

NDOT Local Public Agency Manual

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CHAPTER 1 - LOCAL PUBLIC AGENCY (LPA) PROJECTS

1.1 Introduction

The Nevada Division of the Federal Highway Administration (FHWA) is charged with the stewardship of the Federal Highway Program for the state of Nevada. Stewardship, as defined by FHWA, means the efficient and effective management of the public funds that have been entrusted to FHWA. In 1999 the Nevada Department of Transportation (NDOT) and FHWA entered into a Stewardship Plan, which was later replaced by a Stewardship Agreement in 2008 and more recently in 2015. The Stewardship agreement allows NDOT to assume the responsibilities of the FHWA under Title 23 of the United States Code for the design, plans, specifications, estimates, contract awards and inspections with respect to projects unless the U.S. Secretary of Transportation or the NDOT determines that the assumption is not appropriate. This does not include the assumption of FHWA's decision-making authority regarding title 23, United States Code (USC) eligibility or Federal-aid participation determinations.

The Stewardship Agreement between FHWA and NDOT allows NDOT to delegate project review and administration to capable local public agencies (LPAs) when it deems it appropriate. A capable LPA is one that has mechanisms in place to assure project actions will be carried out in accordance with applicable laws, regulations, and policies. FHWA requires NDOT to administer Federal-Aid Highway funds available to LPAs and to retain oversight responsibilities on projects. Oversight is defined as the act of ensuring the Federal Highway Program is delivered consistent with laws, regulations and policies.

NDOT created the LPA Program to address the delegation of authority to the LPAs allowed under the Stewardship Agreement. FHWA holds NDOT responsible and accountable for the LPAs' compliance with all applicable Federal laws and requirements. Delegation of responsibilities to LPAs for projects located on the interstate will be handled on a case-by-case basis.

Each project completed under the LPA Program is done through an agreement between NDOT and the LPA. The design (including the development of plans, specifications, and estimates), advertising, awarding and construction monitoring of a contract is delegated to the LPA. The LPA is also responsible for completing the surveys and permits required for compliance with the National Environmental Policy Act (NEPA.) In addition, right-of-way activities including utility and railroad coordination may be delegated to the LPA. NDOT retains the responsibility for providing FHWA with certifications that the project was completed in conformance with applicable federal laws and regulations as required under Title 23 of the Code of Federal Regulations (CFR) 635.309.

1.2 LPA Program and LPA Projects

The LPA Program allows for the delegation of NDOT's assumed responsibilities on locally administered projects including the design, plans, specifications, estimates, contract awards and inspections on projects that have federal-aid funds in any phase of the project. The main objective of NDOT's LPA Program is to assist LPAs in completing each project successfully with as little administrative oversight as possible, while ensuring federal and state requirements are fulfilled. This delegation of responsibilities

are documented in this manual defining the procedures NDOT and the LPA must follow to comply with the intent of the Stewardship Agreement.

The LPA Program is not a funding program, nor is it a mechanism for creating a project. It is, however, a method for completing a project that has been approved for federal funding in any phase of the project development. It is a reimbursement program that requires the LPA to incur the costs prior to seeking reimbursement for the expended funds. Federal-Aid funds are NOT GRANTS. Unlike grants, the use of federal-aid funds require extensive oversight and are required to meet numerous federal requirements. In addition, they must be administered in accordance with 2 CFR 200.

The LPA Program, which allows the LPA to design and administer construction with the oversight of NDOT, is available for numerous types of federal-aid funding. Some of the funding categories eligible for the LPA Program are:

- Surface Transportation Block Grant Program (STBG)
- Surface Transportation Block Grant Program Transportation Alternatives Set-aside (STBG TAP)
- Congestion Mitigation and Air Quality (CMAQ)
- National Highway Performance Program (NHPP)
- Highway Safety Improvement Program (HSIP)

Projects completed under the LPA Program are referred to as LPA Projects. Examples of the type of LPA projects include bicycle and pedestrian facilities, landscaping, lighting, safety, and capacity projects. In addition to traditional transportation projects, federal-aid projects involving programs, equipment or services may also be completed under the LPA Program.

1.3 Program Eligibility

Generally, to be eligible for the LPA Program, a few basic conditions must be met:

- The LPA must be determined to be a capable agency
- The LPA must be responsible for the design of the plans, advertising, awarding and administering the construction of the project.
- The project must have FHWA federal-aid funds in a phase of the project.

1.4 Projects of Divisional Interest/Projects of Corporate Interest

Under the Stewardship Agreement, FHWA has delegated responsibility for various approvals to NDOT and NDOT has the authority to further delegate those responsibilities to capable LPAs. However, FHWA may choose to retain the approval various activities on Projects of Division Interest (PoDIs) and Projects of Corporate Interest (PoCIs).

Projects of Division Interest (PoDIs) are projects that FHWA has identified as having an elevated risk, contain elements of higher risk, or present a meaningful opportunity for FHWA involvement to enhance meeting program or project goals. They are selected by the local Division office of FHWA on an annual basis. PoDI project selection is risk-

based and oversight activities are established and documented in a PoDI plan. This may include project approvals, or oversight activities related to a specific phase or element of the project.

Major Projects (>\$500M) are always PoDIs with individual PoDI plans. This applies to projects on and off of the National Highway System (NHS). Other projects may be selected as a PoDI. Each PoDI will have a PoDI plan that identifies the role/involvement of FHWA.

Projects of Corporate Interest (PoCIs) are a higher level PoDI. These projects are deemed to be so significant that FHWA is willing to commit additional resources beyond the local Division level to ensure compliance and the successful delivery of the project. PoCIs will also have a plan that identifies the role/involvement of FHWA.

In the event that FHWA selects a LPA project, additional reviews and/or approvals by FHWA shall be required. The LPA is required to adhere to these additional requirements.

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- Establishment of kick-off meeting 1 - 3 weeks
 - Generation of agreement 1 - 3 weeks
 - Fully executed agreement and notice to proceed with design 1 - 6 months
 - National Environmental Policy Act of 1969 (NEPA)
 - Categorical Exclusion 3 - 9 months
 - Environmental Assessment 6 -18 months
 - Environmental Impact Statement 24 - 36 months
 - Design 6 - 24 months
 - Right-of-way processes and utility identification, adjustment and/or relocation 18 - 24 months
 - Review times for plans submittals 3 weeks per submittal
 - Notice to proceed with construction 6 - 8 weeks from approval of final submittal & required local agency certifications
 - NDOT Occupancy Permit 1 – 3 months
 - Construction 6-36 months

The time for design and construction are dependent upon the resources, priorities of the LPA and the scope of the project determined by the LPA. As such, the LPA is in a better position to determine those schedules

2.2 Environmental Impacts

When preparing the project application, the LPA must consider impacts to the natural and social environment both from the aspect of the requirements of NEPA and from the implications of the project construction. By definition, LPA Projects involve federal-aid funding and must complete the NEPA process and other applicable permitting requirements. For more information see Chapter 5.

2.3 Right-of-Way Requirements and Utility Conflicts

Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, commonly called the Uniform Act, must be followed. It applies when federal-aid funds are utilized in any phase of the project and applies even when federal funds are not used specifically for property acquisition or adjustments and relocation activities, but are used elsewhere in the project, such as design, planning, environmental studies or construction. Borrow pits, detours and staging areas must be included in right-of-way considerations.

For additional information see Chapter 6. Also refer to the NDOT Right-of-Way Manual, which includes forms and agreement shells and to the Real Estate Acquisition Guide for Local Public Agencies, available from FHWA.

Types of Right-of-Way requirements are as follows:

- Temporary Easements

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- Permanent Easements
 - Fee Acquisitions
 - Permissions to construct (agreement to construct outside of right-of-way)
 - Relocations
 - Replacement Utility easements

Changes of access to properties, even if not related to right-of-way actions, can cause major impacts to project costs, schedules and designs. Also similar to right-of-way actions are adjustments or relocations of utilities. (See 23 CFR 645 Utilities and Nevada Administrative Code (NAC) 408 Highways and Roads (Installation and Relocation of Facilities))

For utilities occupying NDOT's right-of-way by permit, NDOT will invoke its authority under Nevada Revised Statutes (NRS) 408.210 (4) to require relocation or adjustment of encroachments including utility facilities needed to accommodate the construction of the project. NDOT will exercise final approval over utility adjustments within NDOT's right-of-way and will have full authority to inspect said utility relocations.

The LPA, when the terms of the franchise agreement allow, will require those utility companies having franchise agreements with the LPA to relocate their facilities to accommodate the project improvements at no cost to the project or LPA.

2.4 NDOT Design and Construction Oversight

The LPA shall include NDOT's administrative costs in the project's initial cost estimate. The NDOT design costs can be estimated as the higher of 0.25% of the construction cost or \$5,000.00. For construction oversight, NDOT's administrative costs can be estimated as the higher of 0.50% of the construction costs or \$5,000.00. NDOT will have additional costs if:

- The Environmental process is complex or requires extensive coordination with the State Historic Preservation Office (SHPO)
- Right-of-way, utility adjustments/relocations or railroad involvement will be required for the project.

2.5 Railroad Requirements

Work on or near railroads requires very early coordination with the Railroad Owner because of the timeframes needed to obtain plan reviews and approvals. (See Section 6.6)

2.6 Structural Requirements

All bridge projects must use the American Association of State Highway and Transportation Officials (AASHTO) Load and Resistance Factor Design (LRFD) design method.

NDOT design standards and NDOT's Standard Specifications and Standard Plans shall be used on structures such as retaining walls, bridges, multiple pipe installations, sign structures and boxes for drainage, pedestrians, bicycles and vehicles if:

- The structure will be within NDOT right-of-way.
- The structure will be owned and/or maintained by NDOT.
- The structure is an on-system bridge (located on the Federal Aid System based on the functional classification of the road the bridge carries).
- The structure is an off-system bridge (not located on the Federal Aid System based on the functional classification of the road the bridge carries) that cross waterways.

Off-system bridges not within NDOT right-of-way may be designed to standards other than NDOT's, but they need to be consistent with the roadway in regard to loadings and width when considering 20-year traffic projections.

For projects containing bridges, it is important that an individual experienced in bridge structural design be in responsible charge of the design. The design must include a type selection report showing the structure geometry, clearances, construction staging, and alignment. A brief description of the alternatives considered must be provided along with justification of the preferred alternative (see the current version of NDOT's Structures Manual). The individual in responsible charge of the structural design of the structures must be retained during construction to answer design-related questions and/or address any changes in design during construction. This includes but is not limited to reviewing and approving items such as structural steel drawings, pre-stressing shop drawings, bearings, expansion joints, false work review, and rebar placement. In addition, they must respond to Requests for Information (RFIs), be available during the advertising period and prepare any necessary supplemental documentation.

2.7 Hydraulic Requirements

Drainage facilities in NDOT right-of-way must be designed to NDOT standards. The submittal requirements in the NDOT Drainage Manual shall be followed. LPAs must also follow, at a minimum, NDOT'S standards as outlined in the Water Quality Manuals. Any design exceptions will require prior, written approval from the Chief Hydraulics Engineer.

Drainage facilities outside of NDOT right-of-way may be designed to meet local design criteria and submittal requirements.

2.8 Contingencies

The LPA should include contingencies in the initial cost estimate. Contingencies will allow for increased project costs due to unforeseen scope impacts or scope creep. The initial cost estimate is used to establish the budget for a project and future increases in the available funding may not be available and/or approved.

Contingencies should be higher for the initial cost estimate due to many unknowns, especially when little to no design has been completed. Depending on the potential for unknowns, contingencies may range from ten percent (10%) to thirty percent (30%). As

the design progresses and the unknowns are identified, lower contingency percentages can be used with each progressive engineer's estimate. By the time the design is ready for advertisement and construction, the LPA should still include a reasonable contingency to allow for bidding volatility and to account for possible modifications during construction.

CHAPTER 3 - PROJECT DEVELOPMENT

3.1 Project Initiation

When the LPA decides to use the LPA Program, its project manager completes the LPA Project Data Form. The LPA submits the completed form to the Principal Road Design Engineer over the LPA Section in the Road Design Division at 1263 S. Stewart Street, Carson City, NV 89712, or via e-mail. If the Principal Road Design Engineer determines the project is appropriate for the LPA Program, the project is assigned to a LPA Coordinator.

The LPA can obtain the most current LPA Project Data Form from the Principal Road Design Engineer over the LPA Section or from a LPA Coordinator.

3.2 Preliminary Cooperative (Local Public Agency) Agreement

Projects completed under the LPA Program require an agreement between NDOT and the LPA before reimbursable work can begin. A Cooperative (Local Public Agency) Agreement (LPA Agreement) defines the project scope, project responsibilities and requirements, the cost estimate, funding and payment obligations.

The agreement defines the financial responsibilities of both parties. It includes the total amount payable to reimburse the LPA for eligible costs, which is usually equal to the federal-aid amount minus NDOT direct project charges (dependent on match responsibility). The LPA is financially responsible for costs that exceed the agreement amount.

