting documents, and other records which are considered pertinent to the grant agreement and compliance with applicable Federal laws and regulations (e.g., 23 U.S.C. 112, 40 U.S.C. 1101-1104, 23 CFR 172, 48 CFR 31, and 49 CFR 18) (as specified in 49 CFR 18.42). These records shall be maintained for a minimum period of three years following submittal of the final voucher and all other pending matters are closed (as specified in 49 CFR 18.42(b)).

As such, contracting agencies must maintain records to detail the significant history of a procurement which must adequately demonstrate compliance with applicable Federal laws and regulations. These records should include, but are not necessarily limited to: rationale for the method of procurement, contract type, and payment method; the solicitation (advertisement/announcement) for services including the scope, requirements, and evaluation criteria for selection; documents supporting evaluation, discussion, ranking, and final selection; and documents supporting the analysis, negotiation, and agreement on fair and reasonable compensation.

The extent of procurement history documentation should be reasonable and commensurate with the size and complexity of the procurement itself. Procurement record keeping requirements should be defined within a contracting agency's written policies and procedures to ensure records are consistently and uniformly maintained.

Similar record keeping and retention requirements for consulting firms are to be included in all contracting agency contract provisions (as specified in 49 CFR 18.36(i)(10)-(11)).

2. Are contracting agencies required to conduct performance evaluations of consulting firms working on FAHP funded engineering and design related services contracts? (Posted 7-20-11)

Contracting agencies intending to utilize FAHP funding for engineering and design related services must prepare and receive approval of written policies and procedures for each method of procurement to be utilized (as specified in 23 CFR 172.9(a)). Among other items the written procedures are required to address, these procedures must cover the steps "in monitoring the consultant's work and in preparing a consultant's performance evaluation when completed" (as specified in 23 CFR 172.9(a)(5)). Therefore, at a minimum, contracting agencies must conduct an evaluation of the consultant's performance of the procured services when completed.

Many agencies also perform interim evaluations, providing constructive feedback and encouraging communication throughout the performance period. Interim evaluations also allow for a focused evaluation of components/milestones of a project, mitigating loss of knowledge from changes in personnel and fostering continuous improvement by the consultant and contracting agency. Some contracting agencies even perform a construction quality assessment during or after construction to capture the role that the quality of design plans may have in the construction of the project. Typically, consultant performance evaluations are captured in a database and then utilized as a measure of past performance in the selection process on future projects consistent with the Brooks Act (as specified in 40 U.S.C. 1103(c)). As such, consulting firms should be provided an opportunity to respond in writing to an evaluation or pursue an established appeals process if the consultant believes an evaluation is incorrect.

3. May on-call (indefinite delivery/indefinite quantity (IDIQ)) type contracts be utilized for FAHP funded engineering and design related services? (Posted 7-20-11)

Yes, provided a reasonable maximum length of contract and maximum dollar amount of contract are defined within the solicitation and contract provisions.

A standard on-call contract requires a consulting firm to provide work and services on an as-needed or on-call basis. On-call contracts are typically used when a specialized service will be needed for a number of different projects (e.g., field surveying, geotechnical boring, wetland determination, hazardous waste

analysis, traffic signal design, lighting design, etc.). To maintain the intent of the Brooks Act (40 U.S.C. 1101-1104) in promoting open competition and selection based on demonstrated competence and qualifications, a maximum length of contract and maximum dollar amount of contract must be defined within the solicitation and provisions of an on-call contract. These thresholds provide for a defined termination of the contract to prevent an infinite amount of workload over an infinite period of time being awarded to a single consulting firm. Should additional services be required after an established threshold has been met, a solicitation for a new contract would be required, ensuring open competition and selection of the most highly qualified firm are achieved.

A definitive maximum contract length is not defined in applicable Federal laws and regulations. In many instances, State and local laws and regulations may limit the contract authority (length and amount of contract) that a contracting agency may engage in for an on-call contract. Many States have contract time limitations which range from two to five years. Several States provide an initial contract period with the ability to extend the contract additional years up to a maximum number of years (e.g., two year initial contract with optional one-year extensions up to a maximum of five years total).

If multiple firms are to be procured through a single solicitation for specific on-call services, the procedures for award of task orders among the selected firms must also be defined in the solicitation and contract provisions. Task orders may be awarded to the selected, qualified firms on a regional basis or through an additional qualifications based procedure with opportunity for discussions between the contracting agency and qualified firms for each specific task order. 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 solely on cost proposals. 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 172.5(a)(1)).

Policies and procedures for the use, management, and administration of on-call contracts must be provided in a contracting agency's approved written procurement policies and procedures (as specified in 23 CFR 172.9(a)). These on-call contract policies and procedures should address development of reasonable contract length limits, dollar amount thresholds, and procedures for awarding tasks if multiple firms are selected.

VII. *Disadvantaged Business Enterprise (DBE) Considerations*

1. Are contracting agencies required to give consideration to DBE consulting engineering firms in the procurement of engineering and design related services? (*Posted 7-20-11*)

Yes, contracting agencies are required to give consideration to DBE consultants in the procurement of engineering and design related services contracts using FAHP funding (as specified in 23 CFR 172.5(b) and 49 CFR 26).

Recipients of FAHP funding must develop a DBE program that includes procedures and methods for: establishing DBE program participation goals, setting participation goals on specific contracts, and monitoring and reporting on the performance of its DBE participation. The use of DBE set-aside contracts or quotas for DBEs is prohibited by Federal regulations (as specified in 49 CFR 26.43) (See DBE Program Question & Answer Nos. 3 and 4 and the Preamble to 49 CFR Part 26 in 64 FR 5097 for a discussion of set-asides, quotas, and goals). Contracting agencies are not eligible to receive FAHP funding unless FHWA has approved the agency's DBE program and the agency remains in compliance with its approved program (as specified in 49 CFR 26.21(c)).

DBE program participation goals, as well as the method for achieving them, are specific to the DBE program developed by the contracting agency and subject to FHWA approval. To the extent practical, a

contracting agency must achieve DBE program participation goals through race and gender-neutral measures (as specified in 49 CFR 26.39 and 26.51(a)). DBE participation on all contracts funded with FAHP funds, whether for professional or construction services, may be counted toward overall DBE program participation goals.

When overall DBE program participation goals cannot be met through race-neutral measures, additional DBE participation on engineering and design related services contracts may be achieved through either one of two methods in accordance with an agency's FHWA approved DBE program:

- Use of an evaluation criterion for DBE participation in the qualifications based selection of firms (See DBE Considerations Question & Answer No. 2); or
- Establishment of a contract DBE participation goal (See DBE Considerations Question & Answer No. 3).

For additional information regarding the DBE Program, please visit the FHWA Office of Civil Rights web site at: <http://www.fhwa.dot.gov/civilrights/programs/dbess.htm> and the U.S. Department of Transportation DBE Program web site at: <http://osdbu.dot.gov/DBEProgram/index.cfm>.

2. Under competitive negotiation/qualifications based selection (Brooks Act) procurement procedures, may a contracting agency consider the use/participation of DBEs as an evaluation criterion in the selection of the most highly qualified consulting firm/team? (Posted 7-20-11)

Yes, the use/participation of certified DBE sub-consultant firms may be utilized as an evaluation criterion where appropriate in assessing the qualifications of firms/teams to perform the solicited services. Use of an evaluation factor for DBE participation in the procurement of engineering and design related services must comply with Federal laws and regulations (as specified in 49 CFR 26) and be consistent with the agency's FHWA approved DBE program. (See DBE Considerations Question & Answer No. 1)

The competitive negotiation/qualifications based selection process required for the procurement of FAHP funded engineering and design related services requires evaluation and selection based on demonstrated competence and qualifications to perform the solicited services. However, agencies are required to give consideration to DBE consultants in the procurement of engineering and design related services contracts using FAHP funding (as specified in 23 CFR 172.5(b) and 49 CFR 26). To harmonize Federal regulations related to qualifications based selection and DBEs, a contracting agency may establish the use/participation of certified and qualified DBE sub-consultant firms as an evaluation criterion of no more than ten (10) percent of the total evaluation criteria in assessing the qualifications of firms/teams to perform the solicited services.

In awarding points for a DBE participation criterion in the evaluation and selection of the most highly qualified consulting firm/team, evaluation/selection officials must consider the prime consultant's good faith efforts (as specified in 49 CFR 26 Appendix A) to engage DBEs, as demonstrated in the firm's response to the solicitation. Consulting firms which have demonstrated good faith efforts to engage DBE firms in the delivery of the solicited services shall be considered to have satisfied the DBE evaluation criterion.

If, during the negotiation phase of the procurement process, work proposed to be performed by DBEs in the response to the solicitation is decreased or eliminated through negotiation of the scope of services, the prime consultant must use good faith efforts in revision of its proposal to provide for the participation of DBEs at the level indicated in its response to the solicitation. These good faith efforts should consider the use of DBEs to perform services in other areas of the project in order to obtain the level of DBE participation originally proposed. Failure of the most highly qualified (top-ranked) firm to make adequate good faith efforts during negotiation to provide for the proposed level of DBE participation permits the contracting agency to terminate negotiations and initiate negotiations with the number two-ranked firm. This is based on the fact that DBE participation was utilized as an evaluation criterion to rank the qualified firms/teams.

To maintain the integrity of a competitive negotiation/qualifications based selection procurement, the total of all allowable non-qualifications based evaluation criterion (locality preference and/or DBE participation) should not exceed ten (10) percent of the total evaluation criteria. (See Competitive Negotiation Question & Answer No. 9 regarding local office presence as an evaluation criterion) The ten (10) percent limitation applies only to non-qualifications based evaluation criterion and should not be considered as a limitation for specific DBE contract goals established by a contracting agency in accordance with its approved DBE program. (See DBE Considerations Question & Answer Nos. 1 and 3)

3. May a contracting agency set goals for DBE participation on engineering and design related services contracts? (Posted 7-20-11)

Yes, a contract DBE participation goal may be established on engineering and design related services contracts that have sub-consulting opportunities (as specified in 49 CFR 26.51). The establishment and implementation of a contract DBE participation goal must comply with Federal laws and regulations (as specified in 49 CFR 26) and be consistent with the agency's FHWA approved DBE program. (See DBE Considerations Question & Answer No. 1)

If a contracting agency establishes a DBE participation goal on a consultant services contract, the agency cannot disqualify a consultant for failing to meet the contract goal provided the consultant made good faith efforts to meet the participation goal (as specified in 49 CFR 26.53 and Appendix A). A contracting agency may place in the advertisement or solicitation for engineering and design related services that the prime consultant must meet the established contract DBE participation goal or demonstrate good faith efforts to meet it. The most highly qualified (top-ranked) firm would be required to demonstrate how the firm would meet the contract goal at the negotiation phase of the procurement process.

If, during the negotiation phase of the procurement process, work proposed to be performed by DBEs in the response to the solicitation is decreased or eliminated through negotiation of the scope of services, the prime consultant must use good faith efforts in revision of its proposal to provide for the participation of DBEs to meet the established contract goal. The fact that the prime consultant could perform the work with its own forces does not relieve it from making good faith efforts to meet the DBE goal. If the top-ranked firm does not meet the goal or demonstrate a good faith effort, the contracting agency may terminate negotiations and initiate negotiations with the number two-ranked firm.

4. May a contracting agency advertise or solicit engineering and design related services with set-asides exclusive for DBE consulting firms? (Posted 7-20-11)

No, as the use of DBE set-aside contracting which restricts competition for specified contracts to DBE firms is prohibited by Federal regulations (as specified in 49 CFR 26.43). (See DBE Considerations Question & Answer No. 1 and the Preamble to 49 CFR Part 26 in 64 FR 5097 for a discussion of set-asides, quotas, and goals)

However, a race-neutral small business set-aside program which restricts competition to only small businesses, regardless of the socially and economically disadvantaged status of their owners, may be permitted for prime contracts (as specified in 49 CFR 26.39 (76 FR 5097)) procured under small purchase procedures (as specified in 23 CFR 172.5(a)(2)) (See Other Procurement Procedures Question & Answer No. 2), subject to State and local laws, regulations, policies, and procedures and FHWA approval.

VIII. Conflicts of Interest

1. What are the conflict of interest related laws and regulations applicable to engineering and design related consultant services funded with FAHP funding? (Posted 7-20-11)

In satisfying the requirements for the delivery and administration of the FAHP, State DOTs and their subgrantees may engage the services of consulting firms to the extent necessary or desirable. However, State DOTs and their subgrantees must have adequate powers and be suitably equipped and organized to fulfill the requirements of the FAHP (as specified in 23 U.S.C. 302(a) and 23 U.S.C. 106(g)(4)). This includes providing and maintaining: adequate staffing accountable and responsible for projects, adequate delivery and administration systems for projects, and sufficient accounting controls to properly manage Federal funds to protect the public's interest against fraud, waste, and abuse of taxpayer resources.

Conflict of interest requirements include:

- The requirement that no contracting agency employee who participates in the procurement, management, or administration of FAHP funded contracts or subcontracts shall have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract (as specified in 23 CFR 1.33);
- The requirement that no person or entity performing services for a contracting agency in connection with a FAHP funded project shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project (as specified in 23 CFR 1.33);
- The requirement that no person or entity performing services for a contracting agency in connection with a FAHP funded project shall have, directly or indirectly, any financial or other personal interest in any real property acquired for the project (as specified in 23 CFR 1.33);
- The requirement for non-State direct grantees and subgrantees of these direct grantees to develop and maintain a written code of conduct governing the performance of its employees engaged in the award and administration of FAHP contracts (as specified in 49 CFR 18.36(b)(3)); and
- The requirement for organizational conflicts of interest provisions which address allowable roles and responsibilities associated with the procurement, management, and administration of design-build contracts (as specified in 23 CFR 636.116 and 636.117).

Additional conflict of interest considerations include:

- The requirement for written procurement procedures which shall address monitoring a consultant's work for quality and compliance with applicable standards and specifications, and determining the extent to which a consultant may be liable for design errors and omissions (as specified in 23 CFR 172.9(a));
- The requirement for FHWA approval prior to procuring a consultant to act in a management role on behalf of the contracting agency (as specified in 23 CFR 172.9(d)); and
- The requirement for a full-time contracting agency employee to serve in responsible charge of a Federal-aid construction project (as specified in 23 CFR 635.105).

2. May a contract be awarded to a single consulting engineering firm to provide both preliminary design and final design engineering services on a single FAHP funded project? (Posted 7-20-11)

Yes, provided appropriate provisions are included in the solicitation and contract to indicate that the contracting agency is not obligated to proceed with final design for any alternative, that all reasonable alternatives will be evaluated and given appropriate consideration, and that the firm may not proceed with final design until the relevant NEPA decision documents have been issued (e.g., CE, FONSI, or ROD).

3. **May a contract be awarded to a single consulting engineering firm for the preparation of relevant environmental documents and associated analyses as well as both the preliminary and final design engineering services on a single FAHP funded project? (Posted 7-20-11)**

Yes, provided appropriate provisions are included in the solicitation and contract to indicate that the contracting agency is not obligated to proceed with final design for any alternative, that all reasonable alternatives will be evaluated and given appropriate consideration, and that the firm may not proceed with final design until the relevant NEPA decision documents have been issued (e.g., CE, FONSI, or ROD).

A contracting agency may procure, under a single contract, the services of a consulting firm to prepare any environmental impact assessments or analyses required for a project as well as subsequent engineering and design work on the project provided the contracting agency assesses the objectivity of the environmental documentation prior to its submission to FHWA (as specified in 23 U.S.C. 112(f)).

4. **May a contract be awarded for final design services to a consulting engineering firm, prime or sub-consultant, which provided services during the environmental review and preliminary design engineering phase of the project? (Posted 7-20-11)**

Yes, provided a NEPA decision document has been issued or if the NEPA process is still underway, appropriate provisions are included in the solicitation and contract to indicate that the contracting agency is not obligated to proceed with final design for any alternative, that all reasonable alternatives will be evaluated and given appropriate consideration, and that the firm may not proceed with final design until the relevant NEPA decision documents have been issued (e.g., CE, FONSI, or ROD).

If the final design services are to be accomplished through a design-build contract, the conflict of interest provisions as specified in 23 CFR 636.116 and 636.117 would apply.

5. **May a consulting engineering firm that performed design services on a FAHP funded project be procured to perform subsequent construction engineering/management and/or inspection services on the project? (Posted 7-20-11)**

Federal requirements and FHWA policies do not expressly prohibit the same consulting firm from providing services on subsequent phases (e.g., design and construction engineering/management and/or inspection) of a project that utilizes FAHP funding. However, contracting agencies must establish policies, procedures, and practices that ensure the necessary controls are established and oversight is provided to ensure a potential for conflict of interest does not exist. Specifically, contracting agencies must evaluate and demonstrate that their policies, procedures, and practices with procuring, managing, administering, and providing oversight of contracts for consultant services are being conducted in a manner that complies with State laws, Federal laws, and FHWA requirements and assures adequate opportunity for competition. (See Conflicts of Interest Question & Answer No. 1)

FHWA's conflict of interest requirements (as specified in 23 CFR 1.33) state "No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, *directly or indirectly*, a financial or personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project". In addition, 23 CFR 1.33 further states "It shall be the responsibility of the State to enforce the requirements of this section".

A firm performing construction engineering/management and/or inspection services on the same project on which the firm also performed design services provides the firm an opportunity to influence or affect project decisions on scope changes, design changes, construction revisions, contract change orders, and other related issues. Essentially, the firm serving as the designer or project manager, on behalf of the contracting agency, has a vested financial interest in the successful construction of the project. Thus, performing construction engineering/management and/or inspection services provides the firm an

opportunity to minimize or potentially ignore any design errors, omissions, or influence actions to positively benefit their firm and not the interest of the public agency, and as such, is a potential conflict of interest (as defined in 23 CFR 1.33 for States and State subgrantees, and as defined in 49 CFR 18.36(b)(3) for other direct (non-State) grantees and subgrantees of these direct grantees).

The difficulty lies in providing the burden of proof that the public interest has been maintained and a conflict of interest, direct or indirect, has not occurred or has been sufficiently mitigated by appropriate public agency controls. . Prior to allowing a consulting firm to provide services on subsequent phases of the same project, the contracting agency must ensure that appropriate compensating controls, in the form of policies, procedures, practices, and other safeguards, such as qualified agency staff in responsible charge, are provided to ensure a conflict of interest does not occur and the public interest in the project is not compromised in the procurement, management, and administration of consultant services.

As the potential for conflict of interest, fraud, waste, and abuse exists, the FHWA has an inherent interest in consulting firms providing services on subsequent phases of project development and in serving in management roles for the contracting agency on projects utilizing FAHP funding. As such, conflict of interest requirements and practices for contracting agency employees, consultants, and contractors which clearly define acceptable roles and responsibilities should be established in agency written procurement policies and procedures for approval (as specified in 23 CFR 172.9(a)).

6. What are the controls necessary to mitigate the potential for conflicts of interest with consultants providing services on subsequent phases of a project or serving in management roles? (Posted 7-20-11)

Examples of the controls necessary to consider allowing a consulting firm to provide services on subsequent phases of a project and in serving in management roles for a contracting agency on projects utilizing FAHP funding include, but are not limited to:

- Consultant Services Program/Procurement Procedures Manual (developed and approved as specified in 23 CFR 172.9(a)) which includes/addresses:
 - Conflict of interest guidance, policies, or procedures for consulting firms serving in roles as prime or sub-consultant on projects/contracts and associated impacts to a firm's ability to participate in other roles, project phases, or contracts;
 - Conflict of interest identification, disclosure, and mitigation plans and procedures for both contracting agency and consultant staff throughout all stages of project development and delivery;
 - Consultant errors and omissions policies and procedures;
 - Policies and procedures (provided statutory framework permits) for a contracting agency to pursue a range of civil actions and penalties including fines, suspension, or debarment associated with fraud, waste, abuse, and identified conflicts of interest which were not disclosed; and
 - Provision for Hotline Complaints to OIG.
 - Monitoring, evaluation, and reporting on compliance with Federal and State laws and regulations and approved policies and procedures with respect to conflicts of interest. To ensure overall compliance and no conflicts of interest exist, this oversight and quality assurance should include regular sampling and evaluation of contracts and be documented by reports which identify any remedial actions to address findings.
 - Training requirements/programs for contracting agency staff and consultants on contract management, ethics, conflicts of interest, laws and regulations, and approved policies and procedures.
 - Providing necessary resources (staff) and guidance to support management and oversight of conflict of interest concerns at a program and project level.
-

IX. **Other Considerations**

1. **If a State or local public agency does *not* use FAHP funding for an engineering and design related services contract and uses its own procurement procedures, is the related construction project(s) still eligible for FAHP funding? (Posted 7-20-11)**

Yes, a physical construction authorization is a separate Federal action which carries its own eligibility requirements (as specified in 23 CFR 635 Subpart C).

Federal laws and regulations for procuring, managing, and administering engineering and design related services contracts are specific to the use of FAHP funding for the engineering and design related services. Federal requirements do not apply to activities, phases, or projects that are funded with State or local funds. However, as with other project expenditures that do not comply with Federal requirements, the costs of consultant service contracts that utilize only State or local funding which were not procured, negotiated, or administered in accordance with applicable Federal and State laws and regulations would not subsequently be available to meet the non-Federal share of costs for subsequent phases (e.g., construction) of a FAHP funded project. More information on non-Federal match requirements may be found at:

<http://www.fhwa.dot.gov/legregs/directives/policy/memonfmr20091229.htm>.

2. **May a contracting agency incorporate other parts of the FAR outside of the cost principles (as specified in 48 CFR 31) into their procurement, audit, and contract administration policies and procedures for FAHP funded engineering and design related services contracts? (Posted 7-20-11)**

Yes, a contracting agency may formally adopt, by statute or within approved written policies and procedures (as specified in 23 CFR 172.9(a)), any direct Federal contracting provision as long as it is not in conflict with the requirements, principles, or intent of the Federal laws and regulations applicable to the procurement of engineering and design related services contracts utilizing FAHP funding.

Generally, in order for a non-Federal contracting agency to apply Federal contracting provisions, the Federal grant program must incorporate by reference the particular Federal statute or regulation the contracting agency must apply. Alternatively, a contracting agency may formally adopt the direct Federal contracting requirement provided it is not in conflict with the Federal grant program requirements. This is consistent with the Common Grant Rule (49 CFR 18) which authorizes a contracting agency to procure consistent with its own policies and procedures, except when an applicable Federal law or regulation conflicts with those procedures (as specified in 49 CFR 18.4 and 18.36(a)). When the State or local policies and procedures are in conflict with Federal requirements, the Federal requirements prevail where use of Federal funds is involved.

3. **What is the definition of "management role" as it pertains to the requirement for FHWA approval prior to procuring a consultant to act in a management role for the contracting agency (as specified in 23 CFR 172.9(d))? (Posted 7-20-11)**

A consultant acting in a management role may be defined as a consulting firm or individual representative of a firm acting on the contracting agency's behalf to perform inherently governmental functions or fulfilling a program or project administration role typically performed by the contracting agency. This could include providing oversight of a program element on behalf of the contracting agency or serving as a general engineering consultant (GEC) to manage and provide oversight of a major project, series of projects, and/or the work of other consultants and contractors on behalf of a contracting agency. FHWA Division Office and State DOT stewardship and oversight agreements may further define management role and specific responsibilities within each State.

4. Can a contracting agency accept donations of engineering and design related services from third parties? (Posted 7-20-11)

Yes. A contracting agency may accept donations of engineering and design related services by a third party if incurred after the date of Federal-aid authorization for the project.

The value of third party in-kind contributions, incurred during the grant period, is allowed to be applied toward the non-Federal share of a Federal-aid project (as specified in 49 CFR 18.24(a)(2)). The fair market value of such services may be eligible for credit against the contracting agency's share of the participating costs of the project provided the services and associated fair market value costs satisfy FAHP eligibility and program requirements for engineering and design related services.

More information on non-Federal match requirements may be found at:
<http://www.fhwa.dot.gov/legsregs/directives/policy/memonfmr20091229.htm>.

Appendix 10



NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES

State of New Hampshire, Department of Cultural Resources 603-271-3483
19 Pillsbury Street, Concord, NH 03301-3570 603-271-3558
TDD Access Relay NH 1-800-735-296 FAX 603-271-3433
www.nh.gov/nhdhr preservation@dcr.nh.gov

Request for Project Review by the New Hampshire Division of Historical Resources INSTRUCTIONS

The Division of Historic Resources (DHR) is New Hampshire's State Historic Preservation Office (SHPO). Under state and federal laws, the DHR works with other governmental agencies to review publicly-assisted projects that may affect historical or archeological resources. Historic preservation "Review & Compliance" (R&C) is a consultation process to identify significant historic properties in the planning stage of a project, so that any harm to them can be avoided, minimized or mitigated. It is intended to be a conflict-resolution and problem-solving process that balances the public benefit in historic preservation with the public benefit from a variety of governmental initiatives.

The RPR is not simply a checklist. It is a framework to facilitate a clear and accurate exchange of information. Compiling data for the RPR can strengthen your recognition and understanding of cultural resources and their relationship to your project. Clear and accurate information will support federal and state agencies, including the DHR, in making informed recommendations and comments. **By following these instructions, you can help facilitate an efficient, productive consultation process.**

Laws and regulations protecting historical resources and guiding the DHR's review and consultation are listed below, with citations for additional information noted:

National Historic Preservation Act of
1966, as amended:
www.achp.gov/nhpa.html

NH RSA 227-C:9:
www.gencourt.state.nh.us/rsa/html/XIX/227-C/227-C-9.htm

ACOE NH Programmatic General
Permit:
www.des.state.nh.us/wmb/Section401/reviewProcess.html

Federal Highway Administration:
Section 4(f):
www.environment.fhwa.dot.gov/strmlng/newsletters/mar08nl.asp

If your project has anything to do with transportation (type of project or funding source etc.) please see the RPR for Transportation Projects and related Instructions.



Before You Submit the Request for Project Review Form

1. Check the DHR's Review & Compliance website at www.nh.gov/nhdhr/review/ to be sure you have downloaded the most current form.
2. Determine the entire geographical area in which changes may occur (project area). The boundaries of the project area should be clearly described and indicated on a 7.5 minute USGS topographic quadrangle (clear copy or computer generated).
3. As soon as you've determined your project area, and before initiating the review process, you should determine the presence/absence of standing structures, whether or not there are any previously surveyed properties, and if and when any properties have been determined eligible or not eligible for listing in the National Register of Historic Places within or adjacent to the project area. Information on recorded historic properties is available at the DHR, and this information **must** be collected prior to submitting project review materials. The DHR records are open to the public by appointment by calling the DHR Records Coordinator at 603.271.6568 or email at tanya.krajcik@dcr.nh.gov. Include findings in Table 1 or within the project narrative description. Please be aware that survey in New Hampshire is far from complete, and the absence of historic resources in DHR records does not mean that no historic properties are present.
4. Complete a field review of the project area, taking photographs as directed in the form and instructions.
5. Following the records check and field review, project proponents should complete the Request for Project Review Form and any needed attachments in their entirety by referring to these instructions. Enclose the required additional information and submit your application packet to the DHR in paper. Please include a self-addressed stamped envelope in order to expedite the review process. Incomplete materials will be returned without review.
6. Be aware that, in the event historical resources are affected by your project, you may need to speak with your lead federal agency about developing a plan for public involvement.
7. There is no need to submit the copy of these instructions that print out with the RPR form. It is there for your information and use.