The LPA Coordinator then:

- Develops a draft agreement using information supplied in the LPA Project Data Form.
- Completes the agreement summary form found on NDOT's Agreement Services' SharePoint site.
- Completes and submits the scheduling and programming form to schedule the project. Programming, the obligation/authorization of the federal funds, will be completed after the agreement execution.
- Develops the Project Workbook.

3.3 Kick-Off Meeting

The Kick-off meeting provides an opportunity for the LPA and NDOT to discuss the scope of the LPA project, potential environmental impacts, potential right-of-way needs, impacts to utilities and railroads as well as other issues. In addition, the meeting is used to discuss the draft LPA Agreement.

The LPA Coordinator:

- Sets the date, time and location for the kick-off meeting.

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- Sends meeting invitation to the LPA with a copy of the draft agreement at least three (3) weeks prior to the kick-off meeting date.
 - The LPA's Project Manager shall attend, and LPA personnel as deemed necessary may also attend.
 - It is the LPA Project Manager's responsibility to have the appropriate LPA staff review the draft agreement prior to the meeting.
 - Sends meeting invitation to affected divisions within NDOT and to FHWA's Field Operations Team Leader and FHWA's LPA/Safety Program Engineer. The invitations include a copy of the draft agreement, the LPA data sheet and the project application, if applicable.
 - The following NDOT personnel are invited to attend:
 - Principal Road Design Engineer over LPA Section
 - Federal-Aid Manager
 - Administrative Services representatives
 - Right-of-Way Division representatives
 - District Permits representative (if applicable)
 - Environmental Services Division representatives
 - Construction Division representative
 - District Engineer
 - Contract Compliance Division representative
 - Other NDOT representatives as deemed necessary such as staff from Hydraulics, Bridge, Traffic Operations and Safety
 - Conducts kick-off meeting. Discussions at the kick-off meeting typically address:
 - Overview of project
 - Scope: The LPA explains the scope of the project. This will give NDOT staff a feel for what level of involvement will be required for the project.
 - Consultant Services
 - Selection Procedures
 - Reporting requirements for subconsultants
 - Right-of-way issues
 - Verification of ownership
 - Right-of-way needs
 - Relocation needs
 - Utility impacts
 - Railroad impacts
 - Certification requirements
 - Potential Environmental impacts and documentation required
 - What are the potential environmental issues and the level of the NEPA action?

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- Maintenance responsibilities:
 - Bridge maintenance should be discussed. For example, a bridge crossing over NDOT's facility, even though it may be off-system, will be owned and maintained by NDOT between both ends of the approach slabs. The LPA will perform trash removal, graffiti removal, and other minor maintenance on the bridge riding surface, sidewalks, and inside face of barrier rail. Graffiti on the outside surfaces, piers and abutments will be the responsibility of NDOT.
 - Other facilities
 - The project budget, schedule and bidding requirements
 - How the match will be provided
 - Estimated timeframe for project completion (design & construction)
 - Federal requirements necessary for the project
 - Bidder preference not allowed
 - Contractor and sub-contractor licensing not required until before the award of the contract
 - Preferential hiring of local laborers is not allowed except for Tribal Employment Rights Office (TERO)
 - Federal wage rates
 - DBE goals
 - Affidavits of non-collusion
 - Affidavits for anti-lobbying
 - Buy America
 - Reimbursement billing, accounting procedures and 2 CFR 200
 - Comments on the draft agreement

3.4 Final LPA Agreement

The LPA Coordinator completes the following:

- Revises draft agreement based on comments received.
- Acquires necessary internal signatures on Agreement Summary Sheet.
- Sends revised agreement to Agreement Services Section. Includes the original signed Agreement Summary and the Request for Budget Approval.
 - Agreement Services Section reviews draft agreement.
 - Agreement Services Section sends agreement to Legal for review.
 - Agreement Services Section returns draft agreement to the LPA Coordinator.
- Finalizes agreement.
 - Revises agreement based on comments from Agreement Services Section and Legal.

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- Sends the agreement to the LPA for signature.
 - Sends letter/e-mail to LPA with a copy of the final agreement for signatures or via DocuSign for signatures.
 - The LPA shall not fill in the date or the agreement number, as the Agreement Services Section will complete this.
 - The LPA shall not modify the format of the agreement. (Note: requested changes will require further reviews with no guarantee of approval of requests).
 - The LPA shall obtain signatures for two (2) copies of the agreement if not using DocuSign.
 - The LPA shall sign the required federal affidavits (Affidavit of non-collusion, Restrictions of Lobbying Using Federal Funds and Disclosure of Lobbying Activities) on both copies of the agreement.
 - If the agreement is being executed outside of DocuSign, then once the LPA has returned both copies of the signed agreement to the LPA Coordinator, the coordinator forwards both signed copies to the Agreement Services Section for remaining NDOT signatures and final execution.

3.5 Funding Authorization

When preliminary engineering is part of the agreement, the LPA Coordinator will complete and submit the request for programming to the Financial Management Division once the signed agreement has been received from the LPA. The Financial Management Division requests funding authorization from FHWA through the Financial Management Information System (FMIS).

Before reimbursable work on a Federal-Aid project can be initiated, the work must be authorized by FHWA. In order for the authorization to be approved, the LPA project must be in the State Transportation Improvement Program (STIP), showing the funding in the correct phase and federal fiscal year for the requested authorization approval.

The NDOT LPA Coordinator is responsible for the preparation and submittal of the requests to program each project phase with the review and approval from the Principal Road Design Engineer over LPA Section and the submission of the request from NDOT's Financial Management Division to FHWA.

In accordance with the requirements of 2 CFR 200, any programming action will require the inclusion of an end date for federal participation in project costs. The LPA should develop a process for determining the end date. It should take into consideration the normal advertisement, review, award process for professional services, and other factors that can delay the start of the project or the completion of the project. It is recommended that the LPA include some leeway in their estimate to provide a conservative but reasonable end date. For more information about the end date see Section 14.6.

3.6 Notice to Proceed with Design

The LPA Coordinator may issue a verbal notice to proceed after FHWA has approved the authorization for design and the agreement has been executed by both parties. The Principal Road Design Engineer over LPA Section provides the LPA with a written notice to proceed with design, citing the date of the verbal notice, along with the copy of the executed agreement.

The LPA Coordinator shall forward a copy of the executed agreement with the assigned Federal Project Number to the FHWA Division Office.

3.7 NDOT Information Requests

The LPA Coordinator shall request NDOT project information when the LPA project is located within or abutting NDOT right-of-way. The project information will then be forwarded to the LPA for use on the project plans. The project information requests may include:

- Roadway alignments for roads owned by NDOT from NDOT's Location Division
- Right-of-way verification of NDOT's right-of-way limits from NDOT's Right-of-Way Division
- Copies of NDOT Occupancy Permits from NDOT's Permits Section
- ADA inventory from NDOT's ADA/504 Section

3.8 Design Professional Services

The LPA may choose to hire a firm to provide professional services for a LPA project. The cost of advertising, selecting, negotiating, hiring, and managing the firm is eligible for federal participation. The cost must be in conformance with the requirements of 23 CFR 200. The procurement, management and administration of engineering and design related services must comply with the requirements outlined in 23 CFR 172.

3.8.1 Consultant Selection Procedures

The LPA's procedures for procuring, managing and administering professional services must be reviewed and approved by NDOT. NDOT is tasked with ensuring that the procedures are compliant with 23 CFR 172.

If the LPA does not have approved procedures but wants to use consultant services, it may:

1. Work with NDOT to establish approved procedures; or
2. Use NDOT's LPA Professional Services Procedures; or
3. Use local funds, the funds would not count towards the required match for federal funds;

3.8.2 Design Professional Service DBE Goal

NDOT will establish a DBE Goal for design professional services in conformance with its established DBE Program.

The LPA must provide the proposed scope of services, the estimated cost of those services and the anticipated duration of the services to the LPA Coordinator.

The LPA Coordinator will complete the required request for the DBE goal for the design professional services. NDOT's Contract Compliance Office establishes the goal for the design professional services contract. The LPA Coordinator will forward the goal to the LPA.

If a goal is established for the design services, the LPA must include it in the RFP. While evaluating the qualifications of the firms, the LPA must select the most qualified firm that meets the DBE goal for the RFP and enter into negotiations with that firm. If the LPA is unable to negotiate a fair and reasonable contract, the LPA shall terminate negotiations and enter into negotiations with the next ranked firm that meets the DBE goal.

CHAPTER 4 – PRELIMINARY DESIGN

4.1 Design Standards

Under the LPA Program, different design standards may be applied on a project-by-project basis. The decision of which standards will be used on the project is made during the development of the agreement.

4.1.1 Design Standards in NDOT Right-of-Way

In general for LPA Projects within NDOT right-of-way, NDOT design standards will be used for all elements, including but not limited to roadway, structures, hydraulics, and storm water and traffic operations. NDOT's "Access Management System and Standards" (<http://www.nevadadot.com/business/forms/>) shall be followed. Exceptions to the access management standards must be approved by the appropriate district and NDOT's Operations Division.

LPA standards may be used on projects located within NDOT right-of-way if the LPA is going to maintain the improvements. However, asphalt and concrete specifications for improvements within NDOT right-of-way must meet NDOT requirements.

For LPA capacity Projects within NDOT right-of-way, three percent (3%) of the construction costs shall be applied towards landscape and aesthetics. Landscaping and/or aesthetic treatments shall comply with the Department's Landscape and Aesthetic Master Plan, A Pattern and Palette of Place, and the appropriate Landscape and Aesthetic Corridor Plans. Materials shall be regionally appropriate and plantings shall be drought tolerant.

4.1.2 Design Standards Outside of NDOT Right-of-Way

The LPA may use its standards on projects located outside of NDOT right-of-way. If the LPA does not have standards, NDOT standards must be used.

The LPA may follow its access management policies on their facilities.

See Section 2.6 for requirements associated with structures.

4.2 Design References

The following is a list of acceptable design references. It is the responsibility of the LPA to use the most current version of these references, when applicable.

NDOT Manuals, Policies, Guides and Procedures

- Road Design Division: Standard Specifications for Road and Bridge Construction
- Road Design Division: Standard Plans for Road and Bridge Construction, English
- Road Design Division: CADD Standards Manual
- Hydraulics Section: Drainage Manual
- Hydraulics Section: Storm Water Quality Manuals

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- Planning & Design Guide
 - Construction Site Best Management Practices
 - Landscape Architecture Section: Landscape & Aesthetics Master Plan: Pattern and Palette of Place - A Landscape and Aesthetics Master Plan for the Nevada State Highway System
 - Landscape Architecture Section: Landscape and Aesthetics Corridor Plans
 - Structural Division: Structures Manual – Structural Design Policies and Practices
 - Construction Division: Documentation & Construction Manual
 - Right-Of-Way Division: Right-of-Way Manual
 - Safety & Traffic Division: Work Zone Safety & Mobility Implementation Guide
 - Safety & Traffic Division: Nevada Sign Supplement to the Standard Highway Signs Manual
 - Operations Division: Access Management System and Standards
 - District: Terms and Conditions Relating to Right-Of-Way Occupancy Permits for NDOT Revocable Encroachment Permits

Other Manuals, Policies, Guides, and Procedures

- [NAC Chapter 408 Highways and Roads](#) – Installation and Relocation of Facilities

Environmental Guidance

- Environmental Services: Procedures Guide
- NDOT/FHWA Stewardship Agreement
- FHWA Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents
- FHPM 7-7-3 - Procedures for the Abatement of Highway Traffic Noise and Construction Noise
- AASHTO Environmental Practitioner’s Handbooks
(<http://environment.transportation.org/>)

AASHTO Publications

- A Policy on Geometric Design of Highways and Streets - “Green Book”
- Standard Specifications for Structural Supports for Highway Signs, Luminaries and Traffic Signals.
- AASHTO LRFD Bridge Design Specification, latest edition with interim revisions.
AASHTO Standard Specification for Highway Bridges, latest edition with interim revisions.
- Roadside Design Guide
- An Informational Guide for Roadway Lighting,
- AASHTO Drainage Guidelines,
- Manual on Subsurface Investigations, Publication No. S99-MSI.
- Guide for the Development of Bicycle Facilities,
- Guide for Planning, Design and Operation of Pedestrian Facilities

FHWA Publications

- Contract Administration Core Curriculum Participant's Manual and Reference Guide
- Manual on Uniform Traffic Control Devices
- Standards and Guides for Traffic Control for Street and Highway Construction, Maintenance, Utility, and Incident Management Operation
- Standard Highway Signs and Markings

Transportation Research Board (TRB)

- TRB Special Report 209 - Highway Capacity Manual

Illuminating Engineering Society of North America

- American National Standard Practice for Roadway Lighting (EIS - RP8),

4.3 Thirty Percent (30%) Design Submittals

Thirty percent (30%) level submittals are typically not required for most LPA Projects. However, they are required for projects involving bridges and for complex intelligent transportation system (ITS) projects.

4.3.1 Structural Submittal Requirements

For projects involving new bridges, the following steps shall be addressed during the thirty percent (30%) design phase:

- A Type Selection Report showing structure geometry, clearances, construction staging, and alignment shall be prepared. A brief description of the alternatives considered and a cost estimate for each will be provided along with justification on the preferred plan (see the most current version of the NDOT Structures Manual).
- The methods of analysis and software proposed for use on the major structural components of the bridge must be indicated.
- A QA/QC program for the design of the structure must be submitted for approval. Requirements for this are provided in NDOT's Structures Manual.
- Proposed design parameters including live loads, seismic loads, wind loads and temperature variations used must be stated.
- Right-of-way, construction staging and utility conflicts need to be considered.
- Preliminary bridge scour analysis for bridges over waterways.

The design must be completed according to the Load and Resistance Factor Design (LRFD) design method.

4.3.2 ITS Submittal Requirements

The requirements for ITS projects vary depending on the scope of work. The LPA Coordinator will work with FHWA, NDOT's Operations Division and the LPA to determine the submittal requirements.

CHAPTER 5 – ENVIRONMENTAL

5.1 Introduction

The National Environmental Policy Act of 1969 (NEPA) established a national policy focused on balancing the needs of the current and future generations with the impacts to the natural and human environments. Before transportation-related projects involving federal funds or a federal action can be advanced, the project proponent must address and comply with environmental laws, regulations and executive orders. These cover social, economic, and environmental impacts.

The FHWA NEPA process considers alternatives, examines environmental impacts and mitigations, provides interagency coordination, encourages public involvement, and documents decisions. The NEPA process ensures compliance with environmental laws, regulations and executive orders, including, but not limited to, the following:

- Sections 401, 402 and 404 of the Clean Water Act
- Section 4(f) of the Department of Transportation Act of 1966
- Section 6(f) of the Land and Water Conservation Fund Act of 1965
- Section 106 of the National Historic Preservation Act of 1966
- Section 7 of the Endangered Species Act
- Executive Order 11990, Protection of Wetlands, May 24, 1977
- Executive Order 11988, Protection of Floodplains, May 24, 1977
- Farmland Protection Policy Act, 2000
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, February 11, 1994
- U.S. Environmental Protection Agency, National Pollutant Discharge Elimination System
- Migratory Bird Treaty Act of 1918
- Title 1 of the Clean Air Act
- 23 CFR 771, 772, 774, and 777, FHWA Environmental Regulations

5.2 Environmental Impacts

The following list includes general areas of potential impacts but is not intended to be all inclusive:

- **Air quality** – Under the federal Clean Air Act, transportation activities in air quality nonattainment or maintenance areas that receive federal funding or approval must be fully consistent with the plan developed to meet federal clean air standards, known as the State Implementation Plan (SIP).
- **Noise** – The Federal-Aid Highway Act of 1970 and associated implementing regulations (23 CFR 772) require that potential impacts to noise sensitive areas such as residences, businesses, schools, parks, etc. be identified and mitigation considered during project planning and design. The regulations contain noise abatement criteria (NAC) that are used to determine when a noise impact would occur.

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- **Environmental Justice** – Projects involving a federal action must comply with Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. This Executive Order directs federal agencies to identify and address disproportionate effects of federal projects on the health or environment of minority and low-income populations to the greatest extent practicable and permitted by law.
 - **Cultural resources** – Potential impacts to archaeological, traditional, and built environment resources, including but not limited to buildings, structures, objects, districts, and sites must be addressed under Section 106 of the National Historic Preservation Act and implementing regulations at 36 CFR 800.
 - **Native American Consultation** – Meaningful and timely discussion with tribal governments is required during the project development that may significantly or uniquely affect federally recognized American Indian tribes and their governments. Tribes are sovereign entities and must be approached on a Government to Government basis directly through FHWA with the assistance of the NDOT Cultural Resources staff.
 - **Paleontological resources** – Paleontological resources include fossil plants and animals used to study life in past geologic time. A number of federal statutes, including the Antiquities Act of 1906 and the Federal-Aid Highway Act of 1935, address paleontological resources, their treatment, and funding for mitigation as a part of federally authorized or funded projects.
 - **Water Quality** – Under Section 402 of the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit program regulates the discharge of pollutants from point sources to waters of the United States. A NPDES permit is required for construction sites that disturb one acre or more, and a Storm Water Pollution Prevention Plan (SWPPP) must be prepared to minimize water and wind erosion and the discharge of pollutants from construction sites.
 - **Wetlands and other Waters of the United States** – Section 404 of the Clean Water Act requires a permit from the U.S. Army Corp of Engineers (USACE) for the discharge of dredged or fill material into the waters of the U.S. including tributaries to navigable waters, interstate wetlands, wetlands which could affect interstate or foreign commerce, and wetlands adjacent to other waters of the U.S. Wetlands are areas that meet specific criteria for hydrophytes vegetation, hydric soils, and wetland hydrology. A Section 401 Water Quality Certification from the State of Nevada is also required when a federal Section 404 permit is issued.
 - **Floodplains** – Executive Order 11988 (Floodplain Management) directs all federal agencies to refrain from conducting, supporting, or allowing actions in floodplains unless it is the only practicable alternative. Local, state and federal water resources and floodplain management agencies must be consulted if a proposed action encroaches on a 100-year base floodplain. FHWA requirements for compliance are outlined in 23 CFR 650.

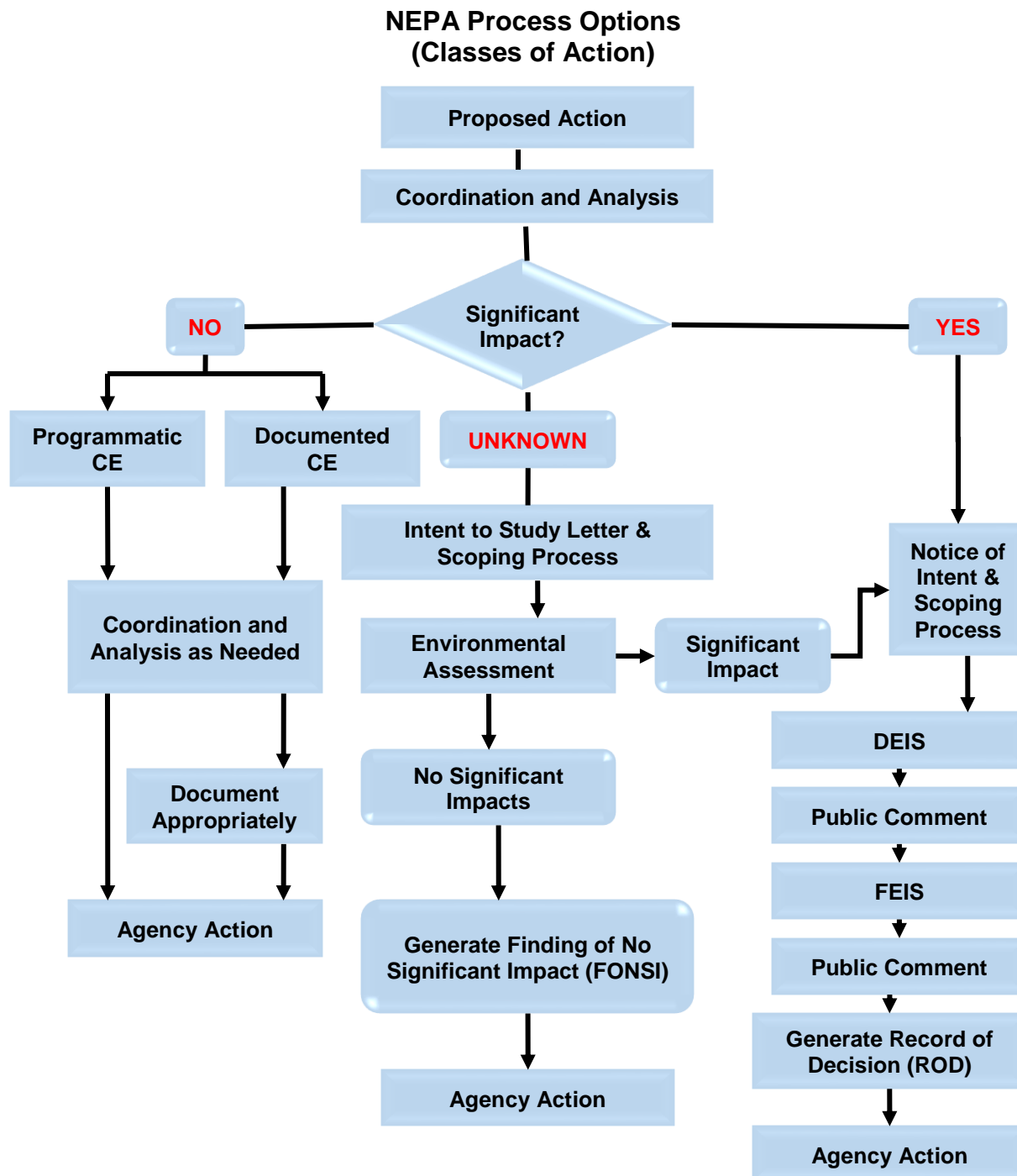
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- **Threatened and Endangered Species** – Under the Endangered Species Act, potential impacts to federally-listed threatened, endangered, proposed, or candidate species and designated or proposed critical habitat must be addressed through consultation with the U.S. Fish and Wildlife Service (USFWS).
 - **Migratory Birds** – The Migratory Bird Treaty Act of 1918, administered by the USFWS, makes it unlawful to take, import, export, possess, sell, purchase, or barter any migratory bird, with the exception of the taking of game birds during established hunting seasons. This law is of particular concern when birds nest on bridges or other transportation infrastructure or in vegetation to be cleared for project construction.
 - **Section 4(f) Properties** – Under the Department of Transportation Act of 1966, a Section 4(f) evaluation is required for any project that uses Section 4(f) property including publicly owned parks, recreation areas, and wildlife or waterfowl refuges, or any publicly or privately owned historic site that is listed or eligible for listing on the National Register of Historic Places.
 - **Section 6(f) Properties** – Projects that convert any outdoor recreation property acquired or developed with funding from the Land and Water Conservation Fund to a use other than outdoor recreation, are subject to Section 6(f) of the Land and Water Conservation Fund Act.
 - **Farmland** – The Farmland Protection Policy Act requires federal agencies to coordinate with the Natural Resources Conservation Service (NRCS) if proposed activities may irreversibly convert farmland (directly or indirectly) to nonagricultural use. Farmland protection applies to “prime” farmland, “unique” farmland, and farmland of statewide or local importance.
 - **Hazardous Materials / Wastes** – Hazardous materials and hazardous wastes are regulated by many state and federal laws. Potentially contaminated property should be identified as early as possible in the project development process.

5.3 NEPA Classes of Actions

To account for the variability of project impacts, three classes of environmental actions have been established. The three classes of environmental actions, in order of potential impact, are:

- A Categorical Exclusion (CE) is issued for actions that do not individually or cumulatively have a significant effect on the environment.
- An Environmental Assessment (EA) is prepared for actions for which the significance of the environmental impact is not clearly established or that have no significant impacts on the quality of the environment; a Finding of No Significant Impact (FONSI) may be issued, or an Environmental Impact Statement must be prepared.
- An Environmental Impact Statement (EIS) is prepared for projects where it is known that the action will have a significant effect on the environment; a Record of Decision (ROD) is issued.

The general NEPA process used to determine the type of environmental action is outlined below:



Non-capacity transportation-related projects may be processed using a CE, which may take a minimum of six months to complete. For capacity improvements, the project may require an EA or an EIS depending on the significance of the environmental impacts. The EA or EIS process is more time consuming. An EA may take eighteen to twenty-four months to complete, while an EIS can take four years or longer. Early coordination between the LPA, NDOT and FHWA will determine which type of action will be involved.

If the project involves right-of-way from a federal agency such as Bureau of Land Management (BLM), Bureau of Reclamation (BOR), Bureau of Indian Affairs (BIA), or the Forest Service (USFS), the project will also require coordination with these agencies. These agencies may require a separate NEPA action or request “Cooperating Agency” status. In this case, these agencies must be involved from the beginning.

5.3.1 CE Process (23 CFR 771.117)

A CE will be processed when the project or actions taken, based on past experience with similar projects or actions, do not involve significant environmental impacts. The CE may be processed as a programmatic CE or a documented CE. A programmatic CE is an action included on the list of actions that meet the criteria for a CE and normally require no further FHWA approvals and is set forth in 23 CFR 771.117(c). The list of actions is as follows:

- Activities that do not involve or lead directly to construction, such as planning and technical studies.
- Approval of utility installations along or across a transportation facility.
- Construction of bicycle and pedestrian lanes, paths, and facilities.
- Activities included in the State’s highway safety plan under 23 USC 402.
- Transfer of Federal lands pursuant to 23 USC 107(d) and/or 23 USC 317 when the subsequent action is not an FHWA action.
- The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
- Landscaping.
- 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.
- Emergency repairs under 23 USC 125.
- Acquisitions of scenic easements.
- Determination of payback under 23 CFR part 156 for property previously acquired with Federal-aid participation.
- Improvements to existing rest areas and truck weigh stations.
- Ridesharing activities
- Bus and rail car rehabilitation
- Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
- Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
- 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.
- Track and rail bed maintenance and improvements when carried out within the existing right-of-way.
- Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

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- Promulgation of rules, regulations and directives.
 - 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 or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.
 - Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way.
 - Federally-funded projects that receive less than \$5,179,656 (this amount is adjusted annually for inflation) of Federal funds; or with a total estimated cost of not more than \$31,077,938 (this amount is adjusted annually for inflation) and Federal funds comprising less than 15 percent of the total estimated project cost.
 - Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.
 - Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of storm water 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.
 - Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in paragraph 23 CFR 771.117(e).
 - Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the action meets the constraints in paragraph 23 CFR 771.117(e).
 - Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at grade railroad crossings, if the action meets the constraints in paragraph 23 CFR 771.117(e).