Photograph Submittals

Photographs submitted for project review may be either 35mm black/white, color or digital prints. All photographs must be clear, crisp and focused. Digital images should not be pixilated. Photographs must be sized 3" x 5" or larger and their subject locations keyed to an accompanied map. They may be embedded in printed Word® documents. All photos must be printed. No CDs, flashdrives, or other storage media with digital images will be accepted.

How to Complete the Request for Project Review (RPR) Form

GENERAL PROJECT INFORMATION

New Submittal or Additional Information – Indicate if the project, or any part thereof, has been previously reviewed by DHR and if so, insert the DHR review number (R&C #). If we know that a project has been previously reviewed, we can often avoid asking for duplicate information.

Project Title – Provide a descriptive name of the project. The name should clearly but concisely indicate what the project involves.

Project Address/Location – Provide the geographical location of the project. If your project involves work on a specific building, please include the street address of the building.

City or Town – Provide the city or town in which your project is located. Provide the **tax map and lot numbers** of the property(s).

Geographic Coordinates – NH State Plane-Feet is the required coordinate system.

An example of State Plane coordinates for the State House in Concord are: Easting 1018526 Northing 257678.

Access to State Plane coordinate data can be found at: <http://granitviewii.unh.edu>. Please refer to the R&C FAQs at www.nh.gov/nhdhr/review/rc_faq.htm on help accessing this data. It is helpful to print the specific instructions provided at www.nh.gov/nhdhr/review/documents/granitview_geotopo.pdf prior to clicking the <http://granitviewii.unh.edu> link.

Lead Federal Agency – Indicate the federal agency and contact person (if applicable) that is responsible for Section 106 compliance and that agency's permit type and permit or job reference number (if known). If you do not know the federal agency involved in your project, please contact the party requiring you to apply for Section 106 review, *not* the DHR, for this information.

State Agency – Indicate the state agency and contact person (if applicable) that is involved in the project and that agency's permit or job reference number (if known). Also note the type of permit.

APPLICANT INFORMATION

Applicant Name – Provide the name and contact information of the applicant (project sponsor).

Contact Person to Receive Response – Provide the name and contact information of the person to receive the DHR's response. The address provided should be a mailing address. Be sure to include a self-addressed stamped envelope with your application packet to expedite the review process.

PROJECT BOUNDARIES AND DESCRIPTION

Project Map – A clear computer generated or photocopy of the 7.5 minute USGS topographic quadrangle map, or a **clearly labeled** portion thereof, showing the exact boundaries of the project location (project area) **must** be attached to this application. Do **not** reduce or enlarge the map. Color copies are helpful. Label the map with the name of the USGS quadrangle. Topographic maps may be printed or downloaded free of charge at: <http://granitviewii.unh.edu>. Please refer to the R&C FAQs at www.nh.gov/nhdhr/review/rc_faq.htm for help on accessing this data.

Narrative Project Description – Attach a detailed written description of the project area and the proposed undertaking. The narrative should describe the project's area of potential effects including areas of potential physical and visual impacts, secondary areas or impacts, such as staging areas or borrow pits, and alterations to a structure, a building, or its landscape. Describe any known past disturbances or alterations to the project area such as grading, filling, paving, excavation and demolition, along with an approximate date. The narrative should clearly describe the proposed action, in as much detail as currently known.

Site Plan – Attach a large-scale map, diagram, or site plan(s), showing the project area's existing conditions and proposed changes (If this type of plan is not yet available for the project, explain why and give a date as to when it will be submitted). The drawing should indicate compass orientation, contours, general soil types, and presence of wetlands (if available). If any existing buildings, structures, cemeteries, dams, canals, bridges, foundations, ruins, old wells, cellar holes, stone walls, trails, or specialized uses such as dump sites, etc., are present, their locations should be shown.

Photos of Project Area – Provide photographs showing the overall project area and the area adjacent to the project location, as well as specific areas of proposed ground impacts and disturbances. These photographs should provide general visuals of the landscape(s), streetscape(s), and relationships between buildings and structures within and adjacent to the area of proposed impact. They should also include views of areas where there might be ground impacts and disturbances, such as digging or staging areas. Informative photo captions explaining each image will facilitate efficient project review. Photos should be keyed to project mapping.

DHR File Review – During the identification stage of the review process you should determine the presence/absence of standing structures. Be sure to include the results of the DHR Records search for historic properties with your submittal packet and indicate the date the file review occurred on the RPR form. Indicate if the records search revealed any historic properties in the project area and if the site inspection revealed any properties more than 50 years of age within or adjacent to the project area which may or may not be recorded at the DHR. Provide results within the project narrative or using Table 1 (available on the DHR website).

ARCHITECTURE

Buildings, Structures, and Landscapes in Project Area – Based on the results of your DHR file review *and* your field review, are there any properties more than 50 years of age **within or adjacent** to the project area? The types of properties to note include buildings, structures (such as bridges, stone walls, culverts, railroad corridors, dams, etc.), objects (such as monuments and mileposts), historic districts, and landscapes (could include designed gardens, scenic roadways, campuses, or a collection of farms across a rural agricultural landscape).

If *none* of these are located in your project area, please note that in your project narrative and then skip to the Archaeology section of the RPR.

If *any* of these are located in your project area you must submit the following information:

Age – Provide an approximate age for the resources in your project area and the source for that information. Sources to determine approximate age could include owner information, visual inspection, municipal records, etc.

Photos of Buildings, Structures, and Landscapes – Photographs of all buildings and structures within the project area must be included with the application materials. These photos should show at least the full front side, however an angled shot showing the front and one side is typically very helpful. Neighborhood streetscape images should be included if applicable, such as when the project is located within an established or possible historic district. Photos should include informative captions and be keyed to project mapping.

Detail Photos, if applicable – If your project work involves physical impacts to existing buildings or structures, such as rehabilitation, demolition, additions, or alterations, detail photos of the area(s) of work must be submitted. For example, if you propose window replacement, then provide a photo of the window to be replaced. If you propose building an addition, then provide a photo of the area of the existing building where the addition will be appended.

ARCHAEOLOGY

Ground-Disturbing Activity in Project Area – While ground-disturbing activities are generally self-explanatory, be aware that they include activities such as construction or modification of drainage ditches and retention ponds, and temporary areas used for staging and access.

If there is *no* ground-disturbing activity in your project area, please note that in your project narrative.

If *any* ground-disturbing activity is anticipated, submit the following information:

Description of Previous Land Use – Attach a detailed descriptive narrative of current and previous land use and any known disturbances within the project area as described in project narrative.

Known or Suspected Archaeological Resources – Please note to the best of your knowledge whether the land owner/developer is aware of any archaeological resources within the project area (i.e. cemeteries/grave markers, stone walls, cellar holes, wells, foundations, dams, etc.).

TYPE AND MEANING OF DHR's RESPONSE

Insufficient information to initiate review – RPR packages will be returned to the applicant without review if, upon receipt, the DHR determines that the RPR package has not been completed sufficiently to review the project efficiently. *The purpose of this policy is to avoid excessive waste of time and money resulting from efforts to interpret or track down unclear or missing materials.*

Additional information is needed in order to complete review – Depending on the presence or types of resources in a project area, there may be multiple steps to the cultural resources consultation process. The necessity of progressing to the next step depends on the result of each preceding step. (*See the DHR website for a flowchart explaining Section 106 of the National Historic Preservation Act of 1966 at www.nh.gov/nhdhr/review/documents/106flowchart.pdf.)* Consultation for some projects may end with the RPR response, while others require continued consultation and fulfillment of additional steps in the process, such as surveys by qualified consultants and findings of effect by the lead federal agency and the DHR.

RPR comment response v. letter response – Depending on the project, the lead federal agency, and the DHR's response, you may receive either comments written on the RPR form or in a separate letter. Both types of responses may be considered the DHR's response.

Your Request for Project Review is ready to be submitted to the DHR if you've:

- ✓ Determined the entire geographical area of the proposed project and of the project's potential impacts
- ✓ Conducted a DHR file review for already-identified historic properties within or adjacent to the project area
- ✓ Conducted a field review for other resources 50 years old or older within or adjacent to the project area
- ✓ Completed the Request for Project Review Form in its entirety including all requested information and attachments
- ✓ Included a self-addressed stamped envelope

Mail the completed RPR form, a self-addressed stamped envelope and required materials to:

NH Division of Historical Resources
State Historic Preservation Office
Attention: Review & Compliance
19 Pillsbury Street
Concord, NH 03301-3570

RPRs **cannot** be accepted via facsimile or e-mail. Please provide a completed form even in cases where project information is included in a separate document, such as DES permit applications and other environmental reports and applications. Environmental documents may be submitted as attachments to the form, only if they provide an important part of the project description. The DHR has a different focus from other agencies. In order to reduce costs and be as environmentally friendly as possible please do not submit entire permit applications. The DHR will retain all items and supporting documentation submitted with a review request, including photographs and publications. Items to be kept confidential should be clearly identified. For questions regarding project review please visit www.nh.gov/nhdhr/review or contact the R&C Specialist at christina.st.louis@dcr.nh.gov or 603.271.3558.

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Please mail the completed form and required material to:

New Hampshire Division of Historical Resources
State Historic Preservation Office
Attention: Review & Compliance
19 Pillsbury Street, Concord, NH 03301-3570

| | |
|---------------|-----------------|
| DHR Use Only | |
| R&C # | _____ |
| Log In Date | ___ / ___ / ___ |
| Response Date | ___ / ___ / ___ |
| Sent Date | ___ / ___ / ___ |

Request for Project Review by the New Hampshire Division of Historical Resources

- This is a new submittal
 This is additional information relating to DHR Review & Compliance (R&C) #:

GENERAL PROJECT INFORMATION

Project Title

Project Location

City/Town

Tax Map

Lot #

NH State Plane - Feet Geographic Coordinates: Easting
(See RPR Instructions and R&C FAQs for guidance.)

Northing

Lead Federal Agency and Contact (if applicable)
(Agency providing funds, licenses, or permits)

Permit Type and Permit or Job Reference #

State Agency and Contact (if applicable)

Permit Type and Permit or Job Reference #

APPLICANT INFORMATION

Applicant Name

Mailing Address

Phone Number

City

State

Zip

Email

CONTACT PERSON TO RECEIVE RESPONSE

Name/Company

Mailing Address

Phone Number

City

State

Zip

Email

This form is updated periodically. Please download the current form at www.nh.gov/nhdhr/review. Please refer to the Request for Project Review Instructions for direction on completing this form. Submit one copy of this project review form for each project for which review is requested. Include a self-addressed stamped envelope to expedite review response. Project submissions will not be accepted via facsimile or e-mail. This form is required. Review request form must be complete for review to begin. Incomplete forms will be sent back to the applicant without comment. Please be aware that this form may only initiate consultation. For some projects, additional information will be needed to complete the Section 106 review. All items and supporting documentation submitted with a review request, including photographs and publications, will be retained by the DHR as part of its review records. Items to be kept confidential should be clearly identified. For questions regarding the DHR review process and the DHR's role in it, please visit our website at: www.nh.gov/nhdhr/review or contact the R&C Specialist at christina.st.louis@dcr.nh.gov or 603.271.3558.

PROJECTS CANNOT BE PROCESSED WITHOUT THIS INFORMATION

Project Boundaries and Description

- Attach the relevant portion of a 7.5' USGS Map (photocopied or computer-generated) **indicating the defined project boundary.** (See RPR Instructions and R&C FAQs for guidance.)
- Attach a detailed narrative description of the proposed project.
- Attach a site plan. The site plan should include the project boundaries and areas of proposed excavation.
- Attach photos of the project area (overview of project location and area adjacent to project location, and specific areas of proposed impacts and disturbances.) (Informative photo captions are requested.)
- A DHR file review must be conducted to identify properties within or adjacent to the project area. Provide file review results in **Table 1** or within project narrative description. (Blank table forms are available on the DHR website.)
File review conducted on ____ / ____ / ____.

Architecture

Are there any buildings, structures (bridges, walls, culverts, etc.) objects, districts or landscapes within the project area? Yes No

If no, skip to Archaeology section. If yes, submit all of the following information:

Approximate age(s):

- Photographs of **each** resource or streetscape located within the project area, with captions, along with a photo key. (Digital photographs are accepted. All photographs must be clear, crisp and focused.)
- If the project involves rehabilitation, demolition, additions, or alterations to existing buildings or structures, provide additional photographs showing detailed project work locations. (i.e. Detail photo of windows if window replacement is proposed.)

Archaeology

Does the proposed undertaking involve ground-disturbing activity? Yes No

If yes, submit all of the following information:

- Description of current and previous land use and disturbances.
- Available information concerning known or suspected archaeological resources within the project area (such as cellar holes, wells, foundations, dams, etc.)

Please note that for many projects an architectural and/or archaeological survey or other additional information may be needed to complete the Section 106 process.

DHR Comment/Finding Recommendation *This Space for Division of Historical Resources Use Only*

- Insufficient information to initiate review.** Additional information is needed in order to complete review.
- No Potential to cause Effects No Historic Properties Affected No Adverse Effect Adverse Effect

Comments: _____

If plans change or resources are discovered in the course of this project, you must contact the Division of Historical Resources as required by federal law and regulation.

Authorized Signature: _____ Date: _____



NHDOT MONTHLY NATURAL RESOURCE AGENCY
COORDINATION MEETING
AGENDA ITEM REQUEST FORM



PROJECT NAME: _____ PROJECT MANAGER: _____
FEDERAL NO.: _____ DOT ENV. MANAGER: _____
STATE NO.: _____ DESIGNER(S): _____
AD DATE: _____

REQUESTED MEETING DATE (click to view possible dates): _____

PROJECT DESCRIPTION

Click here to enter text.

TYPE OF REVIEW (check all that apply)

- Initial Review
- Mitigation Issues
- Other Issues:
- Review of Alternatives
- Issues during Construction
- Wetland Impacts
- Post-construction Issues

RESOURCES OR CONCERNS (check all that apply to project)

- Water Quality/Impaired Waters
- Wetlands (File# if applicable)
- Protected Shoreland (File# if applicable)
- Fisheries/Stream Crossings
- Rare Species/Natural Communities
- Conservation Land
- Coastal Zone
- NH Designated River: Name
- Floodplains/Floodways
- Essential Fish Habitat
- Contamination
- Other:

NH NATURAL HERITAGE BUREAU FILE NUMBER: _____

WHAT IS YOUR GOAL/ DESIRED OUTCOME FOR THIS REVIEW?

Click here to enter text.

THIS PROJECT WAS PREVIOUSLY REVIEWED ON THE FOLLOWING DATES:

| | | | | | |
|--|--|--|--|--|--|
| | | | | | |
|--|--|--|--|--|--|

NAMES AND E-MAIL ADDRESSES FOR ALL NON-DOT ATTENDEES:

Click here to enter text.

HOW MUCH TIME DO YOU NEED (including Q&A)? (A normal review takes approx. 15 min.) _____ minutes

MINUTES WILL BE PREPARED BY: Name

WILL YOU HAVE A POWERPOINT PRESENTATION? YES NO

LOCATION MAP ATTACHED



CATEGORICAL EXCLUSION NON-PROGRAMMATIC ENVIRONMENTAL IMPACT SUMMARY

Action/Project Name: _____
Federal Project Number: _____

State Project Number: _____

Description of Project:

Project Purpose and Need:

Alternatives Considered:

Alt. No. 1 _____

Alt. No. 2 _____

Alt. No. 3 _____

CONTACT LETTERS SENT & REPLIES RECEIVED

| AGENCY/ORGANIZATION | CONTACT | LETTER SENT | REPLY REC'V'D |
|---------------------|---------|-------------|---------------|
| | | | |
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IMPACT ASSESSMENT SUMMARY

1. Right-of-Way

Is additional ROW required? Yes No Acreage
Are improved properties acquired? Yes No Acreage
Displacement: Rental Units ___ Residential Properties Non-residential Properties

Relocation services to be provided? _____

Properties available for relocation? _____

Public Land (Federal State, or Municipal) Involvement? Yes No . (See Section 4 below.)

Acquisitions of land for hardship or protective purposes? Yes No

If, yes explain? _____

2. Traffic Patterns/Roadway Access

Expansion of a roadway by addition of through lanes? Yes No

Describe: _____

Temporary detour required? Yes No Length
Temporary bridge required? Yes No Impacts? Yes No

Describe: _____

Permanent changes to traffic patterns? Yes No

Describe: _____

Changes in access that pertain to interstate highways? Yes No
Changes in access that have wide-reaching ramifications? Yes No

Describe: _____

3. Cultural Resources (Section 106 or RSA 227-C:9)

Have you identified, and invited, parties to consult in the review pursuant to 36 CFR 800.3(f)? Yes No
Explain _____

List of Consulting Parties confirmed by FHWA _____

Historic Resources Investigated? Yes No National Register Eligible? Yes No
 Comments _____

Archaeological Resources Investigated? Yes No National Register Eligible? Yes No
 Comments _____

Findings: No Historic Properties Affected No Adverse Effect Adverse Effect

Agency Comments: _____

Review Completed: _____

Advisory Council Consultation Comments (when Adverse Effects are found): _____

Review Completed: _____

Mitigation (Describe): _____

4. Section 4(f) Resources

| | | | | |
|---|------------------------------|-----------------------------|------------------------------------|------------------------------------|
| Public Parkland Impacts? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Temporary <input type="checkbox"/> | Permanent <input type="checkbox"/> |
| Public Recreational Area Impacts? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Temporary <input type="checkbox"/> | Permanent <input type="checkbox"/> |
| Public Wildlife/Waterfowl Refuge Impacts? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Temporary <input type="checkbox"/> | Permanent <input type="checkbox"/> |
| Historic Properties Impacted? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Temporary <input type="checkbox"/> | Permanent <input type="checkbox"/> |
| LCIP Recreational Land? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Temporary <input type="checkbox"/> | Permanent <input type="checkbox"/> |

Acquisition required? Yes No Area

Comments: _____

Non-acquisition use of 4(f) property (23 CFR 771.135(p)):

| | | | | | |
|----------------------|------------------------------|-----------------------------|-------------------|------------------------------|-----------------------------|
| Noise Level Increase | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Visual Intrusion | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Access Restriction | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Vibration Impacts | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Ecological Intrusion | Yes <input type="checkbox"/> | No <input type="checkbox"/> | | | |

Programmatic 4(f) Evaluation Full 4(f) Evaluation *De minimis* 4(f) Finding

For impacts to recreational 4(f) resources, obtain a statement of significance from official with jurisdiction:

Date Requested: ____ Date Received: ____

Construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers? Yes No

| | | | |
|---|--------------|--|--|
| Non-Wetland Bank <small>(Jurisdictional land adjacent to lakes, ponds, streams and rivers)</small> | N/A | | |
| Upland Portion of the Tidal Buffer Zone <small>(Land within 100' of the highest observable tide line)</small> | N/A | | |
| Prime Wetland Buffer <small>(Land within 100' of a Prime Wetland)</small> | | | |
| | Total | | |

Estimated length of permanent impacts to banks _____ ft.
 Estimated length of permanent impacts to channel _____ ft.
 Estimated volume of impacts in Public Waters _____ cu. yd.
 If waterfront project, indicate total length of shoreline frontage _____ ft.
 If wall, riprap, beach, or similar project, indicate length of proposed shoreline impact _____ ft.

Does the project require consideration of stream crossings? Yes No

Describe: _____

Describe Mitigation: _____

Comments: _____

Coordination Required on:

| | | |
|------------------------|------------------------------|-----------------------------|
| Public Waters Access? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Shoreland Protection? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Lakes Management? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Wild and Scenic River? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| NH Designated River? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

Comments: _____

8. Coast Guard

Does the project involve work in navigable waters? Yes No
 Does the project impact a historic bridge? Yes No
 Does the project require a Coast Guard Permit? Yes No
 Does the project qualify under the Section 144(h) exemption? Yes No (if yes, include FHWA confirmation)

FHWA and/or Coast Guard Comments: _____

Comments: _____

9. Floodplains or Floodways

Does the proposed project encroach in the floodplain? Yes No Acreage _____
 Volume _____

Describe: _____

Does the proposed project encroach in the floodway? Yes No Acreage _____

Does the proposed project cause an increase in base flood elevation? Yes No Volume _____

Describe: _____

Coordination With FEMA Required? Yes No

CLOMR Required? Yes No

Comments from NH Floodplain Management Program: _____

Does the project require compensation for loss of flood storage? Yes No

Comments from US Army Corps of Engineers: _____

Comments (describe): _____

10. Water Quality

Aquifer present? Yes No

Drinking Water Source Protection Area present? Yes No

Wellhead Protection Area present? Yes No

Public Water Supply present? Yes No

Groundwater Impacts? Yes No

Surface Water Impacts? Yes No

Surface Water Impairments? Yes No If yes, list: _____

Outstanding Resource Waters present? Yes No

Water Quality Certificate Required? Yes No

Will the project disturb >100,000 sq. ft. of land (50,000 sq. ft. if within protected shoreland), or any land with a grade of 25% or greater within 50' of a surface water? Yes No

If yes, project must comply with the NHDES Alteration of Terrain regulations. Describe compliance: _____

Will the project disturb greater than 1 acre of land? Yes No

If yes, project must comply with the EPA NPDES Construction General Permit, which requires preparation of a SWPPP.

Existing Impervious Surface in project area: _____

Proposed Impervious Surface in project area: _____

Will permanent Best Management Practices be installed for treatment of stormwater runoff? Yes No

Comments: _____

11. Noise

Is project a Type I Highway Project? Yes No
 Are There Receptors Present? Yes No # of Residential __. # Of Commercial __.

| Year | Range of Noise Levels (dBA Leq) | | | | Noise Abatement Criterion Impacts | | | |
|----------------|---------------------------------|----------|----------------|----------|-----------------------------------|------|-------------------|------|
| | Residential (R) | | Commercial (C) | | # Approaching | | # At or Exceeding | |
| _____ No-Build | _____ | to _____ | _____ | to _____ | Res, | Comm | Res, | Comm |
| _____ Build | _____ | to _____ | _____ | to _____ | Res, | Comm | Res, | Comm |
| _____ No-Build | _____ | to _____ | _____ | to _____ | Res, | Comm | Res, | Comm |
| _____ Build | _____ | to _____ | _____ | to _____ | Res, | Comm | Res, | Comm |

Will completed project increase noise levels 3 dBA or more? Yes No
 15 dBA or More? Yes No

Are mitigation measures included in project? Yes No

Explain: _____

Has the municipality received a copy of the traffic noise assessment? Yes No

12. Threatened or Endangered Species/Natural Communities

State-Listed Threatened or Endangered species in project area? Yes No
 Exemplary Natural Community in project area? Yes No
 Federally-Listed Threatened or Endangered species in project area? Yes No
 Section 7 consultation necessary? Yes No
 Impacts subject to the conditions of the Bald and Golden Eagle Protection Act? Yes No

Comments from NH Natural Heritage Bureau: _____

Comments from USFWS and/or NOAA: _____

Mitigation (Describe): _____

13. Wildlife and Fisheries

Does the project impact Highest Ranked Habitat as identified by the Wildlife Action Plan? Yes No
 Does the project impact Essential Fish Habitat? Yes No
 If yes, was an EFH Assessment completed? Yes No

Does the project involve stream crossings? (Env-Wt PART 900) Yes No
 If yes, describe how the NHDES Stream Crossing Rules will be addressed: _____

Comments from State, Federal, or private agency: _____

Mitigation (Describe): _____

14. Air Quality

Is project located in ozone nonattainment area? Yes No
 Is project located in carbon monoxide nonattainment area? Yes No
 Is project included in conformity determinations? Yes No Year
 Is project exempt from conformity determination? Yes No
 Is project exempt from CO analysis? Yes No
 Exemption Code (from most recent conformity document):
 Has project changed since the conformity analysis? Yes No
 Is project exempt from NEPA requirement to consider air quality? Yes No

For Projects Requiring a Carbon Monoxide Microscale Analysis:

Maximum Predicted 1-Hour Concentrations (ppm):

| | YEAR | CONCENTRATIONS | | | Yes | No |
|--------------|--------------|----------------|--------|-------------------|--------------------------|--------------------------|
| Current Year | () | ___ | to ___ | NAAQS Violations? | <input type="checkbox"/> | <input type="checkbox"/> |
| Opening Year | () build | ___ | to ___ | NAAQS Violations? | <input type="checkbox"/> | <input type="checkbox"/> |
| Opening Year | () no-build | ___ | to ___ | NAAQS Violations? | <input type="checkbox"/> | <input type="checkbox"/> |
| Design Year | () build | ___ | to ___ | NAAQS Violations? | <input type="checkbox"/> | <input type="checkbox"/> |
| Design Year | () no-build | ___ | to ___ | NAAQS Violations? | <input type="checkbox"/> | <input type="checkbox"/> |

Comments: _____

15. Coastal Zone

Is the project located in the Coastal Zone? Yes No

Has an Intergovernmental Consistency Review been completed to determine consistency with the Coastal Zone Management Act? (16 U.S.C. 1451-1464) Yes No

Comments: _____

16. Agricultural Land

Does the project impact agricultural land? Yes No Active farmland? Yes No
 Does project area contain prime, unique, statewide or locally important farmland soils? Yes No
 Completion of Form AD-1006 or Form CPA-106 Required? Yes No

Comments: _____

17. Hazardous/Contaminated Materials

Does the project area include sites from NHDES OneStop GIS Database? Yes No
 Are there sites from NHDES OneStop GIS Database within a 1,000 foot radius of the project area? Yes No
 Does the project involve a bridge with Asbestos Containing Material? Yes No
 ISA completed and attached? Yes No Additional investigation required? Yes No
 Remediation required? Yes No

Comments: _____

18. Public Participation

Initial Contact Letters sent to local officials? Yes No Date _____
 Public Informational Meeting? Yes No Date _____
 Public Hearing Required? Yes No Date _____

Comments: _____

19. Social and Economic Impacts

Is the project consistent with local and regional land use plans? Yes No

Describe: _____

Neighborhood and community impacts? Yes No
 Churches Handicapped
 Schools Low Income Housing
 Elderly Emergency Service Facilities/Vehicles
 Minorities Environmental Justice (Executive Order 12898)

Describe _____

Impacts to local businesses? Yes No Temporary Permanent

Describe: _____

20. Environmental Justice

Does the area affected by the proposed action contain EJ (minority, elderly, limited English proficiency, and/or low-income) populations? Yes No

Are the anticipated project impacts resulting from the proposed action likely to fall disproportionately on EJ populations? Yes No

Comments: _____

21. Construction Impacts

Describe: _____

22. Invasive Species

Does the project area contain invasive species prohibited under RSA 430:55 or RSA 487:16-a? Yes No

If yes, will an Invasive Species Control and Management Plan be required during construction? Yes No

Comments: _____

23. Field Inspection Comments:

24. Coordination

| Meeting | Date | Comments |
|---------|------|----------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

25. Environmental Mitigation and/or Commitments:

Note: When appropriate, more detailed descriptions of resources and an explanation of the impact analysis should be attached to this form.