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- 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.
 - 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. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

Other projects, as specified under 23 CFR 771.117(d), may also qualify as a documented CE if appropriately analyzed and documented showing it will not have significant environmental impacts. Approval by the FHWA Division office is required.

5.3.2 EA Process (23 CFR 771.119 & 23 CFR 771.121)

When the significance of impacts of a transportation project proposal is uncertain, an environmental assessment (EA) is prepared to assist in making this determination. If it is found that significant impacts will result, the preparation of an environmental impact statement (EIS) should commence immediately.

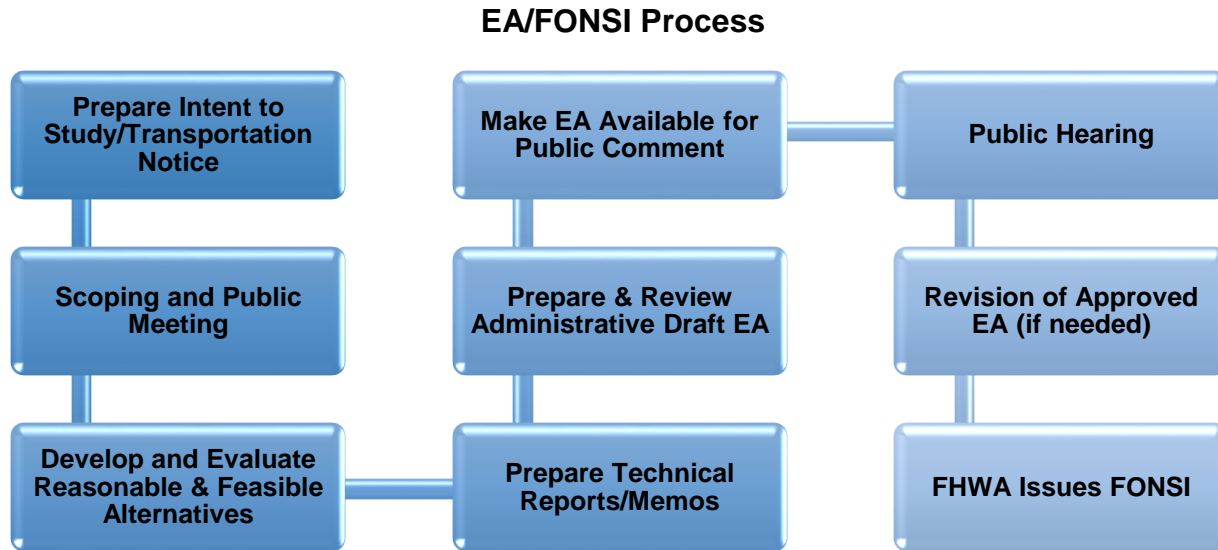
An EA is a concise public document for which a Federal agency is responsible that serves to 1) briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact; 2) aid an agency's compliance with NEPA when no environmental impact statement is necessary; and 3) facilitate preparation of a statement when one is necessary. The EA shall include brief discussions of the need for the project, of alternatives, of the environmental impacts of the proposed alternatives, and a listing of agencies and persons consulted.

FHWA must approve an EA before it is made available to the public. EAs do not need to be circulated but they must be made available to the public through notices of availability in local, state, or regional clearinghouses, newspapers and other means. Depending on the FHWA-approved state public involvement procedures, a public hearing may or may not be required. A 30 calendar day review period is required.

After public comments are received and considered, a determination of the significance of the impacts is made. If, after completing the EA, it is evident that there are no significant impacts associated with the project, a finding of no significant impact (FONSI) may be prepared. If at any point in the process of preparing an EA it is discovered that the project would result in significant impacts, then an environmental impact statement (EIS) must be prepared.

If it is determined that there will be no significant impacts a FONSI will be prepared to conclude the process and document the decision. A FONSI is issued when environmental analysis and interagency review during the EA process find a project to have no significant impacts on the quality of the environment. No formal public circulation of the FONSI is required, but the state clearinghouse must be notified of the availability of the FONSI.

The general overall process is outlined below:



5.3.3 EIS Process (23 CFR 771.123, 23 CFR 771.125 & 23 CFR 771.127)

NEPA requires Federal agencies to prepare environmental impact statements (EIS) for major Federal actions that significantly affect the quality of the human environment. An EIS is a full disclosure document that details the process through which a transportation project was developed, includes consideration of a range of reasonable alternatives, analyzes the potential impacts resulting from the alternatives, and demonstrates compliance with other applicable environmental laws and executive orders.

The Notice of Intent is published in the Federal Register by the FHWA and signals the initiation of the process. Scoping, an open process involving the public and other Federal, state and local, agencies, commences immediately to identify the major and important issues for consideration during the study. Public involvement and agency coordination continues throughout the entire process. The draft EIS (DEIS) provides a detailed description of the proposal, the purpose and need, reasonable alternatives, the affected environment, and presents analysis of the anticipated beneficial and adverse environmental effects of the alternatives. Following a formal comment period and receipt of comments from the public and other agencies, the final EIS (FEIS) will be developed and issued. The FEIS will address the comments on the draft and identify, based on analysis and comments, the "preferred alternative".

The major EIS sections include:

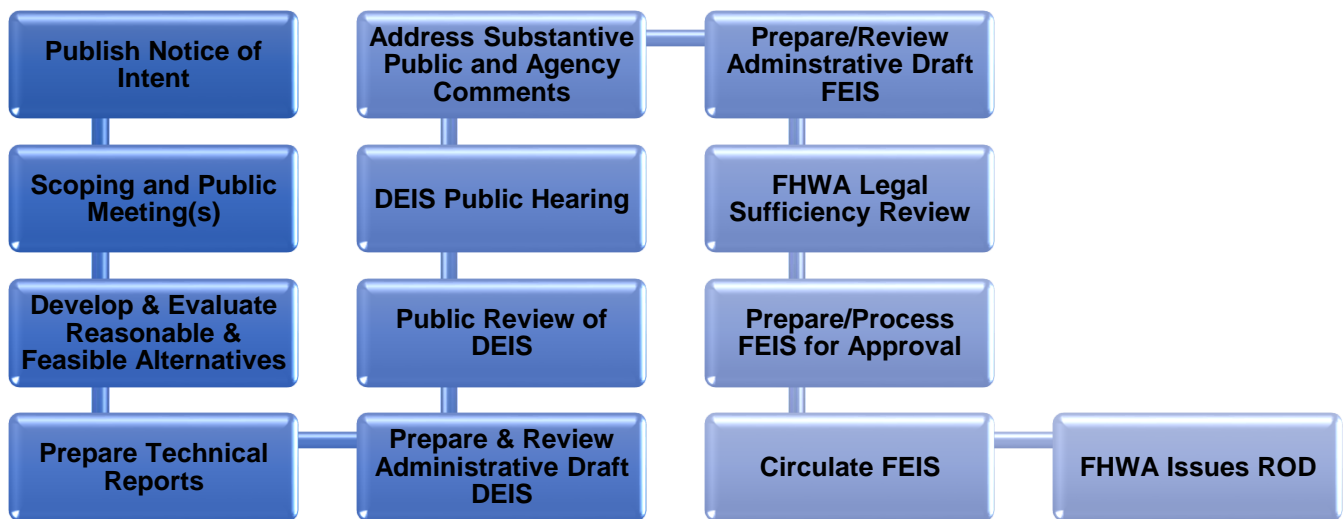
- Purpose and Need. This section establishes why an agency is proposing to implement a project. The purpose and need drives the development of the range of alternatives.
- Alternatives. This section describes the process used to develop, evaluate, and eliminate potential alternatives based on the purpose and need of the project and describe how the alternatives, including the "no-build", studied in the EIS meet the need for the project and avoid or minimize environmental harm.

- **Affected Environment.** This section provides information on the existing resources and condition of the environment relative to the impacts of the alternatives.
- **Environmental Consequences.** This section describes in detail both the impacts of the proposed action and the potential measures that could be taken to mitigate these impacts.
- **Comments and Coordination.** The EIS must summarize the scoping process, the results of any meetings and any comments received during agency coordination, substantive comments received on the draft EIS, and those from public hearings.

The Record of Decision (ROD) is the final step in the EIS process and may not be issued sooner than 30 days after the approved final EIS is distributed nor 90 days after the Draft EIS is circulated. The ROD identifies the selected alternative, presents the basis for the decision, identifies all the alternatives considered, specifies the "environmentally preferable alternative," and provides information on the adopted means to avoid, minimize and compensate for environmental impacts.

At the discretion of the FHWA and meeting established conditions, a single combined FEIS/ROD document may be issued.

DEIS/FEIS Process



5.4 Environmental Procedures

As noted earlier, the environmental impact a transportation-related project has varies greatly from project to project. It is impossible to delineate one procedure to complete the NEPA process. Each project must be examined to determine what the scope of work is, the area impacted and the possible environmental impacts.

The LPA must contact NDOT's Environmental Services Division following the kickoff meeting at 775-888-7688 Using the project information provided by the LPA, NDOT, in cooperation with FHWA, will determine what procedures will satisfy the NEPA process.

5.4.1 LPA's Environmental Role

Once the type of action required is determined and the procedures outlined, the LPA must have the work completed by personnel with NEPA compliance experience. If the LPA does not have staff capable or qualified to complete the work, qualified consultants must be hired by the LPA.

The LPA is responsible for providing NDOT's Environmental Services Division with all reports, documentation and draft correspondence needed to complete the consultations noted in Section 5.4.2 that may be required to satisfy the project's compliance with NEPA. Early and often coordination with NDOT's Environmental Services Division is recommended to ensure that the NEPA process is done correctly. And in as timely a manner as possible.

If NDOT determines the project requires a Section 404 Clean Water Act permit from the United State Army Corps of Engineers (COE), the LPA will be required to secure the Section 404 permit from the COE. The LPA may be required to prepare a Jurisdictional Determination (JD) for the COE in support of the permit or to demonstrate why a permit is not needed. The JD process may take up to a year to complete. NDOT Storm Water Division may review the JD and permit prior to submittal. Any submittals must conform to COE guidance and local office standards. The LPA and their consultants are encouraged to work directly with the local COE office. The LPA should be in receipt of the COE permit prior to NEPA approval.

Additional guidance can be found in Appendix A.

5.4.2 NDOT's Environmental Role

FHWA and NDOT uses the work completed by the LPAs including reports, documentation, draft correspondence, plans, and specifications to initiate and complete any required consultations with regulatory agencies. These consultations most often include but are not limited to the following:

- Section 106 National Historic Preservation Act (NHPA) consultation with the State Historic Preservation Officer (SHPO)
- Government-to-government consultation with Native American tribes (tribes Identified by NDOT/FHWA)
- Section 7 Endangered Species Act (ESA) consultation with the US Fish and Wildlife Service (FWS)
- Section 4(f) consultation with the US Department of the Interior (DOI) and the 4(f) property officials with jurisdiction
- Section 6(f) consultation with Nevada State Parks and the US National Park Service

In addition, NDOT's Biology Section will request a species list from the Nevada Natural Heritage Program (NNHP) to determine the presence of federally threatened or endangered species and state protected species. If the NNHP report indicates protected species may be impacted by the project, then NDOT will request the LPA prepare a biological survey report.

5.5 NEPA Documentation/Environmental Certification

The LPA completes the majority of the work needed to comply with NEPA and other environmental permits and clearances and provides NDOT with copies of letters, applications, and reports and/or permits to document compliance.

NDOT's Environmental Services Division must certify the project to complete the construction programming. The certification is dependent on information supplied by the LPA.

CHAPTER 6 - RIGHT-OF-WAY, UTILITIES AND RAILROADS

6.1 Introduction

NDOT has a responsibility for the acquisition of right-of-way on federal transportation projects in the state. Transportation projects that use federal funds or require a federal action are considered a federal transportation project. A project that impacts the interstate is considered a federal transportation project. Right-of-way needed for a federal transportation project must be acquired in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended regardless of how the acquisition is funded. Prior to commencing right-of-way activities, the following must be completed: LPA agreement executed, NEPA completed, and a NTP for right-of-way activities received.

NDOT must certify the right-of-way needed to construct the project is in legal and/or physical possession and utility relocation and railroad work has been completed or arrangements have been made to coordinate the efforts with the construction of the project, before any federally funded construction project can be authorized by FHWA for advertisement.

6.2 Verifying Existing Right-of-Way

The existing limits of the LPA's and/or NDOT's right-of-way must be documented in order to ensure that all work is within existing right-of-way. Documenting the existing right-of-way limits enables the LPA to determine the potential need for agreements with other local agencies and/or the need to acquire right-of-way for the project.