LIST OF EXHIBITS

Prepared by: _____ Date _____
 Name, Title

Reviewed by: _____ Date _____
 Project Management Section Chief
 NHDOT Bureau of Environment

Approval
 Recommended by: _____ Date _____
 Administrator
 NHDOT Bureau of Environment

ABBREVIATIONS/ACRONYMS USED IN THIS DOCUMENT

| | |
|-------|--|
| ACOE | Army Corps of Engineers |
| ACM | Asbestos Containing Materials |
| CE | Categorical Exclusion |
| CFR | Code of Federal Regulations |
| CLOMR | Conditional Letter of Map Revision |
| CMAQ | Congestions Mitigation & Air Quality |
| CO | Carbon Monoxide |
| CORD | Council on Resources and Economic Development |
| CZMA | Coastal Zone Management Act |
| dBA | Decibels Adjusted |
| EJ | Environmental Justice |
| EPA | Environmental Protection Agency |
| FEMA | Federal Emergency Management Agency |
| FHWA | Federal Highway Administration |
| ISA | Initial Site Assessment |
| LCHIP | Land & Community Heritage Investment Program |
| LCIP | Land Conservation Investment Program |
| LWCF | Land & Water Conservation Fund |
| NAAQS | National Ambient Air Quality Standards |
| NEPA | National Environmental Policy Act |
| NHDES | New Hampshire Department of Environmental Services |
| NHF&G | New Hampshire Fish and Game Department |
| NHNHB | New Hampshire Natural Heritage Bureau |
| NOAA | National Oceanic and Atmospheric Administration |
| NPDES | National Pollutant Discharge Elimination System |
| PPM | Parts Per Million |
| ROW | Right-of-Way |
| SWPPP | Storm Water Pollution Prevention Plan |
| USDOT | United States Department of Transportation |
| USFWS | United States Fish and Wildlife Service |



CATEGORICAL EXCLUSION PROGRAMMATIC DETERMINATION CHECKLIST

Action/Project Name: _____
Federal Project Number: _____

State Project Number: _____
CE Action Number: _____

Description of Project:

PROGRAMMATIC CATEGORICAL EXCLUSION (CE) CRITERIA¹

| | NO | YES |
|--|--------------------------|--------------------------|
| 1 <u>Right-of-Way</u> – Does the proposed action result in any residential or non-residential displacements, or acquisition of property rights to an extent that impairs the functions of the affected property? Does the proposed action include acquisition of land for hardship or protective purposes? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2 <u>Traffic</u> – Does the proposed action result in capacity expansion of a roadway by addition of through lanes? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 <u>Roadway Access</u> – Does the proposed action involve the construction of temporary access, or the closure of existing road, bridge, or ramps that would result in major traffic disruptions? Does the proposed action involve changes in access that pertain to interstate highways, or that have wide-reaching ramifications? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4 <u>Cultural Resources</u> – Does the proposed action have an Adverse Effect on historic properties pursuant to Section 106 of the National Historic Preservation Act? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5 <u>Section 4(f)</u> – Does the proposed action require the use of any property protected by Section 4(f) of the 1966 USDOT Act, that cannot be documented with a <i>de minimis</i> impact determination, or a programmatic Section 4(f) evaluation, other than the programmatic evaluation for the use of historic bridges? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6 <u>Section 6(f)/Conservation Properties</u> – Does the proposed action require the acquisition of any land under the protection of Section 6(f) of the Land and Water Conservation Act of 1965, or other publicly funded conservation areas? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7 <u>Wetlands/Surface Waters</u> – Does the proposed action require an Army Corps of Engineers Individual Permit pursuant to the Clean Water Act, and/or a Section 10 permit pursuant to the Rivers and Harbors Act of 1899? | <input type="checkbox"/> | <input type="checkbox"/> |
| 8 <u>US Coast Guard</u> – Does the proposed action require a US Coast Guard bridge permit? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9 <u>Floodways/Floodplains</u> – Does the proposed action encroach on the regulatory floodway of water courses or water bodies, resulting in more than a nominal increase in base flood elevation? Does the proposed action have a significant or adverse impact on floodplain values, or create a significant risk to human life or property? | <input type="checkbox"/> | <input type="checkbox"/> |
| 10 <u>Water Quality</u> – Does the proposed action have more than a negligible impact on water quality? | <input type="checkbox"/> | <input type="checkbox"/> |
| 11 <u>Wild and Scenic Rivers</u> – Does the proposed action require construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers? | <input type="checkbox"/> | <input type="checkbox"/> |
| 12 <u>Noise</u> – Is the proposed action a Type I highway project? | <input type="checkbox"/> | <input type="checkbox"/> |
| 13 <u>Endangered Species</u> – Is the proposed action likely to adversely affect species or critical habitat of species protected by the Endangered Species Act, or result in impacts subject to the conditions of the Bald and Golden Eagle Protection Act? | <input type="checkbox"/> | <input type="checkbox"/> |
| 14 <u>Air Quality</u> – Is the project inconsistent with the State Implementation Plan in air quality non-attainment areas, or the Statewide Transportation Improvement Program, or, in applicable urbanized areas the Transportation Improvement Program? | <input type="checkbox"/> | <input type="checkbox"/> |
| 15 <u>CZMA</u> – Is the project inconsistent with the State's Coastal Zone Management Plan? | <input type="checkbox"/> | <input type="checkbox"/> |
| 16 <u>Other</u> – Are there any other major issues of concern that would benefit from a more detailed discussion? | <input type="checkbox"/> | <input type="checkbox"/> |

- ❖ If the answer to all of the above questions is **NO**, the proposed action **qualifies for classification as a Programmatic Categorical Exclusion**.
- ❖ If the answer to any of the above questions is **YES**, the proposed action **does not qualify for classification as a Programmatic Categorical Exclusion**.

¹ See *Detailed Instructions* for further explanations of the questions and documentation requirements.

DETAILED DISCUSSION OF PROGRAMMATIC CE CRITERIA

Provide a brief narrative response as to how your project qualifies for a Programmatic Categorical Exclusion.

1. Right-of-Way – Does the proposed action result in any residential or non-residential displacements, or acquisition of property rights to an extent that impairs the functions of the affected property? Does the proposed action include acquisition of land for hardship or protective purposes?
2. Traffic – Does the proposed action result in capacity expansion of a roadway by addition of through lanes?
3. Roadway Access – Does the proposed action involve the construction of temporary access, or the closure of existing road, bridge, or ramps that would result in major traffic disruptions? Does the proposed action involve changes in access that pertain to interstate highways, or that have wide-reaching ramifications?
4. Cultural Resources – Does the proposed action have an Adverse Effect on historic properties pursuant to Section 106 of the National Historic Preservation Act?
5. Section 4(f) – Does the proposed action require the use of any property protected by Section 4(f) of the 1966 USDOT Act, that cannot be documented with a *de minimis* impact determination, or a programmatic Section 4(f) evaluation, other than the programmatic evaluation for the use of historic bridges?
6. Section 6(f)/Conservation Properties – Does the proposed action require the acquisition of any land under the protection of Section 6(f) of the Land and Water Conservation Act of 1965, or other publicly funded conservation areas?
7. Wetlands/Surface Waters – Does the proposed action require an Army Corps of Engineers Individual Permit pursuant to the Clean Water Act, and/or a Section 10 permit pursuant to the Rivers and Harbors Act of 1899?
8. US Coast Guard – Does the proposed action require a US Coast Guard bridge permit?
9. Floodways/Floodplains – Does the proposed action encroach on the regulatory floodway of water courses or water bodies, resulting in more than a nominal increase in base flood elevation? Does the proposed action have a significant or adverse impact on floodplain values, or create a significant risk to human life or property?
10. Water Quality – Does the proposed action have more than a negligible impact on water quality?
11. Wild and Scenic Rivers – Does the proposed action require construction in, across, or adjacent to a river designated as a component of, or proposed for inclusion in, the National System of Wild and Scenic Rivers?
12. Noise – Is the proposed action a Type I highway project?
13. Endangered Species – Is the proposed action likely to adversely affect species or critical habitat of species protected by the Endangered Species Act, or result in impacts subject to the conditions of the Bald and Golden Eagle Protection Act?
14. Air Quality – Is the project inconsistent with the State Implementation Plan in air quality non-attainment areas, or the Statewide Transportation Improvement Program, or, in applicable urbanized areas the Transportation Improvement Program?
15. CZMA – Is the project inconsistent with the State’s Coastal Zone Management Plan?
16. Other - Are there any other major issues of concern that would benefit from a more detailed discussion?

ENVIRONMENTAL COMMITMENTS

(List each environmental commitment made for the project, indicating the entity responsible for ensuring successful implementation.)

CLASSIFICATION DETERMINATION

- The proposed action qualifies for a Programmatic Categorical Exclusion.

- The proposed action does not qualify for a Programmatic Categorical Exclusion.

Prepared by: _____
Name, Title Date

Approval
Recommended
By: _____
Project Management Section Chief Date
NHDOT Bureau of Environment

Approved by: _____
Administrator Date
NHDOT Bureau of Environment

Note: Post-hearing follow-up actions, if any, are indicated on the final page of this document.

LIST OF EXHIBITS

(Attach, and list below, documentation/correspondence, as appropriate, that demonstrates how you were able to check each 'NO' box identified on Page 1, in accordance with Section IV(A)(1)(b) of the Programmatic Agreement. Attach such exhibits as maps, plans, letters, figures, tables and permits.)

ACTIVITIES THAT QUALIFY FOR PROGRAMMATIC CATEGORICAL EXCLUSION

| CE Action Number | Activity Description (See Appendix A of the Programmatic Agreement for more information) |
|-------------------------|---|
| 1 | Activities which do not lead directly to construction. |
| 2 | Approval of utility installations along or across a transportation facility. |
| 3 | Construction of bicycle and pedestrian lanes, paths, and facilities. |
| 4 | Activities included in the State's "highway safety plan" under 23 U.S.C. 402. |
| 5 | Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/ or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA. |
| 6 | The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction. |
| 7 | Landscaping. |
| 8 | Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur. |
| 9 | Emergency repairs under 23 U.S.C. 125. |
| 10 | Acquisition of scenic easements. |
| 11 | Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation. |
| 12 | Improvements to existing rest areas and truck weigh stations. |
| 13 | Ridesharing activities. |
| 14 | Bus and rail car rehabilitation. |
| 15 | Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons. |
| 16 | Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand. |
| 17 | The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE. |
| 18 | Track and railbed maintenance and improvements when carried out within the existing right-of-way. |
| 19 | Purchase and installation of operating or maintenance equipment located within the transit facility, with no significant impacts off site. |
| 20 | Promulgation of rules, regulations, and directives. |
| 21 | Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system. |
| 22 | Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. |
| 23 | Projects of Limited Federal Assistance pursuant to 23 CFR 771.117(c)(23). Limited Federal Assistance is defined as any project that (A) receives less than \$5,000,000 in Federal funds or (B) has a total estimated cost of less than \$30,000,000, with Federal funds comprising less than 15 percent of the total estimated cost of the project. |
| 24 | Localized geotechnical and other investigation for preliminary design and for environmental analyses and permitting purposes. |
| 25 | Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation |
| 26 | Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes). |
| 27 | Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting. |
| 28 | Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at grade railroad crossings. |
| 29 | Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE. |
| 30 | Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. |
| 31 | Transportation corridor fringe parking facilities. |
| 32 | Construction of new truck weigh stations or rest areas. |
| 33 | Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts |
| 34 | Approvals for changes in access control. |
| 35 | Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic. |
| 36 | Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users. |
| 37 | Construction of bus transfer facilities when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic |
| 38 | Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community. |



STOP HERE IF YOUR PROJECT QUALIFIES FOR A PROGRAMMATIC CATEGORICAL EXCLUSION AND DOES NOT REQUIRE A PUBLIC HEARING.

**FOLLOW-UP ACTION FOR PROGRAMMATIC CATEGORICAL EXCLUSIONS
FOR PROJECTS REQUIRING A PUBLIC HEARING**

Action/Project Name: _____
Federal Project Number: _____

State Project Number: _____

Was a Public Hearing held? Yes No (if no, you do not need to complete this page)

As a result of the Public Hearing, have changes to the proposed action, if any, resulted in impacts/effects that do not meet the Programmatic Categorical Exclusion criteria? Yes No

If the answer to the above question is **YES**, the proposed action **no longer qualifies for classification as a Programmatic Categorical Exclusion**. In such cases, if the impact(s)/effect(s) leading to the disqualification are not significant, the proposed action may be reprocessed as an Individual CE, requiring FHWA's concurrence.

If the answer to the above question is **NO**, the proposed action continues to **qualify for classification as a Programmatic Categorical Exclusion**.

POST - HEARING CLASSIFICATION DETERMINATION

The proposed action continues to qualify as a Programmatic Categorical Exclusion.

The proposed action no longer qualifies as a Programmatic Categorical Exclusion.

If it no longer qualifies, list reasons: _____

Prepared by: _____
Name, Title

Date

Approval
Recommended
By: _____
Project Management Section Chief
NHDOT Bureau of Environment

Date

Approved by: _____
Administrator
NHDOT Bureau of Environment

Date

Completing the Checklist

First Page:

Project Name and Tracking Numbers Section

Action/Project Name: Name the municipality where the project is located.

State Project Number: Provide the 5-digit number assigned by NHDOT. It usually begins with a "1"

Federal Project Number: Provide the number assigned by the Federal Highway Administration (FHWA). It usually begins with "X-A000"

CE Action Number: This number (from Page 15 of the Checklist) identifies which regulation allows the project to be classified as a Programmatic CE. Most TE, CMAQ and SRTS projects qualify under CE Action Numbers 1, 3, 13, 21, 32 or 33.

Description of Project

This section identifies and describes the proposed project. This includes the location, beginning and end points, and design aspects. This summarizes the scope of the action at the time the determination is made. Attach a project location map to the Checklist. If available, attach the engineering study.

Programmatic CE Criteria

The sponsor should gather supporting documentation, as appropriate, to address questions in this section. Respond to each question by checking either the **YES** or **NO** boxes. Although checking a single **YES**

box will disqualify the action for processing as a Programmatic CE, the sponsor must check answer all questions. This will provide a full record for future reference, in case the project scope is subsequently revised or the environmental parameters change.

Documentation (letters, memos, forms, etc.), as appropriate, should be attached.

The following addresses checklist issues, beginning on Page 6 of the Checklist:

ENVIRONMENTAL IMPACT SUMMARY

1. Air Quality

Is the proposal a non-CMAQ project requiring a conformity determination?

Does the proposed action require an 8-hour CO analysis?

Actions must meet a two-part air-quality test. To qualify for a Programmatic CE, the proposal must be exempt from the requirement for conformity determination. An action is exempt if it is a type of project listed in Table 2 in the final Transportation Conformity rules [40 CFR 93.126](#). It is also exempt:

1) If it is in an attainment area but is not considered a "Regionally Significant Project" under [40 CFR 93.101](#);

2) under rules adopted by the New Hampshire Department of Environmental Services in accordance with the interagency consultation provisions required by [40 CFR 93.105](#).

Such projects are not expected to substantially affect air quality or violate the National Ambient Air Quality Standards (NAAQS).

Projects similar to the types listed in Table 3 of the final Transportation Conformity rules ([40 CFR 93.127](#)) are exempt from regional emissions analysis requirements. However, their local effects on carbon monoxide (CO) must be considered. A 1-hour microscale analysis is typically performed for these projects. The results of the 1-hour analysis will determine if an 8-hour microscale analysis is required, which disqualifies the project for Programmatic CE processing.

Sponsors can contact the Bureau of Environment's air quality analyst to determine the proper response to the air quality questions.

Contact: Jon Evans
Environmental Manager
NHDOT Bureau of Environment
(603) 271-3226
jevans@dot.state.nh.us

2. Historic/Archeological Resources

Does the project adversely affect properties listed or eligible for listing in the National Register of Historic Places?

Section 106 of the 1966 National Historic Preservation Act (NHPA) and the implementing regulations [36 CFR 800](#) of the Advisory Council on Historic Preservation (ACHP) require federal agencies to take into account the effects of federally funded or authorized undertakings on properties eligible for or listed in the [National Register](#) (NRHP).

This process is initiated by filling out a Request for Project Review (RPR) form and submitting it to the State Historic Preservation Office (SHPO), and the NHDOT Cultural Resource Program Manager. The RPR form is available at: http://www.nh.gov/nhdhr/review/review_forms.htm.

These agencies, in cooperation with the SHPO, must make a "Determination of Effect" on all projects that use federal funds or require federal licenses, permits, or approvals.

A determination of "No Historic Properties Affected" or "No Adverse Effect" qualifies the action for Programmatic CE approval. See **Appendix I** for a sample "municipal effects memorandum." Contact the SHPO to determine the proper response to the cultural resources question. In addition, the Bureau of Environment's monthly Cultural Resource Agency Coordination Meetings can be utilized for help in assessing impacts to cultural resources. For information on this meeting venue see **Step 3**.

Contact Edna Feighner
Review and Compliance Coordinator
NH Division of Historical Resources
19 Pillsbury Street, Concord, NH 03301-3570
(603) 271-3483, at

3. Threatened or Endangered Species

Does the proposed project affect habitat or species protected by the Endangered Species act, as determined through consultation with USF&WS, NHF&G and/or NHNHB?

See **Step 2**, the on-line regulatory review section, for initial consultation requirements to determine if species and/or critical habitat of species protected by the Endangered Species Act, the [NH Endangered Species Conservation Act](#) of 1979, and the State Native Plant Protection Act of 1987 are present within the action area.

If such species and/or habitat are present, the sponsor should follow up with the appropriate agencies to determine the effect of the project. This may involve field investigations by qualified personnel and identification of special precautions, seasonal restrictions on work activities, and/or mitigation measures. If it is concluded that the action will not impact these resources, the Programmatic CE will apply.

Contact Melissa Coppola
Environmental Information Specialist

DRED - Natural Heritage Bureau
PO Box 1856, Concord, NH 03302-1856
(603) 271-2214

Contact Maria Tur
US Fish and Wildlife Service
70 Commercial Street, Suite 300, Concord, NH
03301-5087
(603) 223-2541

If so directed by the NHHNB review, the NHF&G contact is:

Contact Kim Tuttle
Wildlife Biologist
NH Fish and Game Department
2 Hazen Drive, Concord NH 03301
(603) 271-2461

4. Floodways

Does the proposed action encroach on the regulatory floodway of water courses or water bodies?

The project sponsor should determine if an action is located in a regulatory floodway by reviewing the [National Flood Insurance Program](#) (NFIP) maps (Flood Insurance Rate Map [FIRM], Flood Boundary & Floodway Map, or Flood Hazard Boundary Map, as available). If so, a

hydraulic analysis may be necessary to determine if flood levels will rise or fall. The required level of analysis should be determined through consultation with the engineering staff and confirmed by the [NH Office of Energy and Planning](#) (NHOEP) and NH Bureau of Emergency Management (NHBEM). If the analysis concludes there will be no rise in the flood elevation greater than one foot over the established 100-year flood elevation (1% annual chance storm or Q100) floodplain elevation, as confirmed by NHBEM or the Federal Emergency Management Agency (FEMA), the action does not *encroach* and qualifies for Programmatic CE approval. Initial correspondence under **Step 2** should be sent to the Water Resources Planner at the NHBEM.

Contact Jennifer Gilbert
Water Resources Planner
National Flood Insurance Program
NH Office of Energy and Planning
57 Regional Drive, Suite 3,
Concord, NH 03301-8519
(603) 271-2155

5. Noise

Is the proposed action a Type I highway project?

Federal regulations ([23 CFR 772](#)) and [NHDOT policy](#) require the consideration of abatement measures where a Type I project increases traffic noise. This includes construction in a new location or change

to an existing highway that substantially change either the horizontal or vertical alignment or increases the number of lanes. Type I projects do not qualify for a Programmatic CE. The project sponsor should contact the BOE noise analyst to determine the proper response to the noise questions.

Contact Jon Evans
Environmental Manager
NHDOT Bureau of Environment
(603) 271-3226
JEvans@dot.state.nh.us

6. Right-of-Way

6a. *Right-of-Way* - Does the proposed action require the acquisition of residences or businesses?

6b. *Right-of-Way* - Does the proposed action require fee simple acquisition or permanent easements to an extent that impairs the functions of the affected properties?

To qualify for a Programmatic CE, projects involving right-of way must meet a two-part test:

First, the action must not require the acquisition of residences or businesses. Second, if the action requires fee simple acquisition or permanent easements that will impair the function of the property, the

Programmatic CE will not apply. These right-of-way "tests" are independent of any cultural resource, Section 4(f), or Section 6(f) impact determinations required for Programmatic CE approval.

Note: As appropriate, an analysis of the effects of property acquisition should be completed and attached to the checklist. In addition, a copy of the Right-of-Way certificate should also be attached, if available at the time of completing the CE.

7 Section 4(f)

Does the proposed action have more than a minimal effect on any property protected by Section 4(f) of the 1966 USDOT Act, other than that for which a "de minimis" (minimal) impact finding has been made?

This section of the law does not allow "the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that there is no feasible and prudent alternative to the use of land from the property and the action includes all possible planning to minimize harm to the property resulting from such use." "Use" is defined as a permanent easement, fee acquisition, or "constructive use" of a property. "Constructive use" occurs when the proximity impacts of the action on the property, without acquisition of land, are so great that the purposes for which the 4(f) property exists are substantially diminished. Any use of

4(f) property will disqualify the action for Programmatic CE processing, unless a *de minimis* impact finding has been made.

Provisions under Section 6009 in the [Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users](#) (SAFETEA-LU), the latest highway bill reauthorization, provide for a finding of *de minimis* impact on a 4(f) property if:

- A. For historic properties, the transportation program or project will have no adverse effect on the historic site; or there will be no historic properties affected by the transportation program or project; or

- B. For parks, recreation areas, and wildlife or waterfowl refuges, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and the finding has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.

FHWA determines whether 4(f) applies to an action. For more information on Section 4(f) and whether it applies to a proposed action the project sponsor should contact either the project

development section chief at the NHDOT Bureau of Environment (see contact information for Charles Hood under **Step 3** above).

Contact Charles H. Hood, Administrator
NHDOT Bureau of Environment
271-3226

8. Section 6(f)

Does the proposed action require the use of any property protected by Section 6(f) of the Land and Water Conservation Fund Act?

The Land and Water Conservation Fund Act (LWCFA) of 1965 provides for the preservation and development of quality outdoor recreation resources. Section 6(f) states that no property acquired under the act shall be converted to non-recreational uses without the approval of the Secretary of Interior. Such conversion precludes Programmatic CE approval.

New Hampshire administers the state's Section 6(f) lands through the NH Department of Resources and Economic Development (DRED), [Division of Parks and Recreation](#). The sponsor should contact the DRED state liaison officer to determine if such a project involves 6(f) lands and whether or not the proposed use of such lands constitutes a conversion.

Contact Jane Carey

Program Assistant
NH Department of Resources and Economic
Development
172 Pembroke Road, Concord, NH 03301

9. Water Quality

Does the proposed action have more than a negligible effect on surface waters?

Projects can affect both surface and underground water quality. Impacts can be temporary (construction phase) and/or longer-term, and they can vary in magnitude.

Typically, temporary effects of small projects of short duration can be minimized with proper erosion and sedimentation controls and storm-water management measures. These impacts should not result in substantial impairment to water quality. Such actions will normally qualify for Programmatic CE approval.

However, if the receiving waters are sensitive resources (e.g. Class A waters, as designated by the [NHDES Water Division](#), public water supplies, etc.), the potential for temporary and/or long-term impacts is greater and the project will not qualify for a Programmatic CE. Similarly, larger projects that affect sensitive resources or have the potential for sustained or cumulative impacts resulting from

protracted construction operations or long-term, high-volume runoff will not be eligible for Programmatic CE approval.

The project sponsor should consult with NHDES, as necessary, to determine if sensitive water resources are present and to determine the magnitude of potential impacts. See contact information for Gino Infascelli below under the Wetlands section.

10. Wetlands

Wetlands - Does the proposed action require an Army Corps of Engineers Individual Permit?

Impacts to wetlands (i.e. dredge, fill, drain, etc.) require a permit from the NH Department of Environmental Services, [Wetlands Bureau](#) (NHWB), and/or the Army Corps of Engineers (ACOE), in accordance with RSA 482-A and/or Section 404 of the Clean Water Act. To qualify for Programmatic CE approval, the action must not require an Individual permit from the ACOE. If the action meets the criteria for the ACOE's [State Programmatic General Permit](#) (SPGP), or is not in the ACOE's jurisdiction, it may qualify for Programmatic CE approval.

Contact the DES Wetlands Bureau to determine the potential for impacts to jurisdictional areas. In addition, the Bureau of Environment's monthly Natural Resource Agency Coordination Meetings can be utilized for help in determining permit thresholds and mitigation requirements. For information on this meeting venue see **Step 3**.

Contact Gino Infascelli
Public Works Permitting Officer
NHDES Wetlands Bureau
29 Hazen Drive
PO Box 95, Concord, NH 03302-0095
(603) 271-2147

11. Other

Do any of the above conclusions benefit from more detailed explanation or are there other issues of concern?

Other issues can disqualify projects from Programmatic CE approval. Such issues may include: substantial public opposition or controversy, excessive hazardous or contaminated materials involvement, impacts to [Wild & Scenic Rivers](#) or [NH Designated Rivers](#), incompatibility with scenic roads, inconsistency with the [Coastal Zone Management \(CZM\) Program](#), unacceptable impacts to resources under the protection of the [Lakes Management Program](#) and/or [Comprehensive Shoreland Protection Act \(CSPA\)](#), etc.

To determine if additional special conservation lands exist in the project area and to determine if they will be impacted by a proposed action, the project sponsor should contact the Stewardship Specialist at the [NH Conservation Land Stewardship \(CLS\) Program](#) and the

Executive Director at the [Land and Community Heritage Investment Program](#) (LCHIP).