6.2.1 Projects within NDOT Right-of-Way

When a LPA Project is located within or adjacent to NDOT right-of-way the LPA Coordinator requests a right-of-way verification and a search of the permits from the NDOT Right-of-Way Division. The LPA Coordinator will provide that information to the LPA. The LPA will verify the project and its appurtenances stay within the right-of-way limits. In addition, the LPA shall make the LPA Coordinator aware of impacts to permits within the project limits. The LPA shall display the right-of-way limits on the plan sheets.

If it appears the improvements or the construction operations and equipment will extend beyond NDOT's right-of-way limits, the LPA must notify the LPA Coordinator and work with NDOT to acquire the necessary right-of-way.

6.2.2 Projects within LPA Right-of-Way

The LPA must research and be able to provide documentation on the LPA's right-of-way limits on the project. The documentation of the existing right-of-way limits may consist of copies of deeds, plat maps dedication acceptance by the LPA, record of survey showing acceptance by the LPA or a town plat. **Copies of assessor's maps are not acceptable.** The LPA shall display the right-of-way limits on the plan sheets.

If it appears the improvements or the construction operations and equipment will extend beyond the LPA's right-of-way limits, the LPA must notify the LPA Coordinator and work with NDOT to acquire the necessary right-of-way.

6.3 Projects with Right-of-Way Acquisition

Not all projects can be constructed within the limits of the existing right-of-way owned by either the LPA or NDOT. In those cases, right-of-way must be acquired to accommodate the project. In determining the right-of-way requirements for a project, the LPA needs to also consider the requirements to accommodate the construction activities of the project. Typically, NDOT is responsible for acquiring the additional right-of-way. Costs associated with acquiring the right-of-way will be considered a project cost.

NDOT may delegate responsibility to a qualified LPA to complete all of the work or portions of the work required to acquire the right-of-way. For a LPA to be considered qualified for right-of-way acquisition, the LPA must submit the following information to NDOT:

1. A listing of positions performing the functions of appraisal, appraisal review, negotiations, relocation assistance and property management, in compliance with the Uniform Act.
2. An organizational chart indicating both positions and names of staff.
3. The qualifications and experience of the right-of-way staff and/or consultant staff who will be performing right-of-way services, including the number of years of experience working with or utilizing the Uniform Act.
4. A statement detailing the LPA's process for;
 - a. Approval of administrative and legal settlements
 - b. Reviewing relocation assistance appeals
5. Identification of the agency official with responsibility for appraisal, appraisal review, negotiations, relocation assistance and property management.
6. A description of any right-of-way procedures proposed as alternatives to NDOT right-of-way procedures.

Qualification of a LPA to perform right-of-way will be determined by NDOT's Right-of-Way Division based on the LPA's ability to perform the right-of-way activities. The approval will be re-evaluated if there are significant changes in the LPA right-of-way staff.

In the event that the LPA is delegated right-of-way activities, the LPA shall work with NDOT's right-of-way staff to ensure compliance with federal and state laws.

Right-of-way acquisitions, regardless of who acquires, shall be completed in accordance with the NDOT Right-of-Way Manual and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

6.3.1 Initial Right-of-Way Setting

An initial right-of-way setting meeting shall be held once the NEPA process has been completed and the LPA has identified the right-of-way needed for the project. The

purpose of the meeting is to discuss the right-of-way needed for the finished design and additional needs for the construction of the project. Impacts to existing utilities and the possible resolutions to those impacts are discussed at the meeting.

The LPA Coordinator arranges the initial right-of-way setting meeting with representatives from the LPA and NDOT. The LPA Coordinator will invite the appropriate NDOT Right-of-Way staff including the Supervisory Right-of-Way Agent for Negotiations, the Supervisory Right-of-Way Agent for Utilities, the Manager for R/W Engineering, the Right-of-Way Staff Specialists, Chief Counsel from NDOT's Legal Division, members of NDOT's Environmental Services Division, and FHWA's Field Operations Team Leader, FHWA LPA/Safety Program Engineer and the FHWA Civil Rights/Rights-of-Way Specialist to attend.

The LPA must be prepared to discuss why the right-of-way is needed and possible alternatives to avoid or minimize the right-of-way required. The LPA must provide an exhibit showing the limits of the existing right-of-way and the limits of the additional right-of-way needed for the project. The limits of the proposed right-of-way must be delineated with stations and offsets to the construction centerline. The exhibit must also identify the type of acquisition needed.

The acquisition types are as follows:

- **Fee Simple**
Fee Simple is the acquisition of the total property interest.
- **Permanent easement**
A permanent easement is defined as an area required for the construction of a highway-related feature that is permanent in nature or requires ongoing maintenance. This type of easement requires the purchase of a less than fee interest in the land. Examples of permanent easements include ingress/egress, maintenance, slope and drainage.
- **Temporary/construction easement**
A temporary easement is defined as an area outside the right-of-way limits required to allow the construction of a highway feature. The compensation to the property owner as a result of the granting of the temporary easement will vary according to the length of time the easement is needed, the use to which the temporary easement is to be placed, and the type of property being valued, etc.
- **Control of access**
The valuation and acquisition of access rights to a public facility is measured by the loss in value, if any, of the remaining parcel measured on a before and after basis.
- **Permissions to construct (agreement to construct outside of right-of-way)**
This is used when the contractor needs to enter private lands to reconstruct a feature for the use and benefit of the landowner. Examples would be an area required to rebuild an owner's approach or to construct an irrigation ditch belonging to the landowner that is not associated with highway drainage. If

the owner does not give a permission to construct, it does not impact the ability to build the project. In that case, the parcel and work is removed from the construction plans and right-of-way maps.

The LPA must be prepared to discuss utilities impacted by the project. The discussion must include how the utilities are impacted, who will do the adjustments/relocations, and who is responsible for the costs.

Only those utilities with a documented prior right can be reimbursed for design costs, replacement easements, and adjustment/relocation costs. The LPA, working with the utility companies, must provide documentation to support the utility's claim of prior rights. The supporting documentation may consist of copies of deeds or easements, or franchise agreements.

6.3.2 Final Right-of-Way Setting

It is determined at the conclusion of the initial right-of-way setting if another meeting is required. If there are no or only minor changes to the additional right-of-way limits needed for the project, a second meeting may not be required and the initial setting will act as the final. Otherwise additional meetings may be required to set the final right-of-way needs for the project.

6.3.3 Right-of-Way Setting Memo

Once the right-of-way needs are set, the LPA Coordinator, with input from the LPA, prepares a Right-of-Way Setting Memo. This memo documents the discussions at the right-of-way setting meetings. The memo must include:

- An exhibit that identifies and displays the areas and parcels to be acquired. The exhibit shows the limits and type of acquisitions and includes offsets to the project alignment at parcel breaks (Project alignments for NDOT highways must be approved by NDOT's Location Engineer).
- The county the project is located.
- The ultimate titleholder.
- Number and type of acquisition (See Section 6.3.1 for types)
- Alternatives explored including the justification for the take versus the alternative
- Recommendation approval signature block for the Chief Environmental Services Engineer and a signature block for the Chief Right-of-Way Agent.

Changes from the information outlined in the Right-of-Way Setting Memo, such as the deletion of a parcel, requires an amended Right-of-Way Setting Memo.

6.3.4 Authorization for Right-of-Way Acquisition

After the Right-of-Way Setting Memo is approved, the LPA Coordinator completes a Project Scope/Budget Change and Update request. This document is used to request funding be authorized for the right-of-way acquisition, relocation and utility relocations/adjustments. The request will be based on estimates provided by the LPA and verified by the NDOT Right-of-Way Division.

In order for the authorization to be approved, the LPA project must be in the State Transportation Improvement Program (STIP), showing the funding in the correct phase and federal fiscal year for the requested authorization approval.

In accordance with the requirements of 2 CFR 200, any programming action will require the inclusion of an end date for federal participation in project costs. The LPA should develop a process for determining the end date. It should take into consideration the normal process for acquiring right-of-way including the condemnation process, and other factors that can delay the completion of right-of-way acquisitions. It is recommended that the LPA include some leeway in their estimate to provide a conservative but reasonable end date. For more information about the end date see Section 14.6.

Once the funding authorization from FHWA has been received, the right-of-way phase of the project can begin. When the LPA is delegated the authority to acquire right-of-way for the project, the LPA Coordinator will issue a Notice to Proceed with the right-of-way engineering, appraisal and appraisal review. NDOT must establish the just compensation for the parcels before the LPA can begin making offers to the property owners.

6.3.5 NDOT Right-of-Way Acquisition

Right-of-way acquisitions, regardless of who acquires, shall be completed in accordance with the NDOT Right-of-Way Manual and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

When NDOT completes all the activities of right-of-way acquisition, NDOT's Right-of-Way Division will prepare the title reports, right-of-way maps, appraisals, appraisal reviews, offers and property transfer documents in accordance with NDOT procedures. The right-of-way will be acquired in the name of the State.

In some cases where NDOT will do the actual acquisition, some phases of work may be delegated to the LPA. The activities that the LPA may perform shall be delineated in the LPA Agreement. Refer to the appropriate subsections in 6.3.6 for more information regarding those activities.

If the LPA Agreement establishes or perpetuates NDOT maintenance responsibilities the acquired right-of-way will be retained by NDOT. The NDOT may, by Resolution of Relinquishment, recommend to the Transportation Board the disposal of or transfer of property to the LPA.

6.3.6 LPA Right-of-Way Acquisition

If the LPA acquires the right-of-way for a project, the LPA shall follow the NDOT Right-of-Way Manual and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. The NDOT Right-of-Way Manual has been approved by FHWA and ensures compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The LPA shall work closely with the LPA Coordinator and NDOT's Right-of-Way Division during the acquisition process, to

assure federal and state requirements are met. The Right-of-Way Division shall review products prepared by the LPA for the project.

6.3.6.1 Title Reports and Right-of-Way Mapping

The LPA shall submit legal descriptions, right-of-way plans, and title reports to the NDOT Right-of-Way Division for review and approval. Right-of-way plans must meet NDOT's right-of-way standards if NDOT will own the right-of-way upon completion of the project. (See NDOT Right-of-Way Manual)

6.3.6.2 Appraisals

Appraisals shall be performed by state licensed appraisers under contract with the LPA. Contract appraisers must be on the NDOT Approved Appraiser List maintained by the NDOT Right-of-Way Staff Specialist for Appraisals. Appraisals for property must follow the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisition (Yellow Book). When differences occur between the two standards the Yellow Book shall be considered the prevailing authority.

Where property acquisition is uncomplicated and value is estimated to be less than \$10,000 the LPA may prepare a Waiver Valuation according to the guidelines found in the NDOT Right-of-Way Manual. Appraisals and Waiver Valuations are commenced by the invitation to the owner to accompany the appraiser on their field review as required under 49 CFR 24.102.

The LPA shall have the appraisals reviewed by an independent appraiser on the NDOT Approved Appraisers List prior to submitting the appraisals to NDOT. The NDOT Right-of-Way Division will review the appraisal reports.

6.3.6.3 Just Compensation

Once the NDOT Right-of-Way Division has received the appraisal reports from the LPA, it will review them for completeness. After the appraisal reports have been approved, NDOT's Right-of-Way Division will set just compensation for the acquisition and will provide it to the LPA for use in negotiations. The LPA cannot begin negotiations before the just compensation has been set.

6.3.6.4 Right-of-Way Negotiations

Once the LPA receives the just compensation for a parcel, it may begin negotiations with the affected property owner. (See Negotiations Section in the NDOT Right-of-Way Manual)

The NDOT Right-of-Way Division will conduct periodic reviews of the LPA's negotiations with the affected property owners.

6.3.7 Dedications and Donations

NDOT cannot accept right-of-way by direct dedication. There must be a deed transferring ownership to NDOT. The LPA may accept, as part of a federal or federally

assisted project, a parcel that a developer has dedicated or proposes to dedicate. Dedication is the process of reserving a parcel of land for future public use. A dedication is usually made as part of the subdivision or zoning approval process. The LPA may accept land dedicated pursuant to the local planning process or at the request of the property owner for land use concessions that are consistent with the local and federal regulations and environmental regulations.

Real property obtained through normal zoning or through subdivision procedures requiring dedication of strips of land in the normal exercise of police power is not considered to be a taking in the constitutional sense. Therefore, it does not call for payment of just compensation or compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Property and property rights acquired in this manner may be incorporated into a federally assisted project without jeopardizing federal participation in other project costs. However, dedication undertaken to circumvent federal requirements is unacceptable.

Property owners whose real property is to be acquired for a project may make a gift or donation of the land to the acquiring agency, for any part of it, or of any of the compensation paid for it. The owner-donors must be informed of their right to receive just compensation for the acquisition of the property if it is desired. The owners must also be informed that they are entitled to have an appraisal made of the property along with an offer of just compensation. The owner(s) may release the LPA from these obligations and waive the appraisal and compensation. This release must be in writing and comply with the NDOT Right-of-Way Manual. The complete donation process is explained under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended and within the NDOT Right-of-Way Manual.

6.4 Monumentation

Final monumentation is done after the right-of-way is purchased. A sufficient amount of control monuments shall be placed within the right-of-way (or in centerline survey wells) to allow for the establishment, re-establishment or retracement of the acquisition centerline and in accordance with the NRS. All work performed in monumenting the centerline control shall be performed under the direct supervision of a professional land surveyor licensed in the State of Nevada.

6.5 Utilities

On most LPA projects, the proposed improvements impact utilities. It is the LPA's responsibility to determine which utilities will be impacted by the project. These impacts can include adjustments to grade, such as valve and manhole cover adjustments, relocations of utilities, as well as line extensions to provide power to new improvements. The LPA must coordinate with utility companies to identify facilities and to determine conflicts.

It is the responsibility of the LPA to ensure compliance with Buy America provisions and the NDOT Right-of-Way Division's Buy America Policy for utility relocations. The Right-of-Way Division's Buy America Policy can be found at:
http://www.nevadadot.com/uploadedFiles/NDOT/About_NDOT/NDOT_Divisions/Engineering/ROW/ROW%20Buy%20America%20Policy%208-31-16.pdf

Utilities requiring adjustment must be adjusted prior to the start of construction unless it is more cost effective to make adjustments during construction. If utilities are to be adjusted during construction, the project special provisions must identify the utility coordination and construction sequencing.

Utilities with documented prior rights shall receive a replacement property right, be relocated and reimbursed in accordance with applicable State and Federal regulations, including but not limited to NAC Chapter 408 and 23 CFR Part 645. Costs incurred due to delays in the construction schedule because of utility adjustments are not eligible for reimbursement and do not count towards the required match.

The LPA is typically responsible for coordinating adjustments, relocations and line extensions with the impacted utilities. NDOT will provide guidance and oversight. NDOT may assume the responsibility of coordinating with the impacted utilities when the utilities are within NDOT right-of-way.

6.5.1 Projects with Right-of-Way

On LPA projects where right-of-way acquisition is involved, the utility adjustments are discussed during the Right-of-Way Setting Meetings. This is especially true when utilities are being relocated and require replacement easements. The authorization for the utility adjustments is done in conjunction with the right-of-way acquisition authorization.

6.5.2 Projects without Right-of-Way

For LPA projects where right-of-way acquisition is not involved, the utility adjustments shall be discussed with the LPA Coordinator and the assigned Right-of-Way Agent in the NDOT Utility Section. The LPA must be prepared to discuss utilities impacted by the project. The discussion must include how the utilities are impacted, who will do the adjustments/relocations, and who is responsible for the costs.

Only those utilities with a documented prior right can be reimbursed for design costs, replacement easements, and adjustment/relocation costs. The LPA, working with the utility companies, must provide documentation to support the utility's claim of prior rights. The supporting documentation may consist of copies of deeds or easements, or franchise agreements.

6.5.3 Authorization for Utility Adjustments

Prior to any utilities being adjusted for the LPA project, the federal funds must be authorized for the work. The LPA Coordinator completes a Project Scope/Budget Change and Update request. This document is used to request funding be authorized for the relocation and utility relocations/adjustments. The request will be based on estimates provided by the LPA and verified by the NDOT Right-of-Way Division.

In order for the authorization to be approved, the LPA project must be in the State Transportation Improvement Program (STIP), showing the funding in the correct phase and federal fiscal year for the requested authorization approval.

Once the funding authorization from FHWA has been received, the utility phase of the project can begin. When the LPA is delegated the authority to acquire right-of-way for the project, the LPA Coordinator will issue a Notice to Proceed with the utility adjustments.

The federally reimbursable design for any utility adjustments by the utility itself cannot begin until the Notice to Proceed for the utility adjustments has been issued. The LPA must also have agreements in place with the utility company prior to the LPA issuing a notice to proceed to the utility company for its work.

6.5.4 NDOT Utility Coordination

Typically, when the LPA project is located on NDOT right-of-way, NDOT will complete the utility coordination on the project. The LPA will work with NDOT Right-of-Way Agent(s) in the Utility Section to determine the potential conflicts. NDOT will determine the utilities' rights, coordinate and negotiate agreements with the utilities.

For utilities occupying NDOT's right-of-way by permit, NDOT will invoke its authority under Nevada Revised Statutes (NRS) 408.210 (4) to require relocation or adjustment of encroachments including utility facilities needed to accommodate the construction of the project. NDOT will exercise final approval over utility adjustments within NDOT's right-of-way and will have authority to inspect said utility relocations.

6.5.5 LPA Utility Coordination

If the LPA is responsible for the utility coordination, once it has identified the impacted facilities and determined the potential conflicts, it must:

- Obtain copies of documentation showing utilities' rights to be in a specific location.
- Coordinate necessary utility relocations and negotiate the agreements and/or permits.
- Coordinate necessary power sources, telephone and line extension agreements to facilitate the highway and its appurtenances.
- Draft project utility specifications, and ensure existing utility lines and relocation requirements are shown and/or reflected in the project plans, specifications and estimates.
- Issue Notice to Proceed to utility company for relocation of their facility.
- Process utility billings.

The LPA must coordinate with the Utilities Section of NDOT's Right-of-Way Division. NDOT Right-of-Way Division shall assign a Utility Agent to provide guidance and oversight to the LPA and ensure the relocation/adjustments of the utilities is performed in accordance with the applicable State and Federal regulations, including but not limited to NAC Chapter 408 and 23 CFR Part 645.

In some cases the utility company may be within the LPA's right-of-way under a franchise agreement. When the terms of the franchise agreement allow it, the LPA will require those utility companies having franchise agreements with the LPA to relocate

their facilities to accommodate the project improvements at no cost to the project or LPA.

6.6 Railroads

The LPA may encounter railroad involvement in one of two contexts:

- On projects specifically for the installation of safety devices at highway/railway at grade crossings; or
- When the transportation project will encroach upon railroad property and/or impact railroad facilities. A project does not have to physically touch the railroad facility to be considered an encroachment.

On LPA projects with railroad involvement, the LPA will be required to enter into a preliminary engineering agreement with the railroad for plans review and a flagging agreement for flagging costs on the project. The NDOT right-of-way agent can provide guidance and support at the LPA's efforts with the railroad company. The railroad operator must be contacted very early in the project due to the timeframes required for railroad coordination.

In addition, the project may require approval from the Nevada Public Utilities Commission (PUC). The LPA is responsible for submitting an application for PUC approval. The NDOT Railroad Coordinator in the Safety Engineering Division can offer guidance and support for the LPA's PUC application.

During preliminary design field surveys a right-of-entry permit from the railroad will be required. The application for right-of-entry can be found at http://www.up.com/real_estate/tempuse/index.htm.

The railroad company will require that the LPA's contractor secure Protective Liability Insurance when there is work within the railroad right-of-way. The amount of Protective Liability Insurance is set by the railroad company.

In addition, the LPA's contractor must secure a railroad flagger during construction and obtain a right-of-entry from the railroad. This flagger will be in communication with oncoming trains and with the contractor's flagger to ensure coordination. The railroad flagger must know the crossing number and the railroad milepost. This information can be obtained from NDOT's Railroad Coordinator in the Safety Engineering Division. Particular attention must be paid to the possible back up of traffic onto the tracks due to the project.

The LPA's inspector shall document the railroad's flagging hours using the format provided by the assigned NDOT Right-of-Way Agent.

6.7 Certifications for Right-of-Way

Authorization to advertise a construction project for bids cannot be issued until several requirements have been met. One requirement is that FHWA receives certification from NDOT that right-of-way is acquired and cleared, relocations are completed (if applicable), and that all utility and railroad work has been completed, or arrangements

have been made to coordinate the work with the project, as defined in the executed utility agreement. NDOT's Right-of-Way Division provides certification based on the information and/or certification supplied by the LPA.

6.7.1 Right-of-Way Certification Directly by NDOT

If the project is located within right-of-way owned by NDOT, NDOT will provide a right-of-way verification and certify the project based on information provided by the LPA.

If additional right-of-way was required and NDOT acquired the right-of-way for the project, NDOT will certify the right-of-way acquired for the project as well as existing NDOT right-of-way used for the project. For NDOT to certify the right-of-way for the project, the LPA must provide plans showing the limits of the improvements and removals as well as the limits of the existing right-of-way. The limits of the right-of-way shown on the plans must include offsets from the centerline.

6.7.2 Right-of-Way Certification by LPA

If the project is not located within right-of-way owned by NDOT, the LPA must research and verify its right-of-way limits and certify to NDOT that it has the right-of-way required to construct the project. The certification is submitted through the LPA Coordinator. NDOT's right-of-way certification to FHWA is based on the certification provided by the LPA.

If additional right-of-way was required and the LPA acquired the right-of-way for the project, the LPA must provide a written letter certifying the right-of-way was acquired in accordance with the Uniform Act. If NDOT acquired additional right-of-way for the project, the LPA is responsible for providing the right-of-way certification for the property owned by the LPA prior to the project right-of-way acquisition.

NDOT has developed standard right-of-way certification shells for use by the LPAs. The most current certification shells can be obtained from the LPA Coordinator.

There are three levels of right-of-way certification that may be used by the LPA under the LPA Program. The following sections define the requirements of those levels:

6.7.2.1 Level 1 Certification: No Right-of-Way Acquisitions

Under this level, no additional right-of-way was required in order to construct the project and/or an agreement with another public agency for the use of that agency's right-of-way was required.

The LPA may not certify the right-of-way using this level if any right-of-way was required from private parties, excluding permission to construct. For the purposes of this certification, permission to construct means a non-monetary agreement between the LPA and the property owner which allows the LPA to construct improvements for the use and benefit of the property owner, i.e. required to rebuild the owner's approach because of a change in roadway grade. Eliminating the owner's permission to construct would not hinder the construction of the LPA project.

This level may also be used when NDOT acquired additional right-of-way for the project and the LPA is certifying the existing right-of-way owned by the LPA prior to the acquisition.

This level involves written certification by the LPA with annual audits by NDOT to ensure compliance with federal requirements.

6.7.2.1.1 LPA Certification:

Under Level 1, the LPA submits a written certification to NDOT's LPA Coordinator, at least thirty (30) days prior to the proposed advertisement date. The written certification must state that all the improvements will be constructed on property owned or authorized to be used the LPA.

The certification must be signed by one of the following: (a) head of the LPA's right-of-way section, (b) the attorney for the LPA, (c) the County Surveyor, licensed in the State of Nevada or (d) the individual who signed the LPA Agreement.

No further documentation is required at this time.

6.7.2.1.2 NDOT Audit/Oversight:

Under Level 1, LPA compliance with Federal right-of-way requirements will be monitored by NDOT on an annual basis. Annually, NDOT will select a random sample of projects certified under Level 1. A minimum of one (1) project and a maximum of five (5) projects per year will be selected by NDOT for audit.

NDOT will notify the LPAs whose projects have been selected and will request that the supporting documentation for those projects be provided to NDOT within thirty (30) working days of notification of selection for audit. The supporting documentation may consist of copies of deeds, plat maps showing dedications acceptance by the LPA, record of survey showing acceptance by the LPA or a town plat. Copies of assessor's maps are not considered acceptable documentation. For more information or additional guidance, please contact NDOT's Right-of-Way Division, (775) 888-7480.

Failure of a LPA to submit the requested documentation or to cooperate with NDOT shall result in the loss of Level 1 as a means of certifying right-of-way through the LPA Program.

6.7.2.2 Level 2 Certification: No Right-of-Way Acquisitions

Level 2 Certification is similar to Level 1 Certification. No additional right-of-way was required in order to construct the project and/or an agreement with another public agency for the use of that agency's right-of-way was required.

The LPA may not certify the right-of-way using this level if any right-of-way was required from private parties, excluding permission to construct. For the purposes of this certification, permission to construct means a non-monetary agreement between the LPA and the property owner which allows the LPA to construct improvements for the use and benefit of the property owner, i.e. required to rebuild the owner's approach

because of a change in roadway grade. Eliminating the owner's permission to construct would not hinder the construction of the LPA project.

Level 2 is used when: (a) an LPA has never completed a project under the LPA Program, (b) it has been more than five (5) years since the last time the LPA has certified the right-of-way under the LPA Program, or (c) the LPA failed to provide documentation and/or failed to cooperate with NDOT during an audit of their Level 1 certification.

6.7.2.2.1 LPA Certification:

Under Level 2, the LPA submits a written certification to NDOT's LPA Coordinator, at least sixty (60) working days prior to the proposed advertisement date. The written certification must state that all the improvements will be constructed on property owned or authorized to be used by the LPA.

The certification must be signed by one of the following: (a) head of the LPA's right-of-way section, (b) the attorney for the LPA, (c) the County Surveyor, licensed in the State of Nevada or (d) the individual who signed the LPA Agreement.

In addition to the written certification, the LPA must provide supporting documentation. The supporting documentation may consist of copies of deeds, plat maps showing dedication acceptance by the LPA, record of survey showing acceptance by the LPA or a town plat. Copies of assessor's maps are not acceptable. For more information or additional guidance, please contact NDOT's Right-of-Way Division, (775) 888-7480.