The consultant should determine if these or other issues exist and whether or not the Programmatic CE is applicable. Supporting documentation should be attached to *The Checklist*, as appropriate.

The project sponsor should consult with appropriate agencies, as necessary, to identify other issues and the magnitude of concern. In addition, the Bureau of Environment's monthly Natural Resource Agency Coordination Meetings can be utilized for help in determining permit thresholds and mitigation requirements. For information on this meeting venue see **Step 3**.

Contact Steve Walker
Stewardship Specialist
Conservation Land Stewardship Program
NH Office of Energy and Planning
57 Regional Drive
Concord, NH 03301

Contact Aaron Ferraro
Natural Resource Specialist
Land and Community Heritage Investment Program
10 Dixon Avenue
Concord, NH 03301
(603) 224-4113

In addition, supplemental written information, which provides a narrative summary of the decisions driving the **NO** responses in *The Checklist* is requested and will also expedite the review. See **Appendix G** for a sample.

Part IV: Environmental Commitments

During the NEPA process, commitments are often made to avoid, minimize, or mitigate project impacts. Commitments result from public comment or through the requirements of, or agreements with, resource agencies. It is important that these commitments be carried forward through project design, construction, and maintenance and operation. Environmental commitments for actions processed as Programmatic CEs will be recorded on *The Checklist*, for future reference. The NEPA approval is contingent upon successful implementation of each and every environmental commitment.

Part V: Classification Determination

Upon completion of **Part III** and the interdisciplinary review process, the project sponsor indicates on the checklist a recommendation of whether or not the action qualifies for a Programmatic CE, by marking the appropriate checkbox and signing the checklist. The checklist should then be forwarded to the appropriate project manager at the NHDOT for review. If it is determined the project does *not* qualify as a Programmatic CE, the project sponsor will be notified and the

project will then need to be addressed as an individual CE or other appropriate level of environmental documentation. *Note that some Project Managers allow direct coordination with the Bureau of Environment. Please discuss with your NHDOT Project Manager.* See **Step 5** for projects not qualifying as a Programmatic CE, either by not fitting into a specific CE Action, or by necessitating a **YES** response to any question in **Part III**. If it is agreed that the project qualifies as a Programmatic CE, the project sponsor will be notified of concurrence and the documentation will be recorded and placed in the classification file.

Part VI: Classification Follow-up Action

If the project requires a public hearing, any decisions made as a result of the hearing should be reviewed to determine if the project would change in such a way as to disqualify it from Programmatic CE classification. Post-hearing reviews are documented on Page 3 of the Programmatic CE form.

Likewise, changes made during final design may also disqualify a project from Programmatic CE classification. Under such conditions, the next appropriate level of environmental documentation must be completed (Individual CE).

Step 5: Categorical Exclusions Non-Programmatic Environmental Impact

Summary

If a project does not qualify for classification as a Programmatic CE, either by not fitting into a specific CE Action, or by necessitating a **YES** response to any question in **Part III**, a project sponsor is required to complete a "*Categorical Exclusion Non-Programmatic Impact Summary*," or other Individual CE documentation. While the questions in this longer form are designed to address the same issues as the checkboxes under **Step 4, Part III**, more detailed information is required.

To streamline this full process, a project sponsor can check a "**NOT APPLICABLE**" box when there will be no involvement with the specific resource/issue. In the event that a project sponsor needs to complete this longer form, it is recommended that the NHDOT Bureau of Environment be contacted for guidance. See contact information for Charles Hood under **Step 3** above.

**Cultural Resources Effect Memo
(Municipally Managed Projects)**

Project Town: **XXXX**

Date: **XXXX**

State No.: **XXXXX**

Federal No. (as applicable): **XXXX**

Pursuant to meetings on **XXXX**, and for the purpose of compliance with the regulations of National Historic Preservation Act and the Advisory Council on Historic Preservation's *procedures for the Protection of Historic Properties* (36 CFR 800), the NH Division of Historical Resources and, when applicable, the NH Division of the Federal Highway Administration or the US Army Corps of Engineers have coordinated the identification and evaluation of cultural resources relative to (project description):

XXXX

Based on a review of the project, as presented on this date, it has been determined that:

No Historic or Archaeological Properties will be Affected

There will be No Adverse Effect on Historic or Archaeological Properties

Describe any outstanding commitments: _____

There will be an Adverse Effect on Historic or Archaeological Properties or Resources

describe the effect, measures to minimize harm and proposed mitigation _____
_____ (attach pages as Necessary).

In accordance with the Advisory Council's regulations, we will continue to consult, as appropriate, as this project proceeds.

The NH State Historic Preservation Officer concurs with these findings: _____
NH Division of Historical Resources

There Will Be: No 4(f) ; Programmatic 4(f) ; Full 4 (f) ; or

A finding of de minimis 4(f) impact as stated: In addition, with NHDHR concurrence of no adverse effect for the above undertaking, and in accordance with Section 6009(a) of the 2005 SAFETEA-LU transportation program reauthorization, FHWA intends to, and by signature below, does make a finding of *de minimis* impact. NHDHR's signature below represents concurrence with both the no adverse effect determination and the de minimis findings. Parties to the Section 106 process have been consulted and their concerns have been taken into account. Therefore, the requirements of Section 4(f) have been satisfied.

Federal Highway Administration

Project Manager

US Army Corps of Engineers

Cc: FHWA, NHDHR, ACOE (⇐ as applicable ↑)

ENVIRONMENTAL CONTACTS

(Applicable Programmatic Categorical Exclusion Criteria are noted in parentheses)

AIR QUALITY ⁽¹⁴⁾

Prior to contacting the Air & Noise Program Manager, please consider if your project requires analysis. Coordination should not be made via initial contact letter but on an as needed basis.

Jon Evans
Air & Noise Program Manager
NHDOT Bureau of Environment
(603) 271-3226
jevans@dot.state.nh.us

CULTURAL RESOURCES and SECTION 106 ⁽⁴⁾

Laura Black
Special Projects & Compliance Specialist
NH Division of Historical Resources
19 Pillsbury Street
Concord, NH 03301-3570
(603) 271-3483

Jillian Edelmann
Cultural Resource Program Manager
NHDOT Bureau of Environment
7 Hazen Drive
Concord, NH 03302
(603) 271-3226
jedelmann@dot.state.nh.us

ENDANGERED SPECIES ⁽¹³⁾

Prior to contacting anyone listed below, the following websites should first be consulted to determine if what, if any, follow-up coordination is necessary:

NH Natural Heritage Bureau DataCheck Tool: https://www2.des.state.nh.us/nhb_datacheck/default.aspx

USFWS Online Consultation: <http://www.fws.gov/newengland/EndangeredSpec-Consultation.htm>

Amy Lamb
Environmental Info. Specialist
NH Natural Heritage Bureau
Dept of Res & Econ Development
PO Box 1856
Concord, NH 03302-1856
(603) 271-2215 ext 323

Maria Tur
US Fish and Wildlife Service
New England Field Office
70 Commercial Street, Suite 300
Concord, NH 03301-5087
(603) 223-2541 x12
Maria_Tur@fws.gov

Kim Tuttle
Wildlife Biologist
NH Fish and Game Department
2 Hazen Drive
Concord, NH 03301
(603) 271-6544
kim.tuttle@wildlife.nh.gov

ESSENTIAL FISH HABITAT

Contact the National Marine Fisheries Service only if the project will involve work within tidal waters or waters designated as Essential Fish Habitat (EFH). EFH for Atlantic Salmon is listed in Appendix C of the US Army Corps NH Programmatic General Permit: <http://www.nae.usace.army.mil/Portals/74/docs/regulatory/StateGeneralPermits/NHGP4Apr2013.pdf>. EFH for all other species can be found here: <http://www.habitat.noaa.gov/protection/efh/efhmapper/index.html>

EFH

Mike Johnson
Marine Habitat Resource Specialist
National Marine Fisheries Service
Habitat Conservation Division
Northeast Regional Office
One Blackburn Drive
Gloucester, MA 01930
(978) 281-9130

Tidal Waters for ESA

David Bean
Fisheries Biologist
NOAA'S National Marine Fisheries Service
Maine Field Station
17 Godfrey Drive
Orono, Maine 04473
(207) 866-4172
David.Bean@noaa.gov

mike.r.johnson@noaa.gov

NHDOT RESOURCE AGENCY COORDINATION MEETINGS

Natural Resource Agency Meeting
Matt Urban
Wetlands Program Manager
NHDOT Bureau of Environment
(603) 271-3226
murban@dot.state.nh.us

Cultural Resource Agency Meeting
Jillian Edelmann
Cultural Resource Program Manager
NHDOT Bureau of Environment
(603) 271-3226
jedelmann@dot.state.nh.us

FLOODWAYS/FLOODPLAINS ⁽⁹⁾

Jennifer Gilbert
Floodplain Management Coordinator
National Flood Insurance Program
NH Office of Energy and Planning
107 Pleasant Street, Johnson Hall
Concord, NH 03301
jennifer.gilbert@nh.gov

NOISE ⁽¹²⁾

Prior to contacting the Air & Noise Program Manager, please consider if your project requires analysis. Coordination should not be made via initial contact letter but on an as needed basis.

Jon Evans
Air & Noise Program Manager
NHDOT Bureau of Environment
7 Hazen Drive
Concord, NH 03302
(603) 271-3226
jevans@dot.state.nh.us

RIGHT-OF-WAY ⁽¹⁾

NHDOT Project Manager
Bureau of Planning & Community Assistance

SECTION 6(f)/ NH CONSERVATION LANDS ⁽⁶⁾

NH GRANIT maintains a GIS layer of conservation lands in the state, which can be viewed here: <http://granitview.unh.edu/>. Coordination with the contacts below should also be carried out.

Steve Walker
Conservation Land Stewardship
Program
NH Office of Energy and Planning
107 Pleasant Street, Johnson Hall
Concord, NH 03301
steve.walker@nh.gov
(email is preferred)

Dijit Taylor
Executive Director
LCHIP
dtaylor@lchip.org
(email is preferred)

Bill Gegas
LWCF Program Specialist
NH Division of Parks and Recreation
172 Pembroke Road, PO Box 1856
Concord, NH 03302
(603) 271-3556
bill.gegas@dred.state.nh.us

SECTION 4(f) ⁽⁵⁾

Note: FHWA should be contacted only if publicly-owned parks, recreation areas, and wildlife and waterfowl refuges have been identified in the project area. Section 4(f) concerns with historic resources should be addressed through the Cultural Resource Agency Coordination Meeting.

Jamison S. Sikora
Environmental Program Manager
Federal Highway Administration, NH Division
James C. Cleveland Federal Building
53 Pleasant Street, Suite 2200
Concord, NH 03301
(603) 410-4870
Jamie.sikora@dot.gov

WATER QUALITY ⁽¹⁰⁾

Prior to contacting the Water Quality Program Manager, please consider if your project requires analysis. Coordination should not be made via initial contact letter but on an as needed basis.

NHDES OneStop Web GIS: <http://www2.des.state.nh.us/gis/onestop/>

Mark Hemmerlein
Water Quality Program Manager
NHDOT Bureau of Environment
7 Hazen Drive
Concord, NH 03302
(603) 271-3226
mhemmerlein@dot.state.nh.us

WETLANDS ⁽⁷⁾

NHDES and/or the US Army Corps of Engineers should not receive an initial contact letter and should only be contacted during the preparation of wetland impact plans/permit application should questions regarding jurisdictional impacts or the permitting process arise.

Gino Infascelli
Public Works Permitting Officer
NHDES Wetlands Bureau
29 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Gino.Infascelli@des.nh.gov

Michael Hicks
Project Manager
US Army Corps of Engineers
Regulatory Branch
696 Virginia Road
Concord, MA 01742-2751
michael.c.hicks@usace.army.mil

Appendix 11

WAIVER VALUATION PROCESS FOR LPA PROJECTS

Checklist for Determination if Acquisition is “Uncomplicated”

Project Name: _____

Sponsor: _____

State Number: _____

Sponsor Representative: _____

Federal Number: _____

Date Completed: _____

Map/Lot Number: _____

Property Address: _____

In Order to determine whether or not an acquisition is “uncomplicated” the following questions must be answered

If one of these questions is answered “yes” the acquisition could still be considered “uncomplicated”. Multiple “yes” answers would indicate that the acquisition couldn’t be considered to be uncomplicated. A single “yes” answer would need to be further analyzed to decide whether the indicated situation causes the acquisition to become complicated and thus require the acquisition to be appraised. [The project sponsor will need to submit the additional analysis required with the completed checklist.](#)

This list of questions is not intended to be all-inclusive. The key to use this method of determining compensation is that impacts of the acquisition are minimal or can be easily measured by their cost to cure.

- Is the acquisition over \$10,000?
- Is the acquisition anything more than a strip acquisition?
- Are buildings, wells, signs, etc. affected?
- Is the acquisition severing any buildings from remainder?
- Are trees, shrubs, or other landscaping involved?
- Is the proposed right of way line closer to any building after the acquisition to require analysis of possible proximity damages?
- Is access to the property changed or limited?
- Is current highest and best use of property going to be changed as a result of the acquisition?
- Does a significant amount of the total compensation involve items other than land value?
- Is there reason to believe this parcel will proceed to Condemnation?
- Is more land than actually needed being acquired?
- Are there any other considerations that complicate the valuing of this parcel?

The **Waiver Valuation Process** estimates fair and just compensation for the property owner. This procedure can be used for *minor, uncomplicated acquisitions* where compensation to the property owner does not exceed **\$10,000**. This procedure cannot be used when either severance to the remainder or condemnation is anticipated.

Please note that simply because the compensation value is less than **\$10,000** it does not mean that a compensation estimate may be used rather than an appraisal.

Qualified staff or consultants may prepare compensation estimates. To be qualified to prepare compensation estimates the preparer must be generally knowledgeable of land values, particularly types similar to the property being acquired. Compensation estimates should be based on current land values in the market area and should be applied consistently to all parcels in a construction project.

I have reviewed the plans and easement documents and concur with the city/town ROW plans. _____
NHDOT Project Manager

NHDOT Bureau of ROW Approval: _____

RIGHT-OF-WAY CERTIFICATE

For

Local Public Agency (LPA) Projects

Project Name: _____

State Project No. _____

Federal Project No: _____

All work within existing rights-of-way and no additional acquisitions were necessary for this project; or

All acquisitions and easements acquired as part of this project are listed below:

Total number of parcels impacted: _____

Number of acquisitions acquired by donation: _____

Number of acquisitions acquired by permanent/temporary easement: _____

Number of Acquisitions acquired by fee: _____

Number of Acquisitions acquired via condemnation: _____

Total cost of property rights acquired: \$_____

Were relocation claims paid as part of this project? YES NO

If yes, complete relocation information on Page 2.

The City/Town of _____, State of New Hampshire, hereby certifies the right to occupy and use all the right-of-way necessary for the above-referenced project has been acquired in accordance with the Uniform Act.

 City/Town Manager
 Chairman of Selectmen

Date

Relocation Information

Residential

| | <u>Owners</u> | + | <u>Tenants</u> | = | <u>Total</u> |
|---------------------------------------|---------------|---|----------------|---|-------------------|
| Number of Displacees | | | | | |
| Number of Relocation Housing Payments | | | | | Total Spent \$ |
| Number of Rent Supplement Payments | | | | | Total Spent \$ |
| Number of Moving Payments | Actual | | Scheduled | | Total Spent \$ |

Business

| | <u>Owners</u> | + | <u>Tenants</u> | = | <u>Total</u> |
|---|---------------|---|----------------|---|-------------------|
| Number of Displacees | | | | | |
| Number of Moving Payments | | | | | Total Spent \$ |
| Number of RE-establish Payments | | | | | Total Spent \$ |
| Number of In Lieu of | | | | | Total Spent \$ |
| Number of Misc. Monies (i.e. fences, lights, signs, etc.) | | | | | Total Spent \$ |

Appendix 12

SUPPLEMENTAL SPECIFICATION**AMENDMENT TO SECTION 109 -- MEASUREMENT AND PAYMENT****AMENDMENT TO SUBSECTION 109.09 – PAYMENTS TO SUBCONTRACTORS****109.09 Prompt Payment to Subcontractors.**

The Prime Contractor shall pay all Subcontractors for the work performed no later than 21 calendar days from the date the Prime Contractor received payment from the Department for said work, including materials in accordance with 109.07 and/or 109.08 paid for in the progress payments. Subcontractors are required to pay their Subcontractors and/or material suppliers, within 21 calendar days from the date they receive payment for satisfactory work performed or supplies received. This Prompt Pay requirement shall be made part of all subcontracts and agreements.

If the Prime Contractor believes that any portion of the payment should be withheld from the Subcontractor, the Prime Contractor shall notify the NHDOT Contract Administrator in writing, prior to the estimate being processed. The NHDOT Office of Federal Compliance shall be made part of this notification. The NHDOT may withhold payment for the portion of work in dispute pending resolution.

This prompt payment provision is a requirement of 49 CFR 26.29 and does not confer third-party beneficiary right or other direct right to a Subcontractor against the Department. This provision applies to both DBE and non-DBE Subcontractors.

Satisfactory Work Performed. Satisfactory work performed shall be defined for purposes of this prompt payment provision as:

1. Upon review, the Engineer finds the work completed in accordance with the contract, plans and specifications, and;
2. Required paperwork, for Progress and Partial payments, including material certifications and payrolls, has been received.

The determination of whether work meets the standards set forth above is the responsibility of the Engineer. If the Subcontractor becomes insolvent after it satisfactorily performs work as defined above but before payment is due, the obligation to pay is not extinguished. (Payment may have to be made to the bankruptcy trustee or to an escrow account for the benefit of creditors.)

The Prime Contractor must include, in all subcontract agreements, notices to Subcontractors of their right to prompt payment, and of the Department's policy prohibiting Prime Contractor's from holding retainage from Subcontractors under 49 CFR 26.29.

Failure of a Prime Contractor or a Subcontractor to comply with these prompt payment provisions may result in sanctions.

Non-Payment Claims. All notifications of failure to meet prompt payment provisions shall be referred by Subcontractors, in writing, to the NHDOT Office of Federal Compliance with a copy supplied to the respective Contract Administrator.

Payment Certifications. The Prime Contractor or any Subcontractor who receives payment for work and/or materials (specifically supplied to the project in excess of \$10,000) shall submit a "Monthly Prompt Pay Certification," OFC Form 18, to the NHDOT Office of Federal Compliance no later than the 10th calendar day of each month.

41 CFR 60-4 Affirmative Action Requirements

41 CFR 60-4.2 Solicitations

Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246)

The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

| | Goals for minority participation for each trade | Goals for female participation in each trade |
|--|---|--|
|--|---|--|

STANDARD METROPOLITAN STATISTICAL AREAS (SMSA)

| | | |
|--------------------------|------------|--|
| SALEM-PLAISTOW | 4.0 | |
| 6.9 | | |
| MANCHESTER-NASHUA | 0.7 | |
| 6.9 | | |

NON-SMSA COUNTIES

| | | |
|---|------------|------------|
| COOS, GRAFTON, SULLIVAN | 0.8 | 6.9 |
| BELKNAP, MERRIMACK, CARROLL, STRAFFORD | 3.6 | |
| 6.9 | | |
| CHESHIRE | 5.9 | |
| 6.9 | | |
| ROCKINGHAM | 4.0 | |
| 6.9 | | |
| HILLSBOROUGH | 0.7 | |
| 6.9 | | |

These goals are applicable to all contractor's construction work (whether or not it is Federal or

The Contractor's compliance with Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the Director of the Office of Federal contract compliance programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation addressed as follows:

Director
Federal Contract Compliance Program
US Department of Labor
JFK Building, Room 1612-C
Boston, MA 02203

The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed as noted within in the Contract Special Provisions for Affirmative Action to ensure Equal Employment Opportunity.

federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

Source 41 CFR 60-4.3 Equal Opportunity Clauses

Standard Federal Equal Employment Opportunity
Construction Contract Specifications (Executive Order 11246)

[1]. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

[2]. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

[3]. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

[4]. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed

as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

[5] Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

[6]. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

[7]. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have

Source 41 CFR 60-4 Affirmative Action Requirements

employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's

recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation, which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take

affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(b) The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR Part 60-4 become effective. [43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978, as amended at 45 FR 65978, Oct. 3, 1980]

December 24, 1998
Supersedes Spec. Attn. dated 3/29/88 & 12/5/90

FHWA Projects

SPECIAL ATTENTION

**CONTRACT AFFIDAVIT - CERTIFICATION REGARDING DEBARMENT
SUSPENSION**

The separate form entitled, CONTRACT AFFIDAVIT (As Required by Section 112(c) of Title 23 USC) has been deleted from this proposal.

Bidders are advised that the last page of the bidding proposal has been revised to include the same reference, **IN BOLD PRINT**, relative to the non-collusion statement included on the discontinued form.

X X X X X X X X X X X X X X

The Contractor is advised that 49 CFR 29.510, Appendix A, requires that the Contractor, including all principals, certify that they are not currently under debarment or suspension or have not been under debarment or suspension within the past three years. (For certification instructions see next page).

The certification has been added, **IN BOLD PRINT**, onto the next to the last page of the bidding proposal.

The Contractor is further advised that Appendix B of 49 CFR 29.510 regarding certification of lower tier transactions has been added to Form FHWA-1273.

CONTRACT ESTIMATE

Estimate No.

For the Period Ending

Contract #

Partial Estimate for Engineering Services on Project No.
 Contractor:

| Item No. | Item | Quantities | | |
|----------|------|---------------|--------------------|--------------------|
| | | This Estimate | Previous Estimates | Total Est. To Date |

Engineering Services in accordance with Agreement dated

COMPLETION DATE:

| TOTAL FEE | | | |
|------------------|------------------------|---------------|-----------------------------|
| A | ACTUAL SALARIES | \$0.00 | |
| | Amount Earned | \$0.00 | |
| | Less Prev. Pay | \$0.00 | |
| | AMOUNT DUE | | \$0.00 |
| B | FIXED FEE | \$0.00 | |
| | Amount Earned | \$0.00 | |
| | Less Prev. Pay | \$0.00 | |
| | AMOUNT DUE | | \$0.00 |
| C | OUT-OF-POCKET EXPENSES | \$0.00 | |
| | Amount Earned | \$0.00 | |
| | Less Prev. Pay | \$0.00 | |
| | AMOUNT DUE | | \$0.00 |
| D | OUTSIDE CONSULTANTS | \$0.00 | |
| | Amount Earned | \$0.00 | |
| | Less Prev. Pay | \$0.00 | |
| | AMOUNT DUE | | \$0.00 |
| | TOTAL AMOUNTS | | |
| | | <u>\$0.00</u> | <u>\$0.00</u> <u>\$0.00</u> |

Approved _____
 Project Manager

Total Value of Work To Date \$0.00
 Total Value of Previous Estimates \$0.00
 Value of Work Done This Estimate \$0.00

Date _____

Work Class Code



**John Morton Building
P.O. Box 483, 7 Hazen Drive
Concord, NH 03302-0483**

**OFFICE OF FEDERAL COMPLIANCE
CONSULTANT/TOWN EVALUATION**

- Distribution:**
 - NHDOT Consultant Committee
 - NHDOT Planning & Comm. Asst.
 - Town
 - Consultant Firm

CONSULTANT (or TOWN) / PROJECT INFORMATION

| | |
|------------------------------------|--|
| Name of Consultant Company or Town | |
| Name of Resident Engineer | |
| NHDOT Project Name and Number | |
| Contract \$ Amount | |
| Contract Start Date | |
| Completion Date | |

OVERALL EVALUATION RATING:

*Needs Improvement

Met Requirements

*Comments are mandatory

RECOMMENDATION: From a Labor Compliance standpoint, would we recommend using this Consultant on a future Federally funded, Municipally Managed construction project?

- YES YES – however we recommend the Consultant (or Town) attend Labor Compliance Certification Training (Part 2) again
 *NO

*Comments are mandatory

PERFORMANCE

1. Came to the Pre-Construction Meeting with a complete list of required Additional Work Classifications needed to complete the work and briefed the Prime Contractor on submission procedures and deadlines. Note: The sponsor/consultant shall receive SF 1444 submissions from the Prime and forward to the OFC for processing.

Needs Improvement

Met Requirements

Not Applicable

2. Ensured the bulletin board was erected on site when work began and that the board was in full compliance with the NHDOT Standard Specifications.

Needs Improvement

Met Requirements

Not Applicable

3. Ensured only those contractors who were approved by the NHDOT Office of Federal Compliance performed work on site (no violations of the Required Contract Provisions, NHDOT Standard Specification and RSA 228:4-b).

Needs Improvement

Met Requirements

Not Applicable

4. Monitored "open" Office of Federal Compliance Field Audit Reports and actively worked with Contractors and the Office of Federal Compliance to close Field Audits within the time allowed.

Needs Improvement

Met Requirements

Not Applicable

5. Kept the OFC informed on the current status of the project by providing an OFC Form 13, Project Status Report when the status of the project changed. Note: Reports received 10 calendar days or less are considered timely.

Needs Improvement

Met Requirements

Not Applicable

6. Maintained the OFC Form 3, Payroll Log Sheet, as required; added subcontractors to the form once approved by the NHDOT; annotated when each contractor performed work on site by making the appropriate annotation; noted when each corresponding payroll was received by writing in the date the payroll was received.

Needs Improvement

Met Requirements

Not Applicable

7. Ensured the Prime complied with project sign-in sheet requirements by ensuring all workers (Prime and all approved subcontractors) signed in on the project, prior to performing work, on a daily basis.

Needs Improvement

Met Requirements

Not Applicable

8. Followed-up with the Prime Contractor, in writing, whenever any payrolls were not received on time (14 calendar days from the end of the week in which work was performed) and cc'd the NHDOT OFC.

Needs Improvement

Met Requirements

Not Applicable

9. Monitored work performed on site and compared it to the information being reported on certified payroll reports to ensure contractors were correctly classifying workers on certified payroll reports. Discrepancies were immediately reported to the Prime Contractor and the NHDOT Office of Federal Compliance was courtesy copied in all cases.

Needs Improvement

Met Requirements

Not Applicable

10. Performed employee interviews; obtained a good representation of all classifications for each contractor performing work on site.

Needs Improvement

Met Requirements

Not Applicable

11. Provided copies of Employee Interviews to the OFC on a monthly basis.

Needs Improvement

Met Requirements

Not Applicable

12. Oversight of the Prompt Pay reporting requirements, OFC Form 12. Ensured completed forms were received for each estimate period, as applicable, before processing the next subsequent estimate payment to the Prime.

Needs Improvement

Met Requirements

Not Applicable

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

13. Observed work performed by DBEs, ensured that a Commercially Useful Function (CUF) is being carried out in accordance with 49 CFR 26.55, and completed CUF Reviews for each DBE contractor working on site.

Needs Improvement

Met Requirements

Not Applicable

ON THE JOB TRAINING PROGRAM (OJT)

14. Maintained and monitored project-level OJT records and requirements & ensured the timely submission of OJT Weekly Training Reports from contractors; monitored the trainee's progress, and faxed training completion reports to the NHDOT OJT Monitor on a weekly basis.

Needs Improvement

Met Requirements

Not Applicable

FINAL CLOSEOUT PROCEDURES

15. Informed the Office of Federal Compliance by email when the Final Inspection was to take place.

Needs Improvement

Met Requirements

Not Applicable

16. Submitted OFC Form 13, Project Status Report, to the OFC within 10 calendar days upon completion of the project.

Needs Improvement

Met Requirements

Not Applicable

17. Following the completion of work, ensured that all required payrolls were received **within 14 calendar days** and in those cases when payrolls were missing, immediately sent an email to the Prime notifying them of the missing payrolls. Note: The OFC should be cc'd in every case.

Needs Improvement

Met Requirements

Not Applicable

18. After having received all required payrolls, finalized the Payroll Log Sheet, OFC Form 3, and contacted the NHDOT Office of Federal Compliance (by email) to schedule a final review/audit (target is 20 calendar days following the job completion).

Needs Improvement

Met Requirements

Not Applicable

19. **Final Payment to Prime:** Ensured all certified payrolls were received and deemed complete and correct; ensured CUF Reviews were performed as needed; ensured a final audit by the OFC was performed and then deemed "Closed" by the OFC prior to making the "final payment" to Prime. Note: The Sponsor/Consultant should notify the OFC by email when the final payment is made to the Prime.

Needs Improvement

Met Requirements

Not Applicable

20. Performed the "final" Prompt Pay verification, ensured all applicable OFC Form 12s were received from subcontractors and "major" material suppliers and an email was sent the OFC indicating all Prompt Pay requirements on the project have been fulfilled (target date is 30 calendar days following the job completion). Important Note: Upon receiving this email, the OFC will cut the "Ok to Pay" letter authorizing the final reimbursement to the town.

Needs Improvement

Met Requirements

Not Applicable

OPTIONAL CLOSING COMMENTS:

| | |
|---|----------------|
| Doug Potter Federal Compliance Officer | Signature/Date |
| Jay Ankenbrock Chief of Labor Compliance | Signature/Date |

Appendix A - Certification regarding Debarment, Suspension, and other Responsibility Matters -
Primary Covered Transactions.

Instruction for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification" Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLLA Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLLA Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. 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."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

06/24/08

Supercedes: 9/11/06, 12/5/90

WAGE RATES
FEDERAL AID PROJECTS

This proposal contains minimum wage determinations as specified by the U.S. Secretary of Labor. Copies of the attached wage determination(s) shall be posted on the bulletin board at the work site and furnished to employees upon request. Furthermore, the wage determination(s) shall be incorporated into all subcontract agreements.

If the Contractor, any subcontractor or lower-tier contractor intend to employ a classification of labor not listed in the attached determination(s), it shall submit a Request for Additional Work Classification(s) to the New Hampshire Department of Transportation, Labor Compliance Office at (603) 271-2467. The Contractor is responsible for ensuring that a Request is submitted for any additional classification of work to be employed by itself, any subcontractor or lower-tier contractor 3-4 weeks before the classification is utilized.

This contract is subject to the Work Hours Act of 1962, P.L. 87-581 and implementing regulations.

Office of Federal Compliance - Municipal Contract Review Checklist

Project Name & Number: _____

Date Draft Contract Rec'd for Review:

Date Draft Contract Rtn'd to P&CA:

Does the contract cover sheet have the following items?

Project Name State Project # Federal # County (items not checked are needed)

Check contract – ensure no mention of *retainage*. Pages where noted:

Davis Bacon Wage Rates: Were correct Were not correct – the following rates were inserted:

The **Construction Contract Provisions Package** needs to be included. The following items need to be included and current from the website.

- Wage Rates – Federal Aid Projects document
- Notice to all Bidders document
- Affirmative Action Req. (Source 41 CFR 60-4.2 & CFR 60-4.3)
- FHWA 1273 – Electronic Version – May 1, 2012 (12 pages)
- Disclosure of Lobbying Activities (Standard Form – LLL) (Rev: 7-97)
- Disclosure of Lobbying Instructional Page
- Special Attention – DBE Directory Info. (Rev: 4-1-09)
- Special Attention - DBE Policy (Rev: 7-2-13)
 - Is There a Specified DBE Goal? Yes () No
- Special Attention - Buy America (Rev. 6/2/10)
- Special Attention - Contract Affidavit – Certification Regarding Debarment Suspension
- Special Attention – Lobbying (Rev: 1/2001)
- NHDOT Office of Federal Compliance: Special Attention- Summary of Requirements for Federal Aid Projects (effective 3-26-10)**
- Supplemental Specification Amendment to Section 109.09 Prompt Pay (9-6-11)
- TE/CMAQ – Construction Proposal (Contract Affidavit Form)
- Supplemental Specification to Section 107 (Bulletin Board Requirements) w/Diagram
- Special Attention – Convict Produced Material

Does the Office of Federal Compliance require a another review? Yes No

Comments:

Federal Compliance Officer Signature

Date

Review #



RESPONSIBILITIES GUIDE FOR SPONSORS/CONSULTANTS

(Federal-aid Construction Contracts)

Initial Actions:

Once the OFC receives the “Notice to Proceed” letter from NHDOT Bureau of Planning and Community Assistance, the OFC will contact the Town, hereafter referred to as the Sponsor, within 5 working days to obtain necessary information.

Sponsors/Consultants: Please be prepared to provide the following information to the OFC at the Pre-construction Meeting:

1. The name of the Primary point of contact for the Sponsor with his/her phone number, fax number, and email address.
2. The date the project was advertised, bid award date, scope of work, projected start date, and estimated completion date.
3. Name and contact information of the person providing day-to-day oversight of the project. If a Consultant Company will be utilized, we need the name of the Project Manager and the name of the Resident Engineer (the person who will be providing day-to-day oversight of the project). Unless you tell us differently, we will assume the RE will also be managing certified payrolls, payroll log sheets, etc.
4. Date, time, and location of the Pre-Construction Meeting. Please allow approximately 30 minutes of time for the Federal Compliance Officer to brief applicable parties.
5. List of additional work classifications that will be needed in order to complete work on the project. Submissions shall be on a SF 1444 and shall all be sent to the Sponsor/Consultant who will forward to the OFC for processing.

Important: Per contract, the Prime is responsible for ensuring additional work classifications, including those by subcontractor or lower-tier contractors, are submitted to the OFC “3-4 weeks before the classification is utilized.” If no additional work classifications will be needed, the Sponsor shall make this known at the meeting.

Sponsor Responsibilities:

IMPORTANT: Sponsors who utilize Consultants for project compliance oversight remain fully responsible for the Federal Compliance requirements.

1. Ensure only those Subcontractors or Lower-Tier Subcontractors who have been approved by the NHDOT Office of Federal Compliance perform work on site.

2. Assist the NHDOT Federal Compliance Officer, as needed, to ensure Contractors approved to work on site are in compliance with applicable State and Federal laws, Form FHWA 1273, Required Contract Provisions and NHDOT Standard Specifications.

3. Monitor Office of Federal Compliance Field Audits to ensure the Prime Contractor responds appropriately within the time allotted and has taken all necessary steps to close Field Audits within the time allowed.

4. Ensure Prime Contractor submits SF 1444s for all additional work classifications needed to complete the work 3-4 weeks before the classification is utilized (per contract). Primes shall send submissions to the Sponsor/Consultant who will in-turn send to the OFC for processing.

5. **OFC Form 13, Project Status Reports:** Immediately inform the Office of Federal Compliance as to the current status of the project by faxing (or emailing) an OFC Form 13, Project Status Report, anytime the status of the job changes – starts, suspends for the winter, resumes, or is completed. When faxing, send to (603) 271-8048. The hired Consultant should complete this requirement if responsible for project oversight.

- a. OFC Form 13s submitted to the OFC within 10 calendar days are considered timely.
- b. Projects having two (2) weeks or more inactivity should be considered suspended and require an OFC Form 13 submission.

6. **Change of Resident Engineers:** The Sponsor (or the Consultant Firm) shall immediately notify the Office of Federal Compliance, in writing, anytime there is a change to the Resident Engineer for the project. This notification shall include the effective date of this change along with full contact information of the person who will be assuming project oversight responsibilities. Sponsors are responsible for ensuring the replacement Resident Engineer has attended Local Project Administration (LPA) Certification Training prior to assuming oversight of the project.

7. **Prompt Pay:** In accordance with NHDOT Standard Specification 109.09, contractors are required to pay subcontractors no later than 21 calendar days from the time they are paid for work that was performed by the subcontractor or lower-tier subcontractor. Payment is full (for work completed during the estimate period) is required. **Retainage is not allowed.** Sponsors or consultants who receive complaints, or otherwise become aware of non-timely or “partial” payments, should immediately contact the OFC at (603) 271-6612. Please refer to page 8 of this guide for specific responsibilities relative to Prompt Pay.

8. Commercial Useful Function (CUF) Reviews: The Sponsor (or hired Consultant) shall perform a Commercial Useful Function (CUF) Review for each DBE subcontractor performing work on each project. OFC Form 21 shall be used for this purpose. Completed CUF Reviews should be faxed to the NHDOT, Attn: DBE Coordinator, at 271-8048 as soon as they are accomplished. Sponsors (or hired Consultant) shall create a DBE folder at the respective project and retain copies of the CUF Reviews for OFC and FHWA inspection. Questions regarding CUF reviews or submissions should be referred to the NHDOT at (603) 271-6612.

9. Employee Interviews: The Sponsor (or hired Consultant) is responsible for conducting employee interviews to ensure proper classification and wages paid. The OFC Form 11 shall be used for this purpose. In order to meet FHWA reporting requirements, copies of interview forms shall be provided to the OFC on a monthly basis. **Copies of interviews are due to the OFC no later than the last calendar day of each month.** They may be emailed (preferred) or faxed (603-271-8048). Originals shall be maintained in a separate file on site along with Certified Payroll Reports and sign-in sheets. Interviewees do not need to sign these forms unless their written authorization to release information obtained during the interview is needed in order to resolve a dispute. Interviews shall be performed as soon as payroll information is available. If any contractor's work will be completed prior to the receipt of payrolls, interviews will be performed immediately and workers should be advised who they can call if problems are noted with their wages. Important: Unless a very small project, the OFC/FHWA's expectation is that "some" interviews will be performed monthly.

10. Bulletin Boards: The Sponsor (or hired Consultant) is responsible for ensuring the Contractor is in compliance with NHDOT Standard Specification 107.01, Bulletin Board Requirements. Sponsors/Consultants shall also ensure the Prime Contractor has properly erected the bulletin board on the site of work when the job begins. Sponsors/Consultants shall complete the OFC Bulletin Board Checklist during the first week of work and provide a copy of the completed checklist to the OFC Federal Compliance Officer on his/her first visit to the project. Responsibility also extends to ensuring the Prime Contractor has posted any additional work classifications and rates immediately following USDOL approval.

SUBCONTRACTING:

1. In accordance with FHWA Form 1273 (Required Contract Provisions), NHDOT Standard Specifications 108.01 and RSA 228:4-b, **NO PORTION** of the contract shall be sublet, assigned or otherwise disposed of without the written consent of the NH DOT. Violations are a serious matter.

2. Prime Contractors shall submit consent to sublet packages directly to the Office of Federal Compliance **at least 5 working days prior** to said subcontractor (or lower-tier subcontractor) performing work on site. Primes shall provide a courtesy copy to the Sponsor/Consultant on all submissions. For questions, call (603) 271-6752.

3. The Office of Federal Compliance will email a copy of the subcontractor approval paperwork to the Sponsor/Consultant, the Prime Contractor, and the applicable

subcontractor or lower-tier subcontractor. **Subcontractors cannot be allowed to perform work on site until they have been approved.** Please note that the NHDOT will not pay for work performed by unapproved subcontractors (see NHDOT Standard Specifications Section 108.01).

4. The Sponsor/Consultant shall monitor the day-to-day activities of each contractor working on site to ensure contractors are completing his/her portion of work with their own forces and that no unapproved subcontractors or lower-tier subcontractors are on site.

PAYROLLS / PAYROLL LOG SHEETS / SIGN IN SHEETS:

Note: Sponsors remain ultimately responsible for ensuring payroll, payroll log sheets, and sign-in requirements are fulfilled when a hired Consultant is performing this function.

1. The Sponsor/consultant shall complete the OFC Form 3, Payroll Log Sheet, on a daily basis, accurately recording which companies work on site and when. This form is available at the Office of Federal Compliance web site.

2. Sign-in Sheets: Use of the OFC Form 20, Project Daily Sign-in Record, is mandatory (no substitutes can be used). Workers must physically sign in themselves – a supervisor, foreperson, or co-worker cannot sign in for another person. Sponsors/Consultants should ensure workers are providing all information being requested on the sign-in sheet. Sign-in sheets should be consecutively numbered, kept in chronological order (newest on top), and maintained in a three ring binder. The OFC Form 20 is available at the OFC web site. Sign-in Sheet responsibilities:

- a. Prime Contractors are responsible for ensuring their workers and workers of approved subcontractors and lower-tier subcontractors sign in PRIOR to performing work on site.
- b. Sponsors, or hired Consultants, shall monitor the Prime's compliance with daily sign-in requirements and will take possession of sign-in sheets (originals if copies are made) on a daily basis. Sign-in sheets shall be maintained with Certified Payroll Reports – these are inspection items.

3. **When Payrolls Are Due:** All contractors must submit their certified payroll reports no later than 14 calendar days from the end of the week in which work was performed (the NHDOT considers Saturdays as the week ending date).

4. Sponsors/Consultants shall ensure the Prime Contractor submits all payrolls (including those for subcontractors and lower-tier subcontractors) on time. Sponsors/Consultants shall perform follow-ups, in writing, with the Prime Contractor anytime Certified Payroll Reports are late. The OFC should be cc'd in all cases.

UNDERSTANDING THE REQUIREMENT: Prime Contractors are responsible for ensuring all Certified Payroll Reports, including those from their subcontractors and lower-tier subcontractors, are submitted to the on-site Contract Administrator no later than the due date noted in Paragraph 3 above. Primes who fail to do so are “**in noncompliance.**” In these cases, Sponsors, or hired Consultants, shall act immediately to withhold estimate payments until such time the Prime Contractor is deemed “in full compliance.” In addition, Sponsors, or hired Consultants, shall **immediately** notify the Office of Federal Compliance, **in writing**, any time a contractor is noncompliant with payroll submission requirements.

5. Sponsors/Consultants shall “date stamp” Certified Payroll Reports upon receipt (by hand is acceptable). Dates received should then be transcribed to the Payroll Log Sheet as required.

6. The OFC Form 3, Payroll Log Sheet, Certified Payroll Reports, and daily sign-in sheets shall be maintained together in a location mutually agreed on by the Sponsor and the Federal Compliance Officer. Sponsors/Consultants shall ensure these documents are “inspection ready” at all times.

7. The Sponsor/Consultant shall review payroll submissions to ensure:

- a. Owners who perform work on site have been reported on payrolls
- b. Correct classifications have been used
- c. All equipment is being reported
- d. Correct rates have been paid
- e. Straight time and overtime have been properly broken out
- f. “Other” deductions have been fully described
- g. Project name and number has been included on both Side A and Side B
- h. Certification pages has been signed with an actual signature (copy ok)
- i. Fringe benefit breakouts have been provided with each payroll submission, as required, anytime a contractor relies on fringes to meet the “total rate.”

8. The Sponsor/consultant shall monitor daily work activities on the project and will note any inconsistencies between what is being reported on payrolls and what is actually taking place on the work site (use of equipment and possible misclassifications). Inconsistencies should immediately be brought to the attention of the Prime Contractor, in writing, and the respective NHDOT Federal Compliance Officer is cc'd.

Note: Sponsor/Consultant shall immediately notify the Prime Contractor, in writing, whenever discrepancies are noted (the OFC should be cc'd). **Sponsors should not wait until the next OFC compliance audit to address discrepancies.**

OFC COMPLIANCE FIELD AUDITS:

1. The NHDOT Federal Compliance Officer shall notify Sponsors/Consultants, in advance, when a Compliance Audit is scheduled. Sponsors, or hired Consultants, shall ensure the following documents are ready for inspection:

- a. OFC Form 3, Payroll Log Sheet
- b. Certified Payroll Reports (and fringe benefit breakouts if applicable)
- c. Employee sign-in sheets
- d. CUF Reviews (if a DBE has worked)
- e. Copies of Interviews, OFC Form 11 (Note: OFC and FHWA expectation is “some” interviews will be performed monthly)
- f. A copy of the completed Bulletin Board Checklist (on the first OFC audit)

2. The Sponsor/consultant) may be asked to accompany the Federal Compliance Officer on an on-site visit of the project.

3. The OFC completes an OFC Form 7, Field Audit Report, anytime an audit is accomplished. A copy will be emailed to the Sponsor or hired Consultant, if applicable, and the Prime Contractor as soon as possible after the audit is completed. If discrepancies are present, Primes are given 7 calendar days to correct.

4. The Sponsor/consultant shall work closely with the Office of Federal Compliance to ensure audits are closed out by the due date. Prime Contractors who do not responded appropriately by the due date are considered noncompliant. **No payments shall be made to the Prime Contractor until such time the compliance audit is closed and the Prime Contractor has been deemed “in full compliance.”**

FINAL ACTIONS:

1. The Sponsor/consultant shall advise the Office of Federal Compliance, in writing, when the Final Inspection is to take place. This milestone is added to the project data base record.

2. The Sponsor/consultant shall fax or email an OFC Form 13 to the Office of Federal Compliance indicating the job is “complete” immediately after project work is done. Important: OFC Form 13s received within 10 calendar days of the project completion date are considered “timely.”

3. NO LATER THAN 14 CALENDAR DAYS FROM WHEN WORK WAS LAST PERFORMED, the Sponsor or hired Consultant shall:

- a. Ensure all required Certified Payroll Reports have been received.
- b. Ensure the OFC Form 3, Payroll Log Sheet, is complete/finalized.
- c. Contact the respective NHDOT Federal Compliance Officer advising:
 - 1) There are “unaudited” payrolls and a “final review” is needed. These records will be delivered to the Office of Federal Compliance at 7 Hazen Drive, Concord NH.
 - 2) All certified payrolls required on this project have been received and have been reviewed by the OFC. We recommend an “ok to pay” release letter be accomplished.
- d. **IMPORTANT:** In the event all payrolls due are not accounted for/received by the 14th calendar day, the Town or hired Consultant shall immediately send written notification to the applicable Compliance Officer and provide details. Weekly updates shall be provided to the Compliance Officer until such time all payroll records have been received and deemed compliant.

4. ORGANIZING DOCUMENTS FOR SUBMISSION TO THE OFC FOR FINAL REVIEW:

- a. All payrolls, OFC Form 3s, Payroll Log Sheets, and sign-in sheets need to be provided to the OFC. This documentation must be in “hard copy.”
- b. Sign-in sheets will be filed in a 3-ring binder and be in chronological order, most recent on top.
- c. Payrolls will be broken out by contractor in the same order as they appear on the OFC Form 3, Payroll Log Sheet. Please use tabs to separate contractors.
- d. Payrolls should be filed chronologically, most recent on top.
- e. Fringe benefit documents must be attached to the payrolls they pertain to.

Transferring Payroll Records to Town When Job is Complete:

Following the completion of the final audit, the OFC will notify the Sponsor that the records are ready for pick up. If a Consultant has been overseeing the project, the Consultant shall be responsible for picking up the records at the NHDOT and for ensuring project records are transferred to the Town. In all cases, the Consultant shall transfer the records using a transmittal document. A copy of the transmittal shall then be mailed to the NHDOT for inclusion in the project records.

RELEASING FINAL PAYMENT TO PRIME:

1. Sponsors **shall not** release final payment to the Prime Contractor until:
 - a. All certified payrolls have been received and are deemed complete and correct.
 - b. CUF Reviews have been performed as needed.
 - c. A final audit by the OFC has been performed and the audit has been deemed “closed.”

PROMPT PAY: VERIFYING PAYMENTS TO SUBCONTRACTORS/LOWER-TIER SUBCONTRACTORS AND MATERIAL SUPPLIERS:

1. When making progress payments to the Prime Contractor, the Sponsor shall provide the Prime an OFC Form 12, Prompt Payment Certification.
 - a. Primes shall be instructed to complete a separate OFC Form 12 for each subcontractor and/or “major” material supplier for that progress payment period.
 - b. Primes shall complete the top portion of the form and then forward to his/her subcontractors and/or material suppliers with their payment, as applicable.
 - c. Primes shall instruct the subcontractors/material supplier to complete the lower half of the form and to return the form **directly** to the on-site Contract Administrator.
2. Sponsors/Consultants should also refer to the NHDOT LPA Project Manual section on “Reimbursement of Project Costs.”

Final \$ Reimbursement to Town:

The Bureau of Planning and Community Assistance shall not make the final reimbursement to the Sponsor until an “Ok to Pay” letter is received from the Office of Federal Compliance (OFC). The Process:

- a. When the final progress payment has been made to the Prime and all OFC Form 12s have been received from subcontractors and/or material suppliers, the Sponsor/Consultant should immediately email the OFC to advise all Prompt Pay requirements on the part of the Prime Contractor have been completed.
- b. Upon receipt of the above email, the OFC will complete and forward the “Ok to Pay” letter to the Bureau of Planning and Community Assistance.

OTHER RESPONSIBILITIES OF THE SPONSOR:

1. Retain project records (copies of all payrolls, payroll log sheets, sign in sheets, interview forms, prompt pay certifications, etc.) for a period of at least 3 years following the completion of the project.
2. Complete an end of job Contractor Performance Report (obtain form from the Office of Federal Compliance) anytime there is substandard performance by any contractor performing work on the project or if requested by the Office of Federal Compliance.

SPONSOR / CONSULTANT EVALUATIONS:

The OFC will complete an OFC Form 19, Consultant Performance Evaluation, at the completion of each project. A copy of the completed evaluation shall be provided to the Consultant Company (Branch Manager), the Sponsor, the Bureau of Community Planning and Assistance, and the NHDOT Consultant Committee (Chairman).

SPECIAL ATTENTION

SUMMARY OF REQUIREMENTS FOR FEDERAL-AID PROJECTS

1. Subletting on Federal-aid Contracts.

- a. On Federal-Aid projects, the following documents are required to be incorporated in and made a part of every subcontract agreement (including lower-tier subcontract agreements):
 - NHDOT Policy on Subcontracting
 - Required Contract Provisions (FHWA-1273)
 - Disadvantaged Business Enterprise (DBE) Program Requirements (Standard Spec 103.06)
 - *41 CFR 60-4 Affirmative Action Requirements
 - **U.S. Department of Labor (USDOL) wage rates entitled “GENERAL WAGE DECISION” (as contained in the contract)

*Applicable only to contracts or subcontracts in excess of \$10,000
**Does not apply to companies performing non-Davis Bacon type work (testing, monitoring, and inspection services).
- b. Subcontractor Approvals for Companies Who Perform Testing, Monitoring, Inspection Services
 - 1) Companies and/or independent contractors performing testing, monitoring, or inspection, such as ground penetrating radar, erosion control monitoring, video inspection, SWPPP, environmental testing/monitoring or vibration monitoring, for example, require subcontractor approval (NHDOT must verify Workers Compensation (WC) Insurance coverage).
 - 2) The following subcontractor approval documentation is required:
 - OFC Form 15 (15a for a State managed project and 15b for Local Public Agency (LPA) projects), Transmittal
 - OFC Form 26, Work Certificate
 - Proof of Workers Compensation Insurance coverage (if not already on file)
- c. Contractors will not be approved/authorized to work until the Department’s Annual Assurances requirements have been fulfilled.
- d. RSA 228:4-b shall apply to any work done by an individual contractor on any state transportation project.
- e. Prime Contractors shall submit consent to sublet packages to the NHDOT at least 5 working days prior to said subcontractor (or lower-tier subcontractor) performing work on site. On LPA projects, the Prime Contractor shall also provide a courtesy copy to the town or the town’s consultant, if applicable.
- f. LPA Projects Only: NHDOT Office of Federal Compliance (OFC) is the sole approval authority for all LPA construction projects. Consents to sublet shall be submitted directly to the OFC.

2. **FHWA Form 1273, Required Contract Provisions.**

- a. The Prime Contractor shall insert in each subcontract all the stipulations contained in the Required Contract Provisions. Primes shall further require their inclusion in any lower-tier subcontract or purchase order that may in-turn be made. The Required Contract Provisions shall not be incorporated by reference in any case.
- b. In accordance with Section I, Paragraph 1, the Prime Contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. This shall include any unpaid wages found to be owed that is not paid by a subcontractor or lower-tier subcontractor.
- c. In accordance with Section I, Paragraph 3, “A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension/debarment or any other action determined to be appropriate by the contracting agency and FHWA.”

3. **Submission of Payrolls:** Payrolls, as required by FHWA Form 1273, shall be submitted electronically (email) as a pdf document to the NHDOT Contract Administrator, consistently named in the following format: Contractor’s name (abbreviated is acceptable) followed by the “week ending” date (yyyy/mm/dd). The Contractor’s and each Sub-contractor’s payroll shall be submitted as separate, individual files. Example: Plow Brothers Inc 2014-12-06

4. **Sign-In Sheets.** Use of daily sign-in sheets is **mandatory** on all LPA projects. Every worker must sign in, on a daily basis, prior to performing work on site. The OFC Form 20 shall be used for this purpose. The Prime Contractor is responsible to ensure sign-in sheet requirements are met and are turned in to the Contract Administrator on a daily basis. Contract Administrators shall review and initial sign-in sheets daily cross matching what employees have indicated for their work classification and what employers are indicating on certified payroll reports, and verifying employers of workers signing in have been approved to work by the NHDOT. Sign-in sheets shall be co-located with certified payrolls and filed in a 3-ring binder, newest sign-in sheets on top. Sign-in sheets are an inspection item. Note: Use of sign-in sheets may also be directed by the OFC on State managed projects for any contractor who does not accurately report all workers performing work on site on their payrolls.

5. **Requesting Work Classifications, Classifying Workers, and/or Payment of Wages.**

- a. The Prime Contractor is required to submit an additional request to the NHDOT for any classification of labor/equipment that they or their subcontractors shall be utilizing under the contract that is not contained in the proposal’s Federal General Decision.
- b. Unless otherwise instructed by the OFC, a SF 1444 shall be used for this purpose.
- c. Requests must be submitted to the NHDOT prior to any work being performed in the classification(s).
- d. Contractors who do not receive a USDOL conformance decision from the OFC within 45 days of submission should follow-up with the OFC.