6.7.2.2.2 NDOT Audit/Oversight:

NDOT will review the supporting documentation once it is received to ensure LPA compliance with federal requirements prior to certifying the project to FHWA.

6.7.2.3 Level 3 Certification: Right-of-Way Acquisitions

Under Level 3, the LPA was delegated the authority to acquire right-of-way for the construction of the project. This level is used for any type of right-of-way acquisition that was required, excluding permission to construct and agreements with other LPAs.

6.7.2.3.1 LPA Certification:

Under level 3, the LPA submits a written certification to NDOT's LPA Coordinator, at least sixty (60) working days prior to the proposed advertisement date. The written certification must state that: (a) the proposed improvements will be constructed on property owned or authorized to be used by the LPA; (b) any right-of-way acquired for the PROJECT has been obtained in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended.

The certification must be signed by one of the following: (a) head of the LPA's right-of-way section, (b) the attorney for the LPA, (c) the County Surveyor licensed in the State of Nevada or (d) the individual who signed the LPA Agreement.

In addition to the written certification, the LPA must provide copies of the recorded conveyance document for each parcel that was acquired. No additional documentation is required for the right-of-way owned prior to right-of-way acquisition for the project.

6.7.2.3.2 NDOT Audit/oversight:

Under Level 3, LPA compliance with Federal right-of-way requirements will be monitored by NDOT on an ongoing basis. NDOT will review the first five (5) packets completed by the LPA. If no major issues are found, NDOT will allow the LPA to continue acquisition activities. NDOT will continue to do sporadic reviews of the LPA right-of-way files throughout the acquisition process.

If issues are found during NDOT review of the LPA's right-of-way activities, NDOT will work with the LPA to correct the deficiencies. Once NDOT is satisfied that the deficiencies have been addressed, NDOT will allow the LPA to continue the acquisition activities. NDOT will continue to do sporadic reviews of the LPA right-of-way files throughout the acquisition process.

If persistent deficiencies exist, NDOT may elect to review all right-of-way activities to ensure compliance with federal requirements.

NDOT will review the supporting documentation once it is received to ensure LPA compliance with federal requirements prior to certifying the project to FHWA.

6.8 Utility Certifications

In addition to the required Right-of-Way certification, the LPA must provide a letter certifying the utility impacts. This certification may be combined with the Right-of-Way letter. If no utilities are being impacted on the project, the LPA must provide a written statement to that effect. If utilities are being impacted, the LPA must provide written certification with the following information:

- The name and type of utilities being impacted
- The type and number of impacts
- Who will be doing the adjustment
- When will the adjustment be completed
- Who is responsible for the costs of the adjustments
- Buy America requirements as specified in MAP 21 section 1518 and 23 U.S.C. 313 were met.

The utility certification may come from the: (a) head of the LPA's utility section, (b) the attorney for the LPA or (c) the project manager/engineer as long as they are authorized to certify this program area.

If the work is to be done under the LPA's contract, the LPA must have documentation showing the affected utility companies have granted permission to the LPA to adjust their facilities, including valve and manhole covers and who is responsible for the costs

of those adjustments. Only utilities that have a documented prior right are eligible for federal reimbursement of relocations/adjustments.

This certification involves written certification by the LPA with annual audits by NDOT to ensure compliance with federal requirements. No supporting documentation needs to be submitted at the time of certification.

NDOT has developed standard utility certification language for use by the LPAs. The most current language can be obtained from the LPA Coordinator.

6.9 Railroad Certifications

In addition to the required Right-of-Way certification, the LPA must provide a letter certifying the railroad impacts. This certification may be combined with the Right-of-Way letter. If no railroads are being impacted on the project, the LPA must provide a written statement to that effect. If railroads are being impacted, the LPA must provide written certification with the following information:

- The name of the railroad being impacted
- The type of impact
- Who will be doing the work
- When will the adjustment be completed
- Who is responsible for the costs of the adjustments

This certification involves written certification by the LPA with annual audits by NDOT to ensure compliance with federal requirements. No supporting documentation needs to be submitted at the time of certification.

NDOT has developed standard railroad certification language for use by the LPAs. The most current language can be obtain from the LPA Coordinator.

CHAPTER 7 – NDOT OCCUPANCY PERMITS

7.1 Introduction

A Right-of Way Occupancy Permit issued by NDOT is required when encroachments are made onto NDOT highway right-of-way. The permit is issued pursuant to the provisions of NRS 408.423, NRS 408.210 and NAC 408.

It is the LPA's responsibility to obtain the permit prior to receiving the Notice to Proceed (NTP) with advertising of the project. The LPA Project Manager should contact the NDOT Permit Office nearest the project:

- Las Vegas (includes Tonopah and Caliente) : (702) 385-6500
- Reno (includes Carson City) : (775) 834-8300
- Winnemucca : (775) 623-8015
- Elko : (775) 777-2725
- Ely: (775) 289-1706

The LPA is responsible for ensuring NDOT's Terms and Conditions relating to Right-of-Way Occupancy Permits are included in the contract specifications.

The occupancy permit fee will be waived for LPA Projects.

7.2 District 1 Permit Process

The Las Vegas Permit Office covers District 1. In District 1, the permits office can provide a "pre-permitting" review, if requested by the LPA. The pre-permitting process can occur at any stage of the design process and does not have to wait until the 100% plan are complete. The benefit of the pre-permitting process is that the LPA can get District requirements early in the design process and minimize re-design efforts. The LPA is encouraged to utilize this method to ensure the permit can be acquired prior to seeking permission to advertise. The LPA will be working directly with the District Permits Office to resolve any conflicts with the permit requirements.

If the LPA does not take advantage of the pre-permitting process, the LPA still has to call for a desk audit of the plans when it is ready to request the permit. However, this can result in a major delay in the project schedule and impede the obligation of federal funds in a timely manner.

The LPA will be responsible for contacting the Las Vegas Permits Office to arrange the pre-permitting process and/or to schedule a desk audit. The Permits Office does not review plans submitted to the NDOT LPA Coordinator.

As an additional form of assistance, the Las Vegas Permits Office is willing to schedule monthly progress meetings with the LPA to discuss permit challenges and provide guidance on permits.

7.3 District 2 Permit Process

The Sparks Permit Office covers District 2. The NDOT LPA Coordinator provides copies of the plan submittals to the Sparks Permit Office for review and comments. The Sparks Permit Office forwards comments to the LPA Coordinator. The LPA Coordinator will combine the Permit Office comments with comments from other reviewing divisions and forward them to the LPA.

When the occupancy permit is ready to be submitted by the LPA, the LPA will be responsible to contact the NDOT District Permits Office to schedule a desk audit. The NDOT permit processor who completed the previous plan reviews typically will complete the review of the actual permit. The LPA will follow the permitting process, including the desk audit.

7.4 District 3 Permit Process

The District 3 Permits are handled in the right-of-way sections of the three sub districts, Elko, Winnemucca and Ely. The NDOT LPA Coordinator provides copies of the plan submittals to the appropriate staff in the sub district for review and comments. The right-of-way staff from the sub district forwards comments to the LPA Coordinator. The LPA Coordinator will combine those comments with comments from other reviewing divisions and forward them to the LPA.

When the occupancy permit is ready to be submitted by the LPA, the LPA will be responsible to contact the nearest NDOT sub district office to schedule a desk audit. The NDOT permit processor who completed the previous plan reviews typically will complete the review of the actual permit. The LPA will follow the permitting process, including the desk audit.

CHAPTER 8 - FINAL DESIGN

8.1 Sixty Percent (60%) Design

The LPA is required to submit a 60% design submittal to NDOT for review. At this point the preliminary engineering is complete and significant changes are not anticipated beyond this submittal.

At the time of the 60% design submittal, the construction limits must be known. The limits of right-of-way required to construct the proposed improvements must be established and adjustments to utilities must be identified. If the project requires right-of-way, a preliminary right-of-way setting is scheduled at this point.

The submittal may be made electronically to the LPA Coordinator. If the LPA provides a hard copy submittal, then the LPA must provide multiple copies of the submittal to the LPA Coordinator.

The LPA Coordinator will circulate the submittal within NDOT. The LPA Coordinator will review and make comments on the submittal and collect and review comments from NDOT divisions. The LPA Coordinator will combine the comments and provide written comments to the LPA within the time frame specified in the agreement, typically three weeks from receipt of the submittal.

The following shall be incorporated into the design and reflected in the plans, when applicable:

- Pedestrian and ADA accommodations or facilities (Design Division: Compliance)
- Bicycle master plan facilities (Planning Division: Intermodal Planning)
- Bridge Type Selection Report (Structures Division)
- Aesthetic criteria and landscape requirements (Design Division: LA Section)
- Materials recommendations for projects on NDOT roadways (Materials Division)
- The traffic analysis report for projects on NDOT roadways (Operations Division)
- The final structural section design recommendations for projects on NDOT roadways (Materials Division)
- The drainage design and drainage report as per the Drainage Design Manual (Design Division: Hydraulics)
- Right-of-way benefit/cost analysis (Right-Of-Way Division)
- Utility adjustments and power sources (Right-Of-Way Division: Utilities)

The 60% Design review submittal shall include a cost estimate and shall include, but not be limited to, the following:

Title/Location Sketch

- Federal Project Number on every sheet
- Limits of project, limits of construction and proposed control of access.
- Location sketch

Typical Sections

- Cross section details
- Typical as-constructed and proposed improvement sections
- Structural section design and material application data
- Roadway widths and width transitions
- Roadside designs (slopes, curbs, gutters, dikes, traffic barriers, etc.)

Plans

- Sound and retaining wall details and locations
- Pedestrian improvement details and locations
- Beginning and ending stationing limits of each feature
- Horizontal alignments (stationing, curve data, bearings and distances) for all roadways
- Vertical alignments (stationing, curve data and elevations) as appropriate
- Locations for curbs, gutters, dikes, driveways, sidewalk and curb ramps.
- Cut and fill slope limits.
- Lane arrangements (turn lanes, storage lengths, acceleration lanes, deceleration lanes, special use lanes, etc.).
- Intersection and local street modification layouts.
- R/W limits with dimensions to centerline.
- Location of existing and proposed utilities.
- Geometrics Details (channeling islands, curb returns, turn lanes, etc.)
- Removal details
- Proposed roadside objects (traffic barriers, crash cushions, overhead sign structures, utility poles, bridge piers, etc.)
- Avoidance areas as determined by the NEPA process.
- Special details (Same as plan details)
- Completed drawings and notes for non-standard construction details
- Construction detail sheets with materials and finish schedules
- Pavement Markings
- North Arrow
- Scale

Landscape and Aesthetics Design

- Landscape layout
- Landscape grading
- Revegetation plans
- Hardscape design including structural treatments, rock mulch, fencing, etc.
- Landscape art/aesthetic features and details
- Irrigation layout, calculations, water source
- Planting and irrigation detail sheets

Hydraulic Details

- Intermediate design layout of onsite storm drain system including inlets, laterals trunk lines, ditches, etc.

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- Cross drainage features and appurtenances including culverts, channels, berms, energy dissipaters, headwalls, etc. including sizes, types, and locations.
 - General construction notes.
 - Detention basin grading.
 - Final easements and right-of-way (temporary and permanent).
 - Schematic plan of temporary and permanent erosion control plans.
 - Profile view details of storm drains and cross culverts
 - Completed profiles for cross drainage features including culverts, channels, major storm drain trunk lines, etc.
 - Preliminary storm drain laterals.
 - Special Details
 - Final bridge opening size and anticipated scour depth. (Report)
 - Final scour and river training designs.
 - Final temporary and permanent erosion control plans for bridges.
 - Final “temporary river diversion plan”

Structural Design

- Bridge front sheet (profile view)
- Bridge repair details
- Retaining wall and sound wall details
- Sign and signal bridge details
- Horizontal and vertical alignments
- Structure width
- Vertical clearance

Traffic

- Guide sign layouts for removals and proposed installations (including sign bridges, sign islands, sign structures, etc.) and preliminary sign summaries
- Signal and lighting plans (including railroad-crossing arms, flashing lights, dynamic message signs, ITS, etc.) are complete.
- Summary and status of electrical and communication service acquisitions
- Conduit runs.
- Pull box locations.

Utilities

- Utility relocation plans
- Utility Agreement and/or letters required for certification.

Right-of-Way

- Plan sheets showing the right-of-way limits and the areas the project will impact, may be shown on the roadway plan sheets if there is sufficient room otherwise additional plan sheets may be required.

8.2 Design Exceptions

All LPA Projects should be designed to meet the established design standards to the fullest extent possible. FHWA has established ten controlling criteria in design. If any of these ten controlling criteria are not met, a formal written design exception shall be completed and must be approved prior to incorporating it into the design. The ten controlling criteria are:

1. Design Speed
2. Lane Width
3. Shoulder Width
4. Structural Capacity
5. Horizontal Alignment
6. Grades
7. Stopping Sight Distance
8. Cross Slope
9. Super-elevation
10. Vertical Clearance

If the LPA identifies the need for a design exception, it must generate a written justification for any design exceptions. The LPA must document important decisions, economic analysis and safety information when minimum design standards cannot be met.