- e. Once a decision is received from the USDOL, the OFC will, in-turn, notify the Prime Contractor. In cases when the USDOL stipulates a higher rate of pay than the one proposed by a contractor, and the Contractor elects not to submit an appeal, restitution, if due, shall be paid to employees within 10 calendar days of being notified by the OFC. Restitution requirements of the NHDOT shall apply.
- f. Appeals shall be filed with the USDOL within 30 calendar days and a courtesy copy forwarded to the OFC at the same time. Restitution, if applicable, does not need to be paid during the time the appeal is under review by the USDOL.
- g. Contractors shall immediately inform the OFC whenever appeal decisions (including reconsideration requests) are received from the USDOL.
- h. In those cases when a contractor indicates to the OFC he/she plans to appeal the USDOL decision but fails to provide the OFC proof of submission within 30 calendar days, the contractor shall comply with the original USDOL decision. The OFC will subsequently notify the Contractor that proof of an appeal was not received within 30 days and restitution, if applicable, must be paid to workers within 10 calendar days. Contractors who fail to provide restitution will be deemed “in non-compliance.”
- i. Time Sheets: Every contractor shall create and maintain time sheets for every worker performing work on the project. This includes salaried employees who perform work in a classification, either intermittently or full time. Time sheets shall record all work performed during the work week, both Federal and non-Federal, shop time, travel time considered work time, including any time considered “hours worked” as described under the Fair Labor Standards Act, Part 785. When requested, Contractors shall provide copies of time sheets to the OFC in support of certified payroll report information being provided. Time sheets, payroll records, and other basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of work.
- j. OFC payment release authorization letters (Ok to Pay letters) cannot be accomplished until all wage conformances have been deemed closed (USDOL responses have been received and there are no pending contractor wage appeals).
- k. Job Classifications Descriptions (Laboring Category): While most of skilled and unskilled crafts appearing in Wage Determinations are self-explanatory, the below classifications (not all inclusive) have been described by the NHDOT and are consistent with USDOL requirements. Workers performing in these classes, according to the description, will be classified by contractors accordingly:
 - 1) Asbestos Abatement: All work associated with asbestos abatement shall be classified as “Laborer,” unless said work involves piping that will be reinsulated. In these cases, “Asbestos Abatement Worker” shall be used.
 - 2) Blaster: Supervises and assists in locating, loading, and firing blast holes with explosives to break up hard materials. This work includes any of the following duties on-site: determining the spacing and depth of drilled holes; determining the amount of explosives, timing and placement of detonators; handling blasting materials in the work area; loading holes with detonators, primers and explosives; tamping and stemming holes; directing the placement of blasting mats or other flyrock controls; and detonating the charges.

- 3) Brick Mason (also called Brick Layers): Builds and repairs walls, floors, paths/sidewalks, partitions, fireplaces, chimneys, and other structures with brick, pavers, precast masonry panels, concrete block, and other masonry materials, with or without mortar.
- 4) Drill Operator: Unless a hand held tool, which can then be classified and performed as a Common/General Laborer, all drill work shall be performed in the "Drill Operator" classification. Conformances, if needed, shall be consistent with this requirement.
- 5) Guardrail Installer: Except for the "pounder," each person performing guardrail installation work shall be classified as "Guardrail Installer."
- 6) Ironworker (Reinforcing): Positions and secures steel bars to placement of reinforced concrete; determines number, size, shape and location of reinforcing rods from plans, specifications, sketches and/or oral instructions; places and ties reinforcing steel using wire and pliers, sets rods in place, spaces and secures reinforcing rods. May bend steel rods with hand tools or operate a rod-bending machine; may reinforce concrete with wire mesh; may perform other related duties.
- 7) Ironworker (Structural): Performs any combination of the following duties to set beams, hang diaphragms, install bolts, torque bolts, test bolts, raise, place and unite girders, columns and other structural steel members to form completed structures or structure frameworks, working as a member of a crew; sets up hoisting equipment for raising and placing structural steel members; fastens steel members to cable of hoist using chain, cable or rope; signals worker operating hoisting equipment to lift and place steel members. Guides member using guy line (rope) or rides on member to guide it into position. Reads plans; rigs, assembles and erects structural members requiring riveting or welding. May perform other related duties.
- 8) Lead Abatement Worker: All work associated with lead abatement shall be classified as "Lead Abatement Worker."
- 9) Stone Mason: Builds stone walls, as well as set stone exteriors and floors, lays/sets all cut stone, marble, slate, or stone, with or without mortar. They work with natural cut stone, such as marble, granite, limestone and artificial stone made of concrete, marble chips, or other masonry materials.
- 10) Sweeper/Broom Operators: Whenever Sweeper or Broom does not appear in the Wage Determination, contractors may use the Truck Driver classification for this service if the equipment used is of the over the road type (only). However, anytime the contract has an established classification/rate for "Sweeper or "Broom," this classification must be used and the minimum rate, as it appears in the contract, shall apply.
- 11) Traffic Coordinator: Performs sign placement and maintenance, including proper set up and relocation of construction sign packages and message boards; designs lane closures in accordance with local, state, and Federal requirements. Please do not confuse this classification with Flagger.

6. **Mandatory Training**. Prime Contractors who fail to obtain an annual average (based on the calendar year) of at least 50% “Satisfactory” ratings on all OFC Compliance Field Audit Reports will be required to attend a mandatory 4-hour Contractor Compliance Training Class each spring (as scheduled by the OFC). A principal owner (or executive officer of the company) and his/her payroll accountant shall attend. Note: Compliance ratings on all projects will be averaged whenever a Prime Contractor has multiple projects.
7. **Temporary Suspensions**.
 - a. Any Contractor, Subcontractor, or Lower-tier Subcontractor found to be in violation of FHWA Form 1273, Required Contract Provisions, made part of its contract, or has failed to comply with OFC Field Audit requirements, will be required to take corrective action before participating in future projects funded by the Department. Corrective action will include, but not limited to, the submission of certified payrolls or other records and reports necessary to verify compliance with the Provisions.
 - b. Any Contractor, Subcontractor or Lower-tier Subcontractor found to have repeatedly violated the FHWA Form 1273, Required Contract Provisions, may be required to complete 4-hours of Federal Contract Compliance Training conducted by the NHDOT Office of Federal Compliance. When mandated, a principal owner and/or company executive and his/her payroll accountant shall attend. Federal Contract Compliance Training must be completed before participation on future projects is authorized. This requirement does not relieve the Contractor of its obligations under the prime contract, nor does it prevent the Department from seeking other remedies or enforcement action, as provided by the governing Rules, Laws, and Federal Regulations.
 - c. Companies will be notified of suspensions in writing. Actions the company must take to have participation privileges restored will be clearly indicated. Companies will also be advised that if a satisfactory response is not received within 30 days of receipt of the suspension notice, the company will be considered “non-responsive.” In cases where companies are non-responsive, and unpaid wages on the part of the subcontractor or lower-tier subcontractor are involved, the matter will then be deferred to the Prime Contractor for payment of wages as provided in Form FHWA 1273, Required Contract Provisions, Section I, Paragraph 3.
8. **Right To Withhold Payments**. The Department may withhold payments claimed by the Contractor on account of:
 - a. Failure of the Contractor to make payments to Subcontractors for materials or labor.
 - b. Regulatory non-compliance or enforcement.
 - c. Failure to comply with NHDOT Office of Federal Compliance Field Audit Report requirements.
 - d. Failure to comply with monthly reporting requirements, as applicable.
 - e. For projects with an OJT requirement, failure to submit OJT 1, On-The-Job Training Acknowledgement and Statement of Intent within 30 days of the project start date.
 - f. Failure to submit closeout documentation.
 - g. All other causes that the Department reasonably determines negatively affect the State’s interest.

9. **Final Payment Release.** Once final project records are transferred to the NHDOT Office of Federal Compliance, a final review shall be performed to determine compliance with the Federal provisions. Release of any final payment shall not be made to the Contractor until the Office of Federal Compliance issues a payment release letter (ok to pay) certifying:
- a. All required payrolls, labor, and EEO documentation have been received and deemed complete and correct.
 - b. DBE requirements stipulated in the Contract and/or the Required Contract Provisions have been fulfilled.
10. **Deposits and Escrows.** Every attempt is made to complete compliance actions and resolve any disputes before the project is completed and final payments are made. Sometimes, however, corrective actions or disputes continue after completion and provisions must be made to ensure that funds are available to pay any wage restitution that is ultimately found due. In these cases, the project can proceed to final closing provided the Prime Contractor, from payments already provided him/her, provides written evidence a deposit of an amount equal to the potential liability for wage restitution and liquidated damages, if applicable, has been deposited in an *escrow account*. When a final decision is rendered, the Prime Contractor makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:
- a. Where the parties have agreed to amounts of wage restitution that are due but the employer has not yet furnished evidence that all the underpaid workers have received their back wages. The deposit is equal to the amount of restitution due to workers lacking payment evidence. As proper documentation is received, an amount corresponding to the documentation is returned to the depositor. Amounts for any workers who cannot be located are held in the escrow account for three (3) years. Amounts remaining in the account not disbursed by the end of this three-year period shall be returned to the Prime Contractor.
 - b. Where underpayments are suspected or alleged and an investigation has not yet been completed. The deposit is equal to the amount of wage restitution and liquidated damages, if applicable, that is estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the depositor. If the parties agree to the investigative findings, the amounts due to workers will be disbursed from the escrow account in accordance with the schedule of wages due. Amounts for unfound workers will be retained for a period of three (3) years and subsequently disbursed to the depositor as described above in Paragraph 7a.
 - c. Where the parties are waiting for the outcome of an administrative hearing that has been or will be filed contesting a final determination of wages due. The deposit shall be equal to the amount of wage restitution and liquidated dates, if applicable, that have been determined to be due. Once the final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

Direct questions relating to any of the information above to the NHDOT Office of Federal Compliance (603-271-6752).

Appendix 13

TRAFFIC CONTROL CHECKLIST:

(SOURCE: Bureau of Traffic, Concord, NH)

Portable Changeable Message Sign (PCMS)

- Shall only contain two phases (messages) and the message shall not duplicate a construction sign in the same vicinity.
- If more than two messages are needed, use additional PCMS
- Message shall consist of up to three lines eight characters per line
- Message can use abbreviations as noted in MUTCD Section 1A.14
- Message shall be visible a minimum distance of 650 ft and the PCMS shall have adjustable display rates so the entire message can be read at least twice when driving at the posted speed limit.
- Message shall not scroll or travel horizontally or vertically across the face of the sign.
- Shall be mounted at least 7 ft above the EP in urban areas and divided highways and a minimum height of 5 ft in rural areas.
- Shall be delineated with TC devices (barrels)
- The PCMS trailer should be delineated on a permanent basis by affixing retroreflective material (white/red vehicle sheeting).
- Per 619.3.2.6.3 when a PCMS is not in use, it shall be removed from the clear zone unless adequately protected by portable barrier or equivalent and specifically approved.
- When PCMS are not in use, the message board should be turned parallel to traffic.
- PCMS shall be placed so it will not block other signs or be blocked by other signs, vegetation, etc.
- All letters shall be at least 18 in.

Permanent Construction Signs

- Always listed on the Construction Signs and Warning Devices (CSWD) summary sheet which is included in the project plans or proposal.
- Refer to Work Zone Traffic Control Standard Plans #2 for typical sign layout. Signs shall not block other roadway signs see note #2 on WZTC-1
- Sign text shall follow the NHDOT Construction Sign Standards and Standard Highway Signs.
- Shall always be fluorescent orange sheeting and shall be 48"x48" signs unless in urban areas or so noted on the CSWD summary sheet.
- Shall be mounted on two u-channels posted unless noted differently on the CSWD summary sheet.
- Post shall be flush with the top of the sign or 6 inches below the sign. Post extended over the sign is unacceptable.
- Splicing of U-channel is allowed per NCHRP 350 testing typically 6"
- Post shall be embedded at a depth of 2.5
- Signs shall be mounted at a height of 7 ft off EP in urban areas and divided highways. In rural areas sign can be mounted at a minimum height of 5 ft of the EP.
- Sign not in use shall be removed or covered completely with an approved material i.e. plywood.

Channelizing Devices

- Space for tangent use is twice the speed limit
- Spacing on tapers is the speed limit

A. Cones

- Can be used at night only during work hours. Non-work hours cones can be used at night only to supplement other channelizing devices i.e. drums or barricades. The drums & barricades shall still be spaced per the required spacing.
- Cones used at night shall be at least 28" in height and shall have two retroreflective bands around the cone. One (1) – 6" band located 3" to 4" from the top of the cone and another 4" band located 2" below the 6" band.

B. Drums

- Drums shall be predominately orange per new WZTC-1.
- 36" minimum height
- Shall have alternating orange and white retroreflective stripes 4" to 6" wide.
- Shall have two orange and white stripes with the top stripe being orange.
- Spaces between the stripes shall not exceed 3 inches.
- Ballast shall not be placed on top of the drum.

TRAFFIC CONTROL CHECKLIST (Continued):

(SOURCE: Bureau of Traffic, Concord, NH)

C. Barricades

- Stripes on barricades shall be alternating orange and white retroreflective sloping downward at an angle of 45° in the direction road users are to pass.
- Stripes shall be 6 inches wide except when rail lengths are less than 3 ft, 4 inch stripes may be used.
- Type I and II are intended to be used in situations to direct the road users through a work zone.
- Type I typically are used on conventional roads or urban streets.
- Type II typically are used on Divided Highways or other high speed roadways (greater than 45 mph).
- Type III are primarily used for road closures or partial closures.
- Rails are 8" – 12" wide
- Type I & II rails are 24" minimum in length and the height to the top of rail from the ground is minimum 36".
- Type III rail length is a minimum 4 ft with a minimum height of 5 ft from top of rail to the ground.

Operational Construction Signs

- Signs shall be mounted on an approved NCHRP 350 portable sign stand and the bottom of the sign shall be mounted a minimum 1 ft above the travelway.
- Cold planned areas shall always have the following signs: Motorcycles Use Caution, Grooved Pavement Ahead, Bump or Dip
- "Be Prepared to Stop" sign should be used along with a "Flagger" sign

Flaggers

- Check for Flagger Certification
- Flagger vest apparel shall meet the MUTCD requirements
- Flagger stop/slow paddle shall be 18 in wide with 6" letters and be retroreflective
- "Flagger Ahead" and "Be Prepared To Stop" signs in place and removed if no longer needed.
- Proper Flagger clothing: hard hat or orange baseball cap, shirt, & safety vest
- Flagger stations shall be clean and without distractions i.e. books, chairs, radios, personnel congregating. Flaggers are allowed to use 2-way radios to control traffic.
- Flagger station shall be on the shoulder of the approaching traffic outside of the lane closure per MUTCD and NHDOT Flagger Handbook. Flagger **shall not** be stationed in the travel lane.
- Flagger stationing shall be reviewed throughout the day for adequate lighting and shadows that may damper their visibility.
- Flagger shall not leave their station for any reason such as picking up signs, barrels, cones, etc.
- Are flaggers using proper flagging etiquette and conducting themselves appropriately to send a clear, respectful message to passing drivers?
- Signaling with hand signals and stop/slow paddles shall follow the NHDOT Flagger handbook and the MUTCD.
- Flagger shall **never** flag from inside a vehicle.
- Flagger shall be informed on what to do if approached by emergency vehicles, in the event of accidents or a vehicle running the flagger station.
- The Contractor shall allow for proper rest breaks, explain the traffic control operation to the flagger and check the visibility of the signs and flaggers on the work area.

Pre Construction Meeting

- Determine who the contractor's traffic control coordinator is.
- Make sure that the proper traffic control documents are being used.
- Review NCHRP 350 requirements with the contractor.
- Discuss possible locations for Portable Changeable Message Signs reminding the Contractor that they must be outside the clear zone when not in use.
- Review the layout, or perform the layout prior to erecting the permanent construction signs. Approve only the final product, not the layout.
- Encourage the Contractor to have the proper operational signs on site to use in case of emergencies/unforeseen circumstance.
- Inspect the following before implementation:
 - Sign sheeting intensity, wording, text, size, etc.
 - Proper posts
 - Condition of channelizing devices
 - Check the working conditions of arrow boards and portable changeable message signs.

TRAFFIC CONTROL CHECKLIST (Continued):

(SOURCE: Bureau of Traffic, Concord, NH)

Pavement Markings (Reference Spec 632, 619, & NHDOT WZTC Standard Plans)

- Temporary pavement markings can be paint, tape or removable raised pavement markers.
- Temporary pavement markings are the markings installed on an interim base prior to final pavement markings. Pavement markings installed on detours or winter binder pavement are not considered temporary pavement markings. These markings are paid for under Item 632 and shall follow those specifications.
- Temporary pavement markings shall not be in place for more than 2 weeks, except for temporary raised pavement markers on divided highways, which shall not be in place for more than 1 week.
- All temporary pavement markings shall remain in place while in service and if dislodged or rendered ineffective the temporary markings shall be replaced.
- Temporary raised pavement markers shall not be used to supplement or substitute edge lines and non-longitudinal lines e.g. stop lines, railroad crossings, crosswalks, words, symbols, etc.
- Edgelines, channelizing lines, lane reduction transitions, gore markings, and non-longitudinal lines are usually not required for temporary pavement unless directed by the Engineer refer to NHDOT WZTC Standard plans.
- Raised Pavement Markers spacing for double yellow centerline on two-way roadways is 40 feet. At the Engineer's discretion, "Do Not Pass" (R4-1) signs may be installed for added emphasis. These markers shall be yellow double face retroreflectorized markers placed in pairs.
- Raised Pavement Markers on divided highways shall also be spaced at 40 feet for the single broken line. These markers shall be white single face retroreflectorized markers.
- Refer to the NHDOT Qualified Products List for approved raised pavement markers noted under 619 items.
- Pavement markings that are longer applicable to current condition in the work zone shall be completely removed so that they are not visible either during day or night.
- Perform occasioned drive throughs on the project during the day and night and determine if the markings are no longer visible or if the white markings appear to be white and yellow markings appear yellow, and if they are in "acceptable" condition, if not the Contractor shall repaint the lines.
- Prior to implementing a TC package and throughout construction, work zone drive through is important to verify that the markings are per the TCP.

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STATE OF NEW HAMPSHIRE

INTER-DEPARTMENT COMMUNICATION

DATE:

FROM:

AT OFFICE: Bureau of

SUBJECT:

TO: William J. Oldenburg, P.E
Assistant Director of Project Development

MEMORANDUM

The following information is in accordance with the Guidelines for Implementation of the Work Zone Safety and Mobility Policy to the Traffic Control Committee (TCC) for determination of the project’s significance.

Consistent with the memo dated April 16, 2015 regarding the need for Traffic Control Committee reviews, this project is:

Exempt from Presentation-Reason for Exempt Status

Requires Presentation

The purpose of this project is:

The project will be completed:

Traffic impacts are expected to be:

- An evaluation of the criteria for determination of a significant project is provided in the table shown below.

| FHWA Requirement | Specific Project Response |
|---|---|
| <ul style="list-style-type: none">• Will the Project be located within TMA (See page 6 of Work Zone Safety and Mobility Policy – Guidelines) and include Lane Closures 3 days or more | No, |
| NHDOT – Primary Level of Criteria | “Does the Project meet ALL of the following requirements?” |
| <ul style="list-style-type: none">• Estimated Construction Cost > \$15 M | No, Const. Cost \$ |
| <ul style="list-style-type: none">• Within or affecting Communities > 35,000 residents | No, Community Pop. Year * |
| <ul style="list-style-type: none">• On the Interstate or NHS | Yes, Names |

| | |
|---|------|
| <ul style="list-style-type: none"> Anticipated to create sustained WZ impacts, separately or in combination with another project | Yes, |
|---|------|

*List Community Name, Census Year, Population

| NHDOT Secondary Level of Criteria | Do any of the following items, individually or collectively, in the opinion of the TCC, require the project to be Significant? |
|---|---|
| <ul style="list-style-type: none"> Time and Duration | Yes |
| <ul style="list-style-type: none"> Nature of Work | Yes |
| <ul style="list-style-type: none"> Traffic Volume | Yes, ADT: % T: |
| <ul style="list-style-type: none"> Regional Significance | No |
| <ul style="list-style-type: none"> Sustained WZ Impacts, separately or in combination with another | Yes |

TRAFFIC CONTROL COMMITTEE SUPPLEMENTAL INFORMATION:

Project Name: Bedford Merrimack Project Number: 16100

| Concerns | Responses | | | | |
|--|------------------------|--|------------------------------------|--|--------------------------|
| Detours or Diversions | No | Describe: N/A Duration: N/A Day/Night N/A Remarks: | | Detour Map Attached N/A Maintenance Patrol? N/A | |
| Intersection Impacts? | No | Describe: N/A | | Duration: N/A Day/Night N/A | |
| Lane Closures? | Yes | Which Operations? | | Time of Day Allowed: 24-7 Duration: Hours | |
| Lane Width Restrictions? | No | NETC Rte.? N/A | Lane plus Shldr. Width For Traffic | Which Operation(s)? Duration: Hours | |
| Speed Reduction During Construction? (Coordinate w/ Traffic prior to TCC mtg.) | No | <input type="checkbox"/> Long Term <input type="checkbox"/> Work Hours Only | From mph To mph | Time of day: N/A Restore Speed in Winter: N/A | |
| Night Work? | Yes | Which Operation(s)? Remarks: | | Duration: Hours | |
| Holidays During Project Timeframe? | Yes | Impacts: Minor | | Remarks: No impacts the day before, after. or on holiday | |
| Special Events? | Yes | Contract Restrictions during Spec. Events? Remarks: | | | |
| Schools, Hospitals, etc.? | No | Contract Provisions: N/A | | Additional Provisions: N/A | |
| Are Other State Involved? | No | If Yes, Has Coordination Occurred: N/A | | Remarks: | |
| Special Traffic Control? | No | Type: N/A | | Remarks: | |
| Emergency /Evacuation Routes? | No | Reason Coordinated w/ orgs? N/A | | Contract Requirements: Describe: N/A | |
| Pedestrian facilities or sidewalks on the project? | No | If Yes, are ped facilities be perpetuated?: Yes (MUTCD Section 6D.01 requires accommodations if they exist prior to project). How are they being accommodated? N/A Remarks: | | | Project Duration: Months |
| ITS Request for Permanent Installations | Submitted to TSMO? Yes | Any requirements or recommended permanent ITS infrastructure? Yes | | If yes, describe: | |
| Work Zone ITS Needs Assessments (Temp. Installs During Const.) | Submitted to TSMO? Yes | Any requirements or recommended SWZ or other elements? Yes | | If yes, describe: | |

Based on the evaluation of the criteria presented above, I recommend that the TCC classify this project as:

- Significant Level 1
- Significant Level 2
- Non-Significant

A Level I classification requires the development of a separate Traffic Management Plan (TMP) document (narrative) that includes detailed discussion of Public Outreach (PO), Traffic Control Plans (TCP) and Transportation Operations (TO). For example, I-93 expansion, Newington-Dover and the Bow-Concord Capital corridor improvements have been identified as Level I Significance.

A Level II classification requires the development of a memorandum that includes discussion of the three components (TCP, TO, PO).

Both the Level I and II documents must be presented to the committee for review and approval.

This Section for use by TCC Only:

Designation (Circle One): Significant: Level I Level II Non-Significant

Additional Guidance and Direction: _____

Signature:

Chairperson, TCC

Date

cc: Project File

STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION

DATE: April 16, 2015

FROM: William J. Oldenburg, P.E. AT (Office): Division of Project Development
Chairman, Traffic Control Committee

SUBJECT: Traffic Control Committee Project Review
Presentation Exemptions and Mandatory Reviews

THRU: William J. Cass, P. E. Director of Project Development

TO: Bureau Administrators and Project Managers

MEMORANDUM

In accordance with the "Guidelines for Implementation of the Work Zone Safety and Mobility Policy" (NHDOT Policy #601.01), projects are presented for determination of "level of significance" by the Traffic Control Committee (TCC). This policy applies to all projects that are State and Federally funded.

The significance level is, in essence, an assessment of the project from an impact perspective on the transportation systems; mobility and safety. The classification of projects will result in a "non-significant" or "significant-level 1 or 2". While the "non-significant" project requires no follow-up actions by the development team, those determined to be "significant" do require further actions. An inter-department memo discussing traffic control, public outreach and transportation operations is required for the Level 2 projects, and a comprehensive TMP plan addressing these topics in a more detailed fashion for Level 1 projects.

While it is the goal of the TCC to maintain conformance with the Policy, it is also warranted that TCC efforts be refined and enhanced to allow for efficiency in the process. Considering the magnitude of projects that require review and classification, it appears that more time and effort could be targeted on other critical areas of need by modifying the review process. As the TCC progresses forward in its efforts to review and classify projects, it has become apparent that several project types could be classified as "presentation exempt", (i.e. not warranting presentation to the TCC.) In contrast, there are projects that will require a presentation before the TCC for a mandatory review of the planned TMP simply based upon corridor, volume, or other critical criteria.

All planned projects, except short term and mobile maintenance operations, will require a project determination memorandum to be completed and submitted to the Traffic Control Committee Chair. The Chair, or designee, will review the projects that are requested for presentation exempt classification, and shall either approve or deny the exempt classification. If denied, the project will require presentation to the Traffic Control Committee. At each Traffic Control Committee meeting, the Chair shall provide a list of all approved presentation exempt projects for final level of significance determination by the Committee members.

The following Roadway Tier Guidance describes the criteria for mandatory review and for potential presentation exempt classification.

Roadway Tier Guidance

- 1) Mandatory Review Criteria
 - a) All Tier 1 and 2 Roadways
(e.g. I-89, I-93, I-95, I-293, I-393, FEET, NH 16 (Spaulding Tpke), NH 101 and US 4 corridors and others as applicable)

- 2) Potential Presentation Exempt Criteria
 - a) Tier 3, 4 and 5 Roadways
 - i) 2-lane facilities < 10,000 VPD
 - ii) 4-lane facilities < 20,000 VPD

 - b) Projects involving rest areas, park and rides, and “employee only” access roads to NHDOT facilities that do not impact the roadway.

- 3) Presentation Exempt Criteria
 - a) Short term and mobile maintenance operations for all tiers.

- 4) All projects, including those on Tier 3, 4 and 5 corridors, shall be reviewed for proximity to other projects by the applicant. The applicant shall verify on the project determination memo that there are no other projects within the traffic influence area of the work, or shall list all projects in the influence area describing anticipated impacts to traffic and any mitigating measure that will be applied to the project to reduce impacts.

cc: Keith Cota, P.E., Mark Richardson, P.E., James Marshall, P.E., Chuck Dusseault, P.E., Bill Watson, P.E., Doug Gosling, P.E., Caleb Dobbins, P.E., Chris Waszczuk, P.E., William Lambert, P.E., Denise Markow, P.E.



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



CHRISTOPHER D. CLEMENT, SR.
COMMISSIONER

JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER

Work Zone Training Requirement for Law Enforcement:

Effective April 1, 2013, all Uniformed officers working on any NHDOT funded projects, including municipally managed projects, shall have successfully completed a NHDOT approved course on ***The Safe and Effective Use of Law Enforcement Personnel in Work Zones***. This course shall be taken once every four years. Proof of successful course completion shall be supplied upon request.

NHDOT Approved Work Zone Training Courses for Law Enforcement:

1. Online at PoliceCommunity.net by The Response Network (TRN)
 - a. If your agency is already a subscriber to TRN's online training your agency, and therefore all officers who work at that agency, get the *NH Work Zone* course as part of TRN's course offerings; and therefore, there is no need for any individual officer to pay for access to the course.
 - b. If your agency is not a subscriber, there's a nominal fee for the course.
 - c. The Online Course can be found at the following link:
<http://policecommunity.net/nhdot/index.html>
 - d. If you have any questions or issues with accessing the course, please feel free to contact TRN's CEO Brad Naples at bnaples@comcast.net.

or...

2. Classroom "train-the-trainer" training provided by NH Police Standards & Training Council in Concord, NH.
 - a. Contact Captain Mark Bodanza at (603) 271-2133
 - b. "Trainers" receive training from Police Standards and bring presentation and testing materials back to their respective areas and train and test individual officers in a classroom or office setting.
 - c. Trainers and/or Local or County Departments will be responsible for recording and/or submitting names of officers who successfully completed the training to NHDOT upon request. This will be required to confirm that the training has been completed and allow for release of payment.
 - d. The NHDOT is in the process of developing a tracking database for the trainers to document the list of officers who have successfully complete the training, but this database is not yet completed. Until the database is completed, the NHDOT is requesting that all trainers and/or Police Agencies maintain their lists locally.

*Officer Work Zone training is required per Federal Highway Administration (FHWA) mandate: 23 CFR, Part 630, subpart K – Temporary Traffic Control Devices

Questions? Contact...
Nickie Hunter, P.E. - District Construction Engineer - Bureau of Construction
New Hampshire Department of Transportation
P.O. Box 483 - Concord, NH 03302-0483
(603) 271-2571
nhunter@dot.state.nh.us

October 26, 2011, March 28, 2012, Revised December 14, 2012

| | |
|---|-------------------------|
| NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION POLICY | NUMBER 402.06 |
| TITLE Flagger and Uniformed Officer Use in Work Zones | DATE 05/29/2009 |
| SUBJECT Flagger and Uniformed Officer Use for Temporary Traffic Control and Safety | RESPONSIBLE BUREAU |

Authority: The State Legislature has delegated the Commissioner of the Department of Transportation with full authority to control traffic in highway/bridge construction work zones on Class I, II, III highways; RSA 228:21, 236:1, and 228:37.

Definitions:

Flagger: A person trained in flagger operations who actively controls the flow of vehicular traffic into and/or through a temporary traffic control zone using hand-signaling devices or an Automated Flagger Assistance Device. (MUTCD 6E.01)

Uniformed Officer: A certified law enforcement officer who has the legal authority to enforce traffic laws on the roadways within the work zone.

Dynamic Traffic Control is traffic control that can be continuously adjusted to meet changing work zone needs and traffic demands. Dynamic Traffic Control can be at a fixed location or mobile and requires either human intervention or automated/intelligent electronic devices. Dynamic Traffic Control is typically implemented using flaggers and/or uniformed officers.

Purpose: The purpose of this policy is to provide a safe work zone through the prudent and consistent use of flaggers and/or uniformed officers in dynamic traffic control operations and traffic law enforcement. This policy provides guidance and consistency statewide with regards to the use of flaggers and uniformed officers, while ensuring efficient use of construction funding. This policy was initiated to comply with the requirements of the Federal Highway Administration, 23 CFR Part 630, Subpart K, 630.1106(c) Uniformed Law Enforcement Policy.

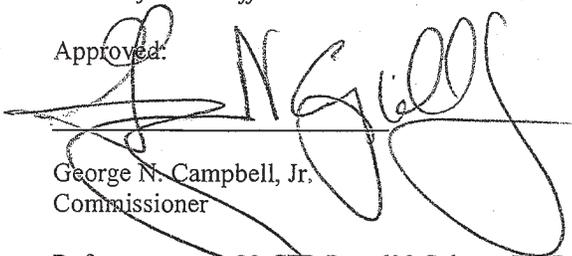
Policy: It is the policy of the Department of Transportation to take appropriate measures to reduce the likelihood of injuries and fatalities to workers and road users in NHDOT work zones. The use of appropriately trained flaggers and uniformed officers for the purpose of dynamic traffic control, presence, enforcement, and emergency assistance will be part of the safety measures taken.

Flaggers will be the primary means for providing dynamic temporary traffic control operations in work zones. Uniformed officers will be utilized for their specific authority for operations beyond that of a flagger, such as assistance in speed control and traffic law enforcement as necessary. The use of flaggers and uniformed officers in work zones is to be consistent with the *NHDOT Flagger and Uniformed Officer Use in Work Zones Guidelines*.

A Municipal Work Zone Agreement (MWZA) outlining the Department of Transportation's authority and responsibility for controlling traffic within the work zone is to be signed by each municipality as detailed in the *NHDOT Flagger and Uniformed Officer Use in Work Zones Guidelines* prior to construction of applicable project.

Responsibility: The Chief Engineer is responsible for the development, oversight and updating of the *NHDOT Flagger and Uniformed Officer Use in Work Zones Guidelines*.

Approved:



George N. Campbell, Jr.
Commissioner

Date: 6/5/09

References: 23 CFR Part 630 Subpart K, RSA 228:21, RSA 236:1, RSA 228:37, RSA 188-F:23, RSA 265:3-b, RSA 265:4, MUTCD

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

WORK ZONE TRAFFIC CRASH REPORT

(Reports are to be submitted to supervisor within 48 hours of crash)

| 1. Town or City: _____ 2. Project Name: _____ 3. Project Number: _____ 4. Bureau: <input type="checkbox"/> Bridge Maintenance <input type="checkbox"/> Bridge Design <input type="checkbox"/> Survey/Design <input type="checkbox"/> Materials & Research <input type="checkbox"/> Construction <input type="checkbox"/> Traffic <input type="checkbox"/> Highway Maintenance <input type="checkbox"/> Turnpikes <input type="checkbox"/> LPA | 15. Roadway Condition: <input type="checkbox"/> normal <input type="checkbox"/> rough <input type="checkbox"/> wheel ruts <input type="checkbox"/> potholes <input type="checkbox"/> pavement edge drop offs | | | | | | | | | | | | | | | | | | | | | | | |
|---|--|--------------------------------|------------------------------|---------------------|---|--------------------------------|--|------------------------------|------------------------------|------------------------------|--------------------------------|--------------------------------|--------------------------------|-------------------------------|-------------------------------|-------------------------------|--|------------|--|--|--|--|--|--|
| 5. District/Shed/Contractor: _____ 6. Crash Date: _____ 7. Crash Time: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM <input type="checkbox"/> unknown | 16. Surface Conditions: <input type="checkbox"/> dry <input type="checkbox"/> wet <input type="checkbox"/> ice/snow <input type="checkbox"/> unknown | | | | | | | | | | | | | | | | | | | | | | | |
| 8. Number of Vehicles Involved: _____ 9. Number of Persons Injured and Fatalities: <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <thead> <tr> <th rowspan="2"></th> <th colspan="3">GENERAL PUBLIC</th> <th colspan="2">PROJECT PERSONNEL</th> </tr> <tr> <th>In Motor Vehicles</th> <th>Motorcycles Bicyclists</th> <th>Pedestrians</th> <th>Operating Equipment</th> <th>Pedestrians</th> </tr> </thead> <tbody> <tr> <td>Injured</td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td>Fatalities</td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> | | GENERAL PUBLIC | | | PROJECT PERSONNEL | | In Motor Vehicles | Motorcycles Bicyclists | Pedestrians | Operating Equipment | Pedestrians | Injured | | | | | | Fatalities | | | | | | 17. Light Conditions: <input type="checkbox"/> daytime <input type="checkbox"/> nighttime <input type="checkbox"/> nighttime illuminated <input type="checkbox"/> dawn/dusk <input type="checkbox"/> unknown |
| | | GENERAL PUBLIC | | | PROJECT PERSONNEL | | | | | | | | | | | | | | | | | | | |
| | In Motor Vehicles | Motorcycles Bicyclists | Pedestrians | Operating Equipment | Pedestrians | | | | | | | | | | | | | | | | | | | |
| Injured | | | | | | | | | | | | | | | | | | | | | | | | |
| Fatalities | | | | | | | | | | | | | | | | | | | | | | | | |
| 10. Location of Crash: <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <thead> <tr> <th style="width: 33%;">OCCURRED ON</th> <th style="width: 33%;">DISTANCE AND DIRECTION FROM</th> <th style="width: 33%;">INTERSECTING ROAD OR FEATURE</th> </tr> </thead> <tbody> <tr> <td style="height: 40px; vertical-align: bottom;">Route No./Street</td> <td style="vertical-align: bottom;"> <input type="checkbox"/> north <input type="checkbox"/> south <input type="checkbox"/> east <input type="checkbox"/> west <input type="checkbox"/> at intersection Distance from (ft.) _____ </td> <td style="vertical-align: bottom;">Route No./Street/Feature _____</td> </tr> </tbody> </table> | OCCURRED ON | DISTANCE AND DIRECTION FROM | INTERSECTING ROAD OR FEATURE | Route No./Street | <input type="checkbox"/> north <input type="checkbox"/> south <input type="checkbox"/> east <input type="checkbox"/> west <input type="checkbox"/> at intersection Distance from (ft.) _____ | Route No./Street/Feature _____ | 18. Weather Conditions: <input type="checkbox"/> clear <input type="checkbox"/> cloudy <input type="checkbox"/> fog <input type="checkbox"/> rain <input type="checkbox"/> snow <input type="checkbox"/> hail <input type="checkbox"/> sleet <input type="checkbox"/> freezing rain <input type="checkbox"/> high winds <input type="checkbox"/> unknown | | | | | | | | | | | | | | | | | |
| OCCURRED ON | DISTANCE AND DIRECTION FROM | INTERSECTING ROAD OR FEATURE | | | | | | | | | | | | | | | | | | | | | | |
| Route No./Street | <input type="checkbox"/> north <input type="checkbox"/> south <input type="checkbox"/> east <input type="checkbox"/> west <input type="checkbox"/> at intersection Distance from (ft.) _____ | Route No./Street/Feature _____ | | | | | | | | | | | | | | | | | | | | | | |
| 11. Type of Crash or Collision with (first harmful event): <input type="checkbox"/> frontal/side <input type="checkbox"/> rollover <input type="checkbox"/> flagger/officer <input type="checkbox"/> sideswipe <input type="checkbox"/> bicyclist <input type="checkbox"/> construction vehicle/equipment <input type="checkbox"/> rear end <input type="checkbox"/> worker <input type="checkbox"/> went over a drop off <input type="checkbox"/> head on <input type="checkbox"/> pedestrian <input type="checkbox"/> fixed object (check box below) <input type="checkbox"/> OTHER: _____ | 19. Traffic Vol. : <input type="checkbox"/> low <input type="checkbox"/> moderate <input type="checkbox"/> heavy | | | | | | | | | | | | | | | | | | | | | | | |
| 12. Roadway Design: <input type="checkbox"/> two way traffic <input type="checkbox"/> interstate/divided <input type="checkbox"/> one way/ramp <input type="checkbox"/> OTHER: _____ | 20. Posted Speed Limit: _____ mph | | | | | | | | | | | | | | | | | | | | | | | |
| 13. Road Alignment: <input type="checkbox"/> straight and level <input type="checkbox"/> intersection <input type="checkbox"/> curve and level <input type="checkbox"/> straight and on a grade <input type="checkbox"/> curve at a hillcrest <input type="checkbox"/> straight at a hillcrest | 21. Traffic Control Package: <input type="checkbox"/> in use <input type="checkbox"/> not in use Package Designation: <div style="display: flex; justify-content: space-around;"> MUTCD TA- _____ NHWZTC TC- _____ OTHER _____ </div> Condition of devices: <input type="checkbox"/> good <input type="checkbox"/> fair <input type="checkbox"/> poor Modifications or comments about the package: _____ | | | | | | | | | | | | | | | | | | | | | | | |
| 14. Roadway Surface Type: Travel In.: <input type="checkbox"/> asphalt <input type="checkbox"/> concrete <input type="checkbox"/> grooved pavement <input type="checkbox"/> unpaved Shoulders: <input type="checkbox"/> asphalt <input type="checkbox"/> concrete <input type="checkbox"/> grooved pavement <input type="checkbox"/> unpaved | 22. Pavement Markings: <table style="width: 100%; margin-top: 5px;"> <thead> <tr> <th>Left TW</th> <th>Centerline</th> <th>Right TW</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/> none</td> <td><input type="checkbox"/> none</td> <td><input type="checkbox"/> none</td> </tr> <tr> <td><input type="checkbox"/> RPM</td> <td><input type="checkbox"/> RPM</td> <td><input type="checkbox"/> RPM</td> </tr> <tr> <td><input type="checkbox"/> paint</td> <td><input type="checkbox"/> paint</td> <td><input type="checkbox"/> paint</td> </tr> <tr> <td><input type="checkbox"/> tape</td> <td><input type="checkbox"/> tape</td> <td><input type="checkbox"/> tape</td> </tr> </tbody> </table> | Left TW | Centerline | Right TW | <input type="checkbox"/> none | <input type="checkbox"/> none | <input type="checkbox"/> none | <input type="checkbox"/> RPM | <input type="checkbox"/> RPM | <input type="checkbox"/> RPM | <input type="checkbox"/> paint | <input type="checkbox"/> paint | <input type="checkbox"/> paint | <input type="checkbox"/> tape | <input type="checkbox"/> tape | <input type="checkbox"/> tape | | | | | | | | |
| Left TW | Centerline | Right TW | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> none | <input type="checkbox"/> none | <input type="checkbox"/> none | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> RPM | <input type="checkbox"/> RPM | <input type="checkbox"/> RPM | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> paint | <input type="checkbox"/> paint | <input type="checkbox"/> paint | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> tape | <input type="checkbox"/> tape | <input type="checkbox"/> tape | | | | | | | | | | | | | | | | | | | | | | |
| 15. Roadway Design: <input type="checkbox"/> two way traffic <input type="checkbox"/> interstate/divided <input type="checkbox"/> one way/ramp <input type="checkbox"/> OTHER: _____ | 23. Lane Width (feet): Lanes: <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input type="checkbox"/> tapered <input type="checkbox"/> unknown Shdrs.: <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 10 <input type="checkbox"/> tapered <input type="checkbox"/> unknown | | | | | | | | | | | | | | | | | | | | | | | |
| 16. Roadway Design: <input type="checkbox"/> two way traffic <input type="checkbox"/> interstate/divided <input type="checkbox"/> one way/ramp <input type="checkbox"/> OTHER: _____ | 24. Changeable Message Signs: <input type="checkbox"/> none <input type="checkbox"/> in place and operating <input type="checkbox"/> in place and not operating <div style="text-align: center; margin-top: 5px;"><u>MESSAGE</u></div> phase 1: _____ phase 2: _____ *phase 3: _____ <i>* FYI - per the MUTCD, message shall consist of only one or two phases</i> | | | | | | | | | | | | | | | | | | | | | | | |
| 17. Roadway Design: <input type="checkbox"/> two way traffic <input type="checkbox"/> interstate/divided <input type="checkbox"/> one way/ramp <input type="checkbox"/> OTHER: _____ | 25. Flaggers: <input type="checkbox"/> in use <input type="checkbox"/> not in use | | | | | | | | | | | | | | | | | | | | | | | |
| 18. Roadway Design: <input type="checkbox"/> two way traffic <input type="checkbox"/> interstate/divided <input type="checkbox"/> one way/ramp <input type="checkbox"/> OTHER: _____ | 26. Uniformed Officers : <input type="checkbox"/> with vehicle <input type="checkbox"/> without vehicle <input type="checkbox"/> not used | | | | | | | | | | | | | | | | | | | | | | | |
| 19. Roadway Design: <input type="checkbox"/> two way traffic <input type="checkbox"/> interstate/divided <input type="checkbox"/> one way/ramp <input type="checkbox"/> OTHER: _____ | 27. At the time of the crash was there Work Zone related activity? <input type="checkbox"/> yes <input type="checkbox"/> no | | | | | | | | | | | | | | | | | | | | | | | |
| 20. Roadway Design: <input type="checkbox"/> two way traffic <input type="checkbox"/> interstate/divided <input type="checkbox"/> one way/ramp <input type="checkbox"/> OTHER: _____ | 28. Police Report: Was a report generated? <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> unknown Town/City/State Troop No. : _____ Officer Name: _____ Report Number: _____ | | | | | | | | | | | | | | | | | | | | | | | |

Appendix 14

APPENDIX 15

FEDERAL LPA CONSTRUCTION PROJECT CHECKLIST

1. Schedule related issues
 - a. Notice-to-proceed letter for construction
 - b. Completion date or day count in contract
 - c. Liquidated damages in contract as per FHWA CFR 635.127
 - d. Schedule by contractor with critical path items
2. Daily reports by Contract Administrator (CA)
3. Records for payment
 - a. Field books with measurements by CA
 - b. Quantity books with summaries of measurements and running totals with cross-references
 - c. Record books with cross-references
 - d. Computed by and checked by
 - e. Approvals of pay requisitions by consultant based on measured/calculated quantities by CA
 - f. Final audit check by consultant
 - g. Records need to be able to be understood by auditor without explanation
4. QA/QC testing
 - a. QA/QC program understood by consultant and municipality
 - b. QA/QC sub-consultant for all testing required at each project
 - c. Contract administrator aware of NETCP standards requirement
 - d. Contract administrator requests and records verification of each tester for each type and day of test
5. Certificates of Compliance
 - a. Contract Administrator has them before payment for items
 - b. Buy America certifications required for all items that include steel

6. Contingency items
 - a. Need to be tightly defined
 - b. Will be reviewed by NHDOT staff during construction phase
7. DBE requirements
 - a. Contract Administrator understands requirements
 - b. Clear paperwork exists defining DBE's at project
8. Change orders
 - a. Independent Government Estimate
 - b. Approved change orders need signed copies
 - c. Approval by NHDOT prior to doing work
9. Invoices
 - a. Invoices for reimbursement shall be submitted monthly for reimbursement
 - b. Approval must be based on actual measurement and calculations by Contract Administrator
 - c. Request for reimbursement must include proof of payment
 - d. Request for reimbursement must include status report of work accomplished during period of invoice

NOTE: If there are questions, please communicate directly with NHDOT Project Manager who will then coordinate with others in NHDOT as needed.

NJM
Rev 07-06-10

APPENDIX 16

| STA | Item 647-1 Humus | Width | Avg. | Dist. | Area | Depth 3.5" | Volume | RN-1-03 |
|--------------|---------------------|-------|------|-------|--------------------|---------------|-----------------------|---------|
| 506+95 Rt. | | 0 Ft | 2 Ft | 25 Ft | 50 Ft ² | 0.29 Ft | 14.5 Ft ³ | |
| 506+70 | | 4 | 8 | 25 | 200 | 0.29 | 58 | |
| 506+45 | | 12 | 10 | 20 | 200 | 0.29 | 58 | |
| 506+25 | | 8 | 12 | 25 | 300 | 0.29 | 87 | |
| 506+00 | | 16 | 12 | 25 | 300 | 0.29 | 87 | |
| 505+75 | | 8 | 8 | 20 | 160 | 0.29 | 46.4 | |
| 505+55 | | 8 | 18 | 10 | 180 | 0.29 | 52.2 | |
| 505+45 | | 28 | 20 | 10 | 200 | 0.29 | 58 | |
| 505+35 | | 12 | | | | | | |
| Page Total = | | | | | | | 461.1 Ft ³ | |
| FO RN1-4 | | | | | | | | |

Print Date: 11/10/1996

State Of New Hampshire Department Of Transportation
QUANTITY BOOK ITEM SUMMARY

QB Page 154.00

| | | | |
|-------------------|---------------------------------|----------------------------|-----------|
| Project Name | LACONIA, NHS-018-2 (104), 99999 | | |
| Item Number: | 603.00215 | Appropriation Code: | PAR |
| Item Description: | 15 INCH R.C. PIPE, CLASS III | | |
| Contract Price: | \$28.60 | Contract Quantity: | 65.00 LF |
| | | B&E Quantity: | 124.00 LF |
| | | Certificate Of Compliance: | Required |

| Source | Entered By | Date | Remarks | Quantity | Accumulated Quantity | Est. |
|---------|------------|------------|---|----------|----------------------|------|
| DN 1-06 | RT | 05/13/1994 | Partial length DN #6 = 45 lf | 45.00 | 45.00 | 2 |
| | | | ESTIMATE # 2 05/01/1994 – 05/15/1994 TOTAL : | 45.00 | | |
| DN 1-08 | RT | 06/19/1994 | DN #6 completed, pay 65 – 45 = 20 lf | 20.00 | 65.00 | 5 |
| | | | ESTIMATE # 5 06/15/1994 – 06/30/1994 TOTAL : | 20.00 | | |
| | | | Total | | 65.00 | |
| | LF | | | | | |

Checked By: _____ Date: 11/10/1996
 Approved By: _____ Date: 11/10/1996

Print Date: 11/10/1996

State Of New Hampshire Department Of Transportation
RECORD BOOK ITEM SUMMARY

RB Page 154.00

| | | | | |
|-------------------|---------------------------------|-------------------------|----------|--|
| Project Name | LACONIA, NHS-018-2 (104), 99999 | | | Certificate Of Compliance: Required |
| Item Number: | 603.00215 | Appropriation Code: PAR | | |
| Item Description: | 15 INCH R.C. PIPE, CLASS III | | | |
| Contract Price: | \$28.60 | Contract Quantity: | 65.00 LF | |

| Source | Entered By | Date | Remarks | Quantity | Accumulated Quantity |
|---------|---------------|------------|--|----------------------------|-------------------------|
| DN 1-06 | RT | 07/20/1995 | Drainage Note # 04 Sta 1540+33 -1540+50 Rt. | 17.00 | 17.00 |
| DN 3-24 | RT | 06/22/1995 | Drainage Note # 106 Sta 1562+11 Lt - 1562+14 Rt. | 44.20 | 61.20 |
| DN 3-64 | RT | 10/22/1994 | Existing cross pipe at 1510+84 replaced. | 45.00 | 106.20 |
| | | | | Item Total 106.20LF | |

Checked By: MM
 Approved By: RT

Date: 11/10/1996
 Date: 11/10/1996

APPENDIX 17

Appendix 18

CERTIFICATE OF FINAL COMPLETION OF WORK

(page 1 of 2)

OWNER'S CONTRACT NO.: _____ ENGINEER' PROJECT NO.: _____
AGREEMENT DATE: _____

CONTRACT TITLE: _____

FINAL COMPLETION DATE PER AGREEMENT AND CHANGE ORDERS: _____
ACTUAL DATE OF FINAL COMPLETION: _____

FINAL CERTIFICATION OF CONTRACTOR

I hereby certify that the Work as identified in the Final Payment Request dated _____
_____ for the above-noted construction Contract represents full compensation for the actual
value of work completed. Additionally, all work completed conforms to the terms of the
Agreement and authorized changes.

CONTRACTOR Date

Authorized Representative's Signature

Name & Title

FINAL CERTIFICATION OF ENGINEER

I have reviewed the Contractor's Final Payment Request dated _____ and hereby
certify that to the best of my knowledge, the cost of the work identified on the Final Payment
Request represents full compensation for the actual value of work completed and that the work
has been completed in accordance with the terms of the Agreement and authorized changes.

ENGINEER Date

Authorized Representative's Signature

Name & Title

CERTIFICATE OF FINAL COMPLETION OF WORK

(page 2 of 2)

FINAL ACCEPTANCE OF OWNER

I, as representative of the Owner, accept the above Final Certifications and authorize Final Payment in the amount of \$ _____ and direct the Contractor's attention to the General Conditions. The guaranty for all Work completed subsequent to the date of Substantial Completion, expires _____ year from the date of this Final Acceptance.

At a meeting of the _____ (Town Council/Selectmen/Alderman), the Owner, _____ (Name of the community) has accepted the constructed project.

OWNER

Date

Authorized Representative's Signature

Name & Title

END OF SECTION

Date

Project Contractor Contact
Company Name
Address
Town/City, NH Zip

RE: Project Name & #
Federal Program & #
Project Description
Completion and Acceptance

Dear ??:

You are hereby advised that construction of the above referenced project was completed by the [**Contractor Name**] and Accepted by the Town/City on **DATE**.

All punch list items have been addressed from the final project inspection conducted by NHDOT's Project Manager, Project Sponsor, Consultant and Contractor.

By copy of this letter the project work is now turned over to the [**Project Sponsor**] for maintenance. It is the responsibility of the Contractor to file the required Notice of Termination forms when applicable with the EPA and with the Department.

Sincerely,

XXXXXXXXXXXXx
Project Sponsor Contact
Town/City of ?
Telephone: (603) XXX-XXXX

cc NHDOT Project Manager – Bureau of Planning & Community Assistance
NHDOT Office of Federal Compliance
Consultant – Contact performing construction inspection

**CONSENT OF SURETY COMPANY
TO
FINAL PAYMENT**

OWNER'S CONTRACT NO.: _____ ENGINEER' PROJECT NO.: _____
AGREEMENT DATE: _____
BOND NUMBER: _____

CONTRACT TITLE: _____

To: _____ (Owner)

From: _____ (Contractor)

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the _____ (Surety) on the bond of _____ (Contractor) hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety Company of any of it's obligations to the _____ (Owner) as set forth in the said Surety Company's Bond.

IN WITNESS WHEREOF, the Surety Company has hereunto set its hand this _____ day of _____, 20__.

Surety Company

Signature of Authorized Representative

Name & Title

Attest: (Seal)

Note: Power of Attorney should be attached in instances where same applies.

CONTRACTOR'S FINAL LIEN WAIVER

(page 1 of 2)

OWNER'S CONTRACT NO.: _____ ENGINEER' PROJECT NO.: _____

AGREEMENT DATE: _____

CONTRACT TITLE: _____

To: _____ (Owner)

APPLICATION FOR FINAL PAYMENT

The undersigned hereby certifies that the amount owed set forth below constitutes the entire value of all work performed and services rendered by, through or under the undersigned with respect to the project not heretofore paid for up to and including the period covered by the above Application for Final Payment; that all work covered by such Application has been incorporated into the project and title thereto has passed to the Owner free and clear of all liens, claims, security, interests or encumbrances; and that no work covered by such Application has been acquired subject to an agreement under which any interest therein or an encumbrance thereon is retained by the seller or any other person. In consideration of payment of the requisition, the undersigned hereby releases the Owner from all claims of lien which the undersigned has regarding the Project.

The undersigned, in order to induce the Owner to pay the requisition, hereby represents that it has paid or will pay from the proceeds of the requisition all sums due to those parties who have performed work or provided materials to the undersigned in connection with the Project, and that it will on request of the Owner provide written evidence of the discharge by the undersigned of its obligations to such parties.

Executed under seal as of this _____ day of _____, 20____.

Amount Owed to Contractor by Owner as Final Payment:

\$ _____ (total value of project including change orders)

Amount Unpaid From Previous Application for Payment:

\$ _____

CONTRACTOR'S FINAL LIEN WAIVER

(page 2 of 2)

From: _____ (Contractor)

Authorized Representative Signature

Name and Title (printed)

NOTARY:

Then personally appeared the above named _____ and acknowledged the foregoing to be the free act and deed of the above-named Contractor, before me.

Subscribed and sworn to on the _____ day of _____, 20__.

Notary Public: _____

My Commission Expires: _____

Date

Town/City Contact
Town/City of ?
Address
Town/City, NH Zip

RE: Project Name & #
Federal Program & #
Description
FINAL PROJECT REIMBURSEMENT

Dear ???????:

This letter will serve as notification that your request for reimbursement of project costs has been processed through our office. Under our Agreement, we reimburse ___% of all eligible costs. The State's payment will represent final reimbursement in the amount of \$__ (\$ x ?%).

Please note that our records indicate that the subject project has been completed. Once the payment has been received, The Department will have reimbursed you for all of the project's eligible expenses, which will total \$0.

We are now in position to close out this project. Please sign and date the enclosed Project Completion Form along with the Final Voucher, Part 2 Checklist and return it to me within 30 days of the date of this letter. If we do not receive the signed form or other notification of the project's status within 30 days, we will initiate the final close out process. Once the project is closed, no additional reimbursements will be allowed.

We received the financial summary form that you prepared for this project. Please note that this financial information will need to be completed on a new financial summary form and submitted back to me with the Project Completion Form. We will send you the excel spreadsheet form in a separate email.

In addition, as the project's sponsor, you are required to maintain all project and financial records pertinent to the development of this project for three (3) years beyond the Department's final voucher date, which is the official date that the project is closed. If there is a failure to maintain this documentation, the Department and/or Federal Highway Administration could take an action up to and including requesting a refund of all reimbursed project costs. You will receive a separate letter with the final voucher date and the date of retention.

The above-referenced payment will be sent directly from the State of NH Treasury Department. If you do not receive reimbursement within three weeks, please contact our office at 271-2108.

Sincerely,

????????????????????
Project Manager
Bureau of Planning and Community Assistance
Telephone: (603) 271-????

XXX/xxx
Enclosures

cc: Finance & Contracts

STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION

FROM: Project Manager
DATE:
AT (Office): Bureau of Planning and
Community Assistance

SUBJECT: Project Name & #
Federal Program & #
Description
FINAL PROJECT REIMBURSEMENT

APPROVED BY: _____

DATE: _____

TO: Leonard Russell, Administrator
Bureau of Finance & Contracts

MEMO

Attached please find a request from _____ for final reimbursement of costs on the above-referenced project. Supporting documentation is on file. Under the terms of the Local Public Agency Project Agreement, we reimburse the sponsor __% of eligible project costs. The reimbursement of Request/Invoice #_, dated _____, is in the amount of \$__ (\$ x ?%).

Please have the State Treasury Department prepare payment in the amount of **\$0** to _____, Vendor #__. The Accounting Unit is **2945** and the Work Class Code is #__.

____/____
Attachments

STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION

FROM: Project Manager
DATE:
AT (Office): Bureau of Planning and
Community Assistance

SUBJECT: Project Name & #
Federal Program & #
Description
FINAL PROJECT REIMBURSEMENT

APPROVED BY: _____
DATE: _____

TO: Leonard Russell, Administrator
Bureau of Finance & Contracts

MEMO

Attached please find a request from _____ for final reimbursement of costs on the above-referenced project. Supporting documentation is on file. Under the terms of the Local Public Agency Project Agreement, we reimburse the sponsor __% of eligible project costs. The reimbursement of Request/Invoice #_, dated _____, is in the amount of \$__ (\$ x ?%).

Please have the State Treasury Department prepare payment in the amount of **\$0** to _____ (Vendor #__). The Accounting Unit is **2945** and the Work Class Code is #__.

Below is a summary of all non-participating (non-par) expenses for this project as compared to the non-par approved funds indicated in Project Snapshot:

| <u>Phase</u> | <u>Non-Par Approved Funds</u> | <u>Non-Par Actual Costs</u> |
|--------------|-------------------------------|-----------------------------|
| PE | \$0 | \$0 |
| ROW | \$0 | \$0 |
| Construction | \$0 | \$0 |

[If under a PO, add the following:] The encumbrances under PO #_____ can now be released.
Any remaining funds can be deobligated.

____/____
Attachments

cc: Finance and Contracts

Date

Town/City Contact
Town/City of ?
Address
Town/City, NH Zip

RE: Project Name & #
Federal Program & #
Description
PROJECT COMPLETION

Dear ??:

This letter is formal notification that the Department has closed the above-referenced project and has established a Final Voucher date of **date**.

Per our Local Project Agreement, as Project Sponsor you are required to maintain all project and financial records pertinent to the development of this project until **DATE**, which is three years from the above Final Voucher date. If there is a failure to maintain this documentation, the Department and/or the Federal Highway Administration could take an action up to and including requesting a refund of all reimbursed project costs.

Sincerely,

Project Manager
Bureau of Planning and Community Assistance
Telephone: (603) 271- - Fax (603) 271-8093

XXX/xxx

cc: _____, Program Manager

APPENDIX 19

STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
CERTIFICATE OF COMPLIANCE

Date _____, 20____

WE, _____
(Manufacturer, Supplier, or Contractor)

Address: _____

HEREBY CERTIFY THAT _____
(Type of Product)

(Product Trade Name)

Manufactured by _____

Supplied by: _____

Furnished to _____
Contractor (Prime or Sub.)

Delivered and Used on:

_____ Project Name _____ Federal No. _____ State No.
Used for Item No. _____

_____ Name of Item
MEETS THE REQUIREMENTS OF THE PERTINENT PROJECT PLANS, SPECIAL PROVISIONS AND SPECIFICATIONS OF THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION (NHDOT) IN ALL RESPECTS, INCLUDING "BUY AMERICA" REQUIREMENTS ON FEDERAL AID PROJECTS. PROCESSING, PRODUCT TESTING, AND INSPECTION CONTROL OF RAW MATERIALS ARE IN CONFORMANCE WITH ALL APPLICABLE SPECIFICATIONS, DRAWINGS AND STANDARDS OF ALL ARTICLES FURNISHED.

All records and documents pertinent to this certificate and not submitted herewith will be maintained available by the undersigned for a period of not less than three years from the date the Project has been completed and accepted.

Signed by _____ Title _____
(Officer of Organization)

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public/Justice of the Peace My Commission Expires: _____

TO BE COMPLETED BY CONTRACTOR. Location information for products listed on the QPL
Bridge Items _____ Roadway Items _____
Bridge No.: _____ Station: _____

APPENDIX 20

ALL FA PROJECTS (STEEL & IRON PRODUCTS)**SPECIAL ATTENTION****BUY AMERICA**

In accordance with the **BUY AMERICA** requirements of the Federal regulations, all manufacturing processes for steel and iron materials furnished for permanent incorporation into the work on this project shall occur in the United States. The only exception to this requirement is the production of pig iron and the processing, pelletizing and reduction of iron ore, which may occur in another country. Other than these exceptions, all melting, rolling, extruding, machining, bending, grinding, drilling, coating, etc. must occur in the United States.

Products of steel include, but are not limited to, such products as structural steel, piles, reinforcing steel, structural plate, steel culverts, guardrail and steel supports for signs, signals and luminaires. Products of iron include, but are not limited to, such products as cast iron frames and grates. Coatings include, but are not limited to, the applications of epoxy, galvanizing and paint. The coating material is not subject to this clause, only the application process.

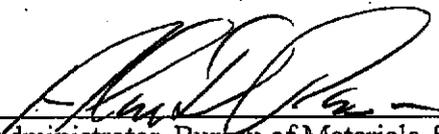
A Certificate of Compliance, conforming to the requirements of Section 106.04, shall be furnished for steel and iron materials. Records to be maintained by the contractor for this certification shall include a signed mill test report and a signed certification by each supplier, distributor, fabricator, and manufacturer that has handled the steel or iron product affirming that every process, including the application of a coating, performed on the steel or iron product has been carried out in the United States of America, except as allowed by this Special Attention. The lack of these certifications will be justification for rejection of the steel or iron product.

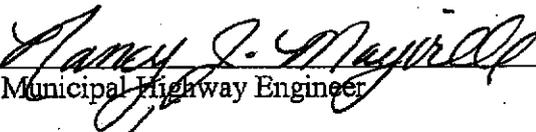
The requirements of said law and regulations do not prevent a minimal use of foreign steel and iron materials if the cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract price or \$2,500.00, whichever is greater.

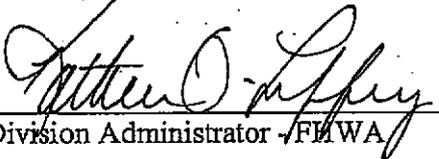
Upon completion of the project, the Contractor shall certify in writing as to compliance with this Special Attention and also provide the total project delivered cost of all foreign steel and/or iron permanently incorporated into the project. The form for this certification is entitled "Buy America Certificate of Compliance" and can be found at www.NHDOT.com.

APPENDIX 21

**NHDOT Quality Assurance Program for
Municipally Managed Federal-aid Projects**

Submitted by:  11-19-10
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NHDOT Quality Assurance Program Municipally Managed Federal-aid Projects

The legislation establishing the Federal-aid Highway program, Title 23 United States Code, requires that Federal-aid projects not on the National Highway System be constructed in accordance with State construction standards (23 U.S.C. 109(p)). The New Hampshire Department of Transportation (NHDOT) has established this quality assurance program to address the materials portion of this requirement for Federal-aid Municipally Managed projects.

This document refers to items by numbers used in the NHDOT Standard Specifications for Road and Bridge Construction and it is intended that Municipally Managed projects use these specifications unless the NHDOT approves an equivalent specification.

It is the policy of NHDOT to provide assurance that the materials and workmanship incorporated into Municipally Managed highway projects conform, or substantially conform, to the requirements of the plans and specifications including approved changes. To accomplish this, the quality assurance program provides for an acceptance program, an independent assurance program, a laboratory qualification program, and a materials certificate as follows:

1. DEFINITIONS

- **Acceptance Samples and Tests** – All of the samples and tests performed by qualified testing personnel used for determining the quality and acceptability of materials and workmanship which have been or are being incorporated into the project. Acceptance tests determine the conformance of the material to the correct specifications. The results are used to determine acceptance or rejection and may be used to adjust the level of pay for the material.
- **Independent Assurance Program** – Independent samples and tests, or observation of test procedures, performed by Materials and Research (M&R) personnel who do not normally have direct responsibility for quality control or acceptance sampling and testing. These tests are used for the purpose of making independent checks of the reliability of the results obtained in acceptance sampling and testing and not for determining the quality or acceptability of the materials and workmanship directly.
- **Method Specifications** - Specifications that direct the contractor to use specified materials in definite proportions and specific types of equipment and methods to place the material. Each step is usually directed by the Municipality.
- **QC/QA Specifications** - A combination of end result specifications and materials and methods specifications. The contractor is responsible for QC (process control), and the municipality is responsible for acceptance of the product. QA specifications are statistically based specifications that use methods such as random sampling and lot-by-lot testing that let the contractor know if the operations are producing an acceptable product and establish the pay for the item. This program includes sampling and testing requirements for QC/QA hot mix

asphalt and concrete items that use random sampling and testing to determine if specified properties are met and to establish the final pay.

- Quality Control – This constitutes the inspection of equipment and the material sampling and testing done by the Contractor to control his operations.
- Qualified Laboratories – A laboratory that provides calibrated equipment for the required test methods and has been accredited by AASHTO.
- Qualified Sampling and Testing Personnel – For soil and asphalt materials, qualified personnel are those who have been certified in the sampling and testing to be performed by the NorthEast Transportation Training & Certification Program (NETTCP) or a person working under the direct supervision of an NETTCP technician certified in the appropriate test. For concrete materials, qualified personnel are those who have been certified in the concrete sampling and testing to be performed by either the American Concrete Institute (ACI) or the NETTCP or a person working under the direct supervision of an ACI or NETTCP certified technician.
- Verification Tests – Samples tested to verify certified properties.

2. SAMPLING AND TESTING PROGRAM

- When the term Municipality or NHDOT is used, it is understood that an authorized firm working on behalf of the NHDOT or the Municipality may perform the action.
- Administration and coordination of the sampling and testing program is the responsibility of the Municipality. All acceptance sampling and testing shall be the responsibility of the municipality managing the construction project.
- The Municipality shall develop a Quality Assurance Program for each project, based on this document, and submit it to NHDOT for documentation prior to the contractor starting construction work. The program shall include the quantity of each item in the project that requires sampling and testing, the number of acceptance tests required, an anticipated schedule for testing, the name and contact information for the party conducting the acceptance tests, and it shall also indicate sources of materials including production plants for ready mix concrete, hot mix asphalt (HMA), precast concrete, and structural steel. See Appendix A for a sample documentation format.
- The municipality must contact NHDOT when work is planned on any item requiring NHDOT independent assurance sampling and testing. Contact the following individuals two weeks in advance of the start of work to establish communication with NHDOT and to provide contact information for the project and the Town:
 - Soils and Concrete Items – Concrete and Soils Supervisor 271 -1656
 - Asphalt Items – Bituminous Supervisor 271-1663
- All acceptance tests shall be performed by qualified sampling and testing personnel at the site using calibrated equipment or at a qualified laboratory.
- It shall be the responsibility of the municipality to request and verify that the sampling and testing personnel are NETTCP, ACI or PCI certified as appropriate for the tests being performed.

- All equipment used for acceptance testing shall have been calibrated within the period prescribed by the respective AASHTO or ASTM method as demonstrated by documentation.
- All acceptance test reports shall include the test locations to allow further testing, if necessary. The required frequency of testing is as shown in the tables in this document.
- The sampling location of the acceptance testing shall be as shown in the tables contained in this document.
- All Independent Assurance sampling and testing shall be the responsibility of NHDOT. The NHDOT conducts a system-based Independent Assurance Program, meaning that each acceptance tester must participate in at least one IA test per calendar year for each material test performed (see tables). The IA test will be done during or prior to the project work. If an acceptance tester has already participated in an Independent Assurance test for a material property in the current calendar year on another project, then the testing program for a project does not have to include an Independent Assurance test for that property. The acceptance tester must be present when Independent Assurance sampling is performed.
- The municipality shall provide a project materials test summary that includes test designation number, the number of tests performed, the name of the acceptance testers, the testers' certification numbers and date of IA test for each tester for each performed test. See Quality Assurance Program Information sheet. This document will become part of the project final records.
- The Independent Assurance personnel shall make a prompt comparison of test results and thereafter investigate, resolve, and document the source of any discrepancies between the results of the assurance and acceptance tests, which are outside the acceptable deviations. See the table of acceptable deviations in Appendix B.
- HMA quantities of less than 500 tons used on roadways will be accepted by field inspection of the work and certification from the producer that it is a NHDOT approved mix design, that it meets the appropriate NHDOT specification, and that it is from a NHDOT certified hot mix asphalt (HMA) plant. No acceptance sampling and testing is required. The municipality is responsible for obtaining the certifications and the certifications for tack coat and crack sealant.
- All HMA quantities used on trails and sidewalks will be accepted by field inspection of the work and certification from the producer that it is a NHDOT approved mix design, that it meets the appropriate NHDOT specification, and that it is from a NHDOT certified hot mix asphalt (HMA) plant. No acceptance sampling and testing is required. The municipality is responsible for obtaining the certifications.
- All structural concrete mix designs shall be approved NHDOT mix designs and the material shall be produced at a NHDOT approved concrete plant and delivered in NHDOT approved mixing trucks.
- All precast concrete items and structures less than or equal to 20' in span along the centerline of roadway, except full depth deck slabs, will be accepted based on the manufacturer's certification that a NHDOT approved mix design was used, that it meets the appropriate NHDOT specification, and that it is from a NHDOT approved plant. The municipality is responsible for obtaining these certifications.

- All items, except natural materials, not in the Materials Frequency of Sampling and Testing Tables in this document will be accepted either:
 - Based on the contractor's or producer's certification that it meets the appropriate NHDOT specification, or
 - Based on inclusion in the NHDOT Qualified Products List & Certificate of Compliance, whichever is required by Specifications.
 - In addition to the certification, plastic pipe shall be supplied by a National Transportation Products Evaluation Program compliant manufacturer.

It is the responsibility of the municipality to obtain the necessary certifications.

- All natural materials, such as granite, fieldstone, and mulch, not requiring testing or certification in the NHDOT specifications will be accepted based on the municipality's field inspection.
- Contractors are responsible for their own quality control. This includes maintaining production equipment in good working order and all sampling and testing necessary to confirm that all material being produced meets specifications.
- Non-NHDOT laboratories, if used in dispute resolution sampling and testing, shall be accredited in the testing to be performed by the AASHTO Accreditation Program.
- The municipality shall prepare a Materials Certificate and submit it to the NHDOT for each Federal-aid municipally-managed construction project (See Appendix C for sample Certificate).

Frequency of Sampling & Testing – Soil Items Method Specifications

| Item | Description | Property | Test Method | Test Location & Frequency | |
|---------------------|---------------------------|------------|---|--|-----------------------|
| | | | | Acceptance | Independent Assurance |
| 203 | Embankment | Compaction | AASHTO T191, AASHTO T310, or Test Strip | In place 1/2,000 CY | * |
| 209 | Granular Backfill, Bridge | Compaction | AASHTO T191, AASHTO T310, or Test Strip | In Place 2/Abutment or Substructure Location | * |
| | | Gradation | AASHTO T27 | In Place 1/Structure/Source | None Required |
| 304.1 through 304.6 | Select Materials | Compaction | AASHTO T191, AASHTO T310, or Test Strip | In Place 1/1,200 CY | * |
| | | Gradation | AASHTO T27 | In Place 1/4,000 CY | * |
| | | Wear | AASHTO T 96, Grading A | 1/Source | None Required |
| 306 | Reclaimed Stabilized Base | Compaction | Control Strip | In Place 1/2,000 SY | * |
| | | Gradation | AASHTO T27 | In Place 1/4,000 SY | * |
| 508 | Structural Fill | Compaction | AASHTO T191 or AASHTO T310 | In Place 1/Two Lifts/ Location | * |
| | | Gradation | AASHTO T27 | In Place 1/Structure/Source | None Required |

* Except if completed on another project during the current calendar year, the materials program for a project must include the acceptance tester's participation in one Independent Assurance test for each material test performed.

**Frequency of Sampling & Testing
Asphalt Items, Method Specification**

| Item | Description | Property | Test Method | Test Location and Frequency | | |
|------|---|--------------------|---------------------------|-----------------------------------|-----------------------|-------------------------------|
| | | | | Acceptance | Independent Assurance | Verification Test** |
| 403 | Asphalt Cement HMA > 500 Tons Placed on Roadway* | Relevant AASHTO | AASHTO M320 | | None Required | Asphalt Plant 1/Project |
| | HMA > 500 Ton Quantity Placed on Roadway* | Compaction | AASHTO T166 | In Place 2 Cores/ Lane Mile | None Required | |
| | | Gradation | AASHTO T30 and T164 | At Plant 1/750 Tons | *** | |
| | | Asphalt Content | AASHTO T164 | At Plant 1/750 Tons | *** | |
| | Emulsified Asphalt | Relevant AASHTO | AASHTO M320 | | None Required | Asphalt Plant 1/Project |
| 410 | Tack Coat | Relevant AASHTO | Certification | | None Required | |
| 413 | Crack Sealant | Relevant AASHTO | Certification | | None Required | |

* If the project HMA method specification quantity placed on a roadway is ≤ 500 tons, then the AC content and HMA are accepted by certification. If the HMA method specification quantity is not used on a roadway, then the AC content and HMA are accepted by certification.

** The municipality shall take samples and furnish them to the NHDOT laboratory in Concord for testing

*** Except if completed on another project during the current calendar year, the materials program for a project must include the acceptance tester's participation in one Independent Assurance test for each material test performed.

**Frequency of Sampling & Testing
Concrete Items, Method Specifications**

| Item | Description | Property | Test Method | Test Location and Frequency | |
|-----------------------------|---|-----------------------------|------------------|---|------------------------|
| | | | | Acceptance | Independent Assurance* |
| 520, 608, 615, 616 | Structural Concrete, All Classes | Strength | AASHTO T22 & T23 | 2/200 CY Min. 2/Placement | From Any Class |
| | | Air Content | AASHTO T152 | 1/50 CY | From Any Class |
| | | Slump | AASHTO T119 | 1/50 Cy | From Any Class |
| All | Non- Stressed Precast ≤ 20' Span | Strength | AASHTO T22 & T23 | None Required Accepted by Certification | None Required |
| | | Air Content | AASHTO T152 | | |
| | | Slump | AASHTO T119 | | |
| All | Precast > 20' Span & All Deck Slabs & Prestressed Precast | Strength | AASHTO T22 & 23 | 2/Member, Bed, or Lot | None Required |
| | | Air Content | AASHTO T152 | 1/Member, Bed, or Lot | None Required |
| | | Slump | AASHTO T119 | 1/Member, Bed, or Lot | None Required |
| | Deck Slabs & Prestressed Precast Items | Rapid Chloride Permeability | AASHTO T277 | 1/Member, Bed, or Lot | None required |

*Except if completed on another project during the current calendar year, the materials program for a project must include the acceptance tester's participation in one Independent Assurance test for each material test performed.

Structural Steel Inspection

| Item | Description | Structural Steel Fabrication Inspection |
|------|------------------|--|
| 550 | Structural Steel | An inspection program shall be developed and implemented that includes all the provisions in the current section 550 of the NHDOT Standard Specifications for Road and Bridge Construction pertaining to shop inspection and non-destructive testing of welds. |

**Frequency of Sampling & Testing
Asphalt & Concrete Items, QC/QA Specifications**

| Item | Description | Property | Test Method | Test Location and Frequency | | |
|------|------------------------------------|-----------------------------|-------------------|--|-----------------------|-------------------------|
| | | | | Acceptance | Independent Assurance | Verification Test* |
| 403 | Asphalt Cement | Relevant AASHTO | AASHTO M320 | | None Required | Asphalt Plant 1/Project |
| | QC/QA HMA | Compaction | AASHTO T166 | In Place 1 Core/750 Tons | None Required | |
| | | Gradation | AASHTO T30 & T164 | In Place 1/750 Tons | ** | |
| | | Asphalt Content | AASHTO T164 | In Place 1/750 Tons | ** | |
| 520 | QC/QA Structural Concrete Class A | Strength | AASHTO T22 & T23 | Minimum 3 Tests/ Lot, 50 CY Maximum Sublot | None Required | |
| | | Air Content | AASHTO T152 | | From Any Class | |
| | | Rapid Chloride Permeability | AASHTO T277 | | None Required | |
| | QC/QA Structural Concrete Class AA | Strength | AASHTO T22 & T23 | Minimum 3 Tests/ Lot, 50 CY Maximum Sublot | From Any Class | |
| | | Air Content | AASHTO T152 | | From Any Class | |
| | | W/C Ratio | NHDOT Microwave | | From Any Class | |
| | | Rapid Chloride Permeability | AASHTO T277 | | None Required | |
| | Fine & Coarse Aggregate | Gradation | AASHTO T27 | None Required | * | |

* The municipality shall take samples and furnish them to the NHDOT laboratory in Concord for testing

** Except if completed on another project during the current calendar year, the materials program for a project must include the acceptance tester's participation in one Independent Assurance test for each material test performed.

Quality Assurance Program Information

At the beginning of project, submit to:

NHDOT Bureau of Materials & Research

P.O. Box 483, 5 Hazen Drive

Concord, NH 03302-0483

ATTN: Chief of Materials Technology

<http://www.nh.gov/dot/org/projectdevelopment/materials/index.htm>

| | | | | |
|--|------------------------------|--|---------------------------------|--|
| Project Name & Number: | | | | |
| Project Description: | | | | |
| Construction Schedule: | | | | |
| Contact Information: | | | | |
| Municipal: | | Phone: | | |
| Project Manager: | | Phone: | | |
| Testing Firm: | | Phone: | | |
| | | | | |
| Material Suppliers: | | | | |
| Redi-mix Concrete: | | Phone: | | |
| Precast Concrete: | | Phone: | | |
| Hot Mix Asphalt: | | Phone: | | |
| Project Materials Test Summary: | | | | |
| Complete during the project and submitted to NHDOT Materials & Research at completion. | | | | |
| | Total Project Quantity | Acceptance Test Method & Required No. | Name of Acceptance Tester | IA Test Dates from This or Other Project |
| Redi-mix Concrete: | | | | |
| Precast Concrete: | | | | |
| Hot Mix Asphalt: | | | | |
| Select Bases: | | | | |

Appendix B
Independent Assurance / Acceptance Test
Acceptable Deviations

| Type of Test | % Deviation |
|--|-------------|
| Sieve Analysis – All Items #4 (4.75mm) Sieve and Larger | + 5% |
| Smaller than #4 (4.75mm) Sieve (Sand Portion) | ± 4% |
| Compaction testing – All Items | ± 2.5% |
| Bituminous Mix Evaluation #4 (4.75) Sieve to ¾” | ± 3% |
| Smaller than #4 (4.75mm) Sieve (Total Sample) | ± 2% |
| Asphalt Content | ± 0.4% |
| Portland Cement Concrete | |
| Air Content | ± 0.8% |
| Water/Cement | 0.03 |
| | |

Appendix C

**Sample Materials Certification for
Municipally Managed NHDOT Project**

Date:

Project Name & Number:

This is to certify that:

The results of the tests used in the acceptance program indicate that the materials incorporated in the construction work, and the construction operations controlled by the sampling and testing, were in conformity with the approved plans and specifications. Exceptions to the above statement are explained in the attachment to this certification.

Duly Authorized Municipal Official

Date

Resident Engineer

Date