For LPA projects located on NDOT facilities, the LPA must submit a written request for approval to NDOT. The written request should include supporting documentation to justify the request. NDOT may approve design exceptions to AASHTO and NDOT design standards when appropriate.

For LPA projects not located on NDOT facilities, the LPA is responsible for documenting and approving design exceptions.

8.3 Ninety Percent (90%) Review Submittal

The 90% review submittal shall include plans, specifications, a cost estimate, and the bid documents. It shall include, but not be limited to, the requirements for the 60% submittal and the following:

Structural Design

- Front sheet - plan, elevation, and typical sections
- Geometric sheet - foundation plan, pile notes, false work details, staging diagrams, removal limits, general notes, and list of bid items
- Abutment and wing wall details - foundations, plan, elevation and section
- Pier and columns details - foundations, piers, columns, bearings
- Superstructure sheets - deck, girder, diaphragms
- Pre-stressing details and notes - concrete classification
- Structural steel sheets - structural steel details
- Camber sheets
- Approach slab sheets
- Barrier rails, expansion joints, pedestrian rail, and sidewalk sheets
- Special detail sheets - signals, signs, lighting, utilities, architectural treatments
- Retaining wall and sound wall sheets

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- Bent bar sheets
 - Bill of materials sheets
 - Boring logs sheets and boring log maps
 - Reference drawings

Right-of-Way

- Right-of-way sheets are required for LPA Projects that involve acquisition of right-of-way and shall include the following:
 - Right-of-Way Title Sheet
 - Title block will have the following: approval date (date when drawing is completed), project description as shown in the programming documents, scale, and number of sheets
 - Right-of-Way Interior Sheets
 - R/W monument indications (all R/W breaks and PCs and PTs) do not place on TE parcels. Monument PCs and PTs radially and towards inside of curve when practical
 - Access ticks (when applicable)
 - Access Control openings with width and station at center of opening. If not practical, monument each side of opening.
 - Label R/W (at least twice for each R/W line on each sheet).
 - Show curve data on R/W where R/W line is not concentric to centerline
 - Milepost parcel numbers with last name and initial on root parcel number only
 - Metes and bounds information reading clockwise for each fee taking or easement parcel, with exception for centerline description or lots and blocks. Note: The purpose for TE and PE parcels will be stated in the “remarks” column of the property schedule.
 - Control of access acquisition parcels get a milepost parcel number if that is the only involvement with the property
 - Station, offset and tie for the point of beginning for each fee or easement parcel. POBs are to be on the R/W line except centerline descriptions and parcels lying wholly within R/W and not adjacent to either R/W line
 - Traffic movement statement.
 - Property schedule will include: parcel number, owner’s name (last name and initial with et al. et ux as applicable), gross area, previously acquired if applicable, net area, remainders left and right, and areas less than 2 acres will be shown in square feet.
 - Excess land area.
 - Remarks pertinent to a particular parcel such as federal application number, total take acreage, drainage easements, etc.

Traffic Management Plan

The components of a traffic management plan (TMP) vary greatly and depend on whether the project is expected to generate significant traffic impacts greater than allowed under NDOT's and/or the LPA's policy. NDOT's policy can be found in the "Work Zone Safety & Mobility Implementation Guide" dated April 3, 2015. The more significant the impact, the more detailed the TMP should be.

For projects with anticipated significant traffic impacts, the TMP consists of a temporary traffic control plan, a transportation operations component and a public information component.

- A TMP is required on a federal-aid construction contract; or
- The contract provisions must include the requirement for the contractor to develop a TMP based on the LPA's TMP requirements.

At a minimum, the TMP consists of a temporary traffic control plan or the requirement for the contractor to develop a temporary traffic control plan based on the LPA's TMP requirement. The temporary traffic control plan should address traffic safety and maintain traffic through the work zone with various devices such as signs, traffic drums, traffic cones, and flaggers.

8.3.1 Documentation Procedures and Quality Control

The LPA must have procedures for quality assurance, including independent assurance and construction documentation, including testing and inspection guidelines. The LPA must have those procedures approved by NDOT on an annual basis. The approval of a LPA's procedures is valid from November 1st to October 31st. Approvals must be requested each federal fiscal year.

LPA submits its quantity documentation and materials testing procedures to the NDOT's LPA Coordinator for approval. The LPA Coordinator submits those procedures to the NDOT Construction Division for review and approval. The documentation and quality control procedures must address, but are not limited to, the following:

- Procedures for documenting the pay quantities for bid items. The contractor's quantities cannot be accepted without verification.
- Quality control procedures (QC): testing requirements including who will be doing the testing and the testing frequencies.
- Independent quality assurance procedures (IA), including who will be responsible for conducting it.
- Contract modification approval procedures, including independent cost analysis

The testers must be certified (i.e. WAQTC/NAQTC) for work maintained by NDOT and for work completed on the NHS.

If the LPA does not have NDOT approved procedures, then it shall follow NDOT's

procedures. NDOT's current procedures can be found on NDOT's website.

8.3.2 Justify Force Account Work by the LPA

Project construction is performed under a contract awarded to the lowest responsible bidder. However, under limited circumstances, it may be cost effective for a LPA to construct a portion of a project on a force account basis. In this context, the term "force account" means the direct performance of project work by the LPA using labor, equipment and materials furnished by it and used under its direct control. As defined in 23 CFR 635.203(e), the term cost effective means "...the efficient use of labor, equipment, materials and supplies to assure the lowest overall cost." It may be found cost effective for a LPA to undertake a construction project by force account when a situation exists in which the rights and responsibilities of the community at large are so affected as to require a special course of action.

In these situations, a cost effectiveness finding will be required. Situations considered in support of a request for a public interest finding include:

- 1) The LPA, through a cost comparison, demonstrates that it is more cost effective to do the work itself rather than bidding all or part of the project.
- 2) An insufficient number of qualified contractors in the area that could be reasonably expected to submit bids.
- 3) Special construction conditions indicating that bids submitted would be unreasonably high.
- 4) Special situations where time does not allow for completion of the process leading to bid contract award. Considerations might be safety.

The LPA generates the request for the cost effectiveness finding. The following information must be provided by the LPA in support of their request:

- 1) Demonstrate that it has the ability to perform the work.
 - a) Has the needed equipment to perform the work.
 - b) Ability to comply with design, construction and material quality standards.
 - c) Ability to document compliance with quality assurance requirements.
 - d) Schedule – a comparison of the time for completion by agency forces and by contractor, if done by contractor.
- 2) A cost comparison between the LPA force account and the competitively bid prices.
 - a) The LPA's cost estimate including the estimated quantities and prices for material, labor, and equipment.
 - i) Include estimated hours and rates
 - ii) Include unit prices using quantities, man-hours, pay rates, material costs, and equipment rental rates.
 - b) The value of material already purchased and stockpiled should be the same as the price listed on the agency's cost inventory and must comply with FHWA's general material requirements in 23 CFR Subpart D.
 - c) Include all work items in the agency cost estimate, regardless of federal

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- participation.
- d) The total cost estimate including an adjustment for the agency's overhead or indirect cost rates for labor, equipment, and materials. The agency's overhead or indirect cost rates must be developed in compliance with 2 CFR 200.
 - e) The total agency cost estimate should not be reduced by:
 - i) Potential savings resulting from use of less than complete plans
 - ii) Potential savings from reduced quality assurance during construction
 - iii) Anticipated savings from reduced construction management and documentation
- 3) Assurance that the project will comply with all Federal-aid requirements.
 - 4) Assurance that the performance of the project by force account will not hinder the State's attainment of its approved DBE goal.

The Principal Road Design Engineer over LPA Section will review and recommend approval. NDOT's Assistant Chief Road Design Engineer, Engineering Services has the authority to approve the LPA's request.

NDOT must approve the cost effectiveness finding before a LPA is authorized to perform force account work on a project.

Materials used by the local agency under force account must still comply with Buy America requirements.

8.3.3 Justify Furnished Materials

FHWA policy requires that the contractor furnish all materials to use in the contract. The contractor also must be allowed to select the sources from which the materials are to be supplied. Exceptions to these requirements may be made when it is shown to be in the best interest of the public for the LPA to supply materials or designate material sources.

- Local public agency supplied materials – When approved through the public interest finding process, such material must be made mandatory. Manufactured materials supplied by the LPA must have been acquired through a competitive bid process. Use of such material may not be made optional.
- Local public agency owned or controlled natural materials – A LPA may designate a borrow pit or stockpile of salvaged pavement material that it owns or controls for use by the contractor. Use of the material may be either optional or mandatory. Mandatory use will require an approved public interest finding.

The LPA generates the request for the public interest finding. NDOT's Assistant Chief Road Design Engineer, Engineering Services has the authority to approve the LPA's request for public interest finding.

Furnished materials must still comply with Buy America requirements.

8.3.4 Justify Proprietary Items

In general federal funds will not participate in costs associated with a proprietary product. However, it may participate in the costs under the following circumstances:

- 1) It is part of a competitive bidding process, as provided under 23 CFR 635.411(a) (1) with equally suitable proprietary or nonproprietary products from multiple manufacturers. The contract must be able to choose amongst as many acceptable products and technologies as possible.
- 2) As provided under 23 CFR 635.411(a)(2), the LPA certifies that the proprietary or patented item is either:
 - a) necessary/essential for synchronization with existing highway facilities; or
 - b) that no equally suitable alternative exists.
- 3) The proprietary product is part of a research effort or for a distinctive type of construction on relatively short sections of road for experimental purposes as provided in 23 CFR 635.411(a)(3).
- 4) NDOT approves the use of the proprietary product after receiving a request for a finding of public interest from the LPA, as provided in 23 CFR 635.411 (c).

For NDOT maintained improvements, the proprietary item must be listed on NDOT's Qualified Products List (QPL), which can be located on NDOT's website.

Proprietary products must still comply with Buy America requirements.

8.3.5 Buy America Requirements and Waivers

Buy America is a requirement applied to Federal-aid highway contracts. Projects located on highways classified as local roads and rural minor collectors; transportation enhancement projects; and non-highway construction are also covered by these requirements.

Buy America requirements apply to steel and iron materials to be permanently incorporated in a Federal-aid project, even if an item is rendered as a "donated material" in accordance with 23 U.S.C. 323 - Donations and Credits. While States and local governments may receive a credit for donated material, this material must comply with Buy America requirements.

However, Buy America does not apply to:

- 1) Raw materials (iron ore and alloys), scrap, pig iron, or processed, pelletized, and reduced iron ore.
- 2) Minimal use of iron/steel materials provided the total cost of all foreign source items used in the project, as delivered to the project site, is less than \$2500 or does not exceed one-tenth-of-one-percent of the total contract amount, whichever is greater.

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- 3) Temporary steel items, e.g., temporary sheet piling, temporary bridges, steel scaffolding and falsework, etc.
 - 4) Materials that remain in place at the contractor's convenience, e.g., stay-in-place forms, ties for steel, sheet piling, etc.

Under Buy America requirements, manufacturing processes must take place domestically. Manufacturing begins with the initial melting and mixing, and continues through the coating stage. Processes that modify the chemical content, the physical size or shape, or the final finish are considered manufacturing processes. These processes include rolling, extruding, machining, bending, grinding, drilling and coating. "Coating" includes epoxy coating, galvanizing, painting, or any other coating that protects or enhances the value of the material.

The manufacturing process for a steel/iron product is considered complete when the product is ready for use as an item (e.g., fencing, posts, girders, pipe, manhole cover, etc.) or could be incorporated as a component of a more complex product through a further manufacturing process (e.g., the case for a traffic signal head). The final assembly process does not need to be accomplished domestically so long as the steel/iron component is only installed and no manufacturing process is performed on the steel/iron component.

The FHWA Administrator may grant a Buy America waiver for items on a specific contract when:

- 1) Following the requirements is inconsistent with the public interest; or
- 2) Insufficient quantities of satisfactory quality domestic products are available.

The LPA may request a waiver with the FHWA Division concurrence. The waiver request must include the project number, description, cost, waiver item(s), item costs(s), country of origin for each item and reason for the waiver. The waiver request must include a discussion on why project requirements cannot be met with domestic products.

FHWA accepts Buy America Waiver Requests on a quarterly basis. Waivers are posted for a minimum 15-day public comment period prior to granting a waiver request. The LPA must consider the need for a Buy America Waiver Request early in the project development. If it is determined that one is required, the LPA must coordinate its efforts with the LPA Coordinator. Because of the process, the LPA should plan on submitting its waiver request at least six months prior to the proposed advertisement of the project requiring the waiver.

8.4 Construction Phase DBE Goal and On-the-Job Training Goal

NDOT will establish the DBE Goal for the construction contract and any on-the-job training goals once the 90% review submittal has been received. In addition to the 90% review submittal, the LPA must provide the LPA Coordinator with the number of working days/calendar days or a "to be completed by" date.

The LPA Coordinator will complete the required request for the DBE and training goals for the construction contract. NDOT's Contract Compliance Office will establish the goals for the construction contract. The LPA Coordinator will forward the goals to the LPA.

8.5 Construction Professional Services

The LPA may choose to hire a firm to provide professional services for construction management, construction support, testing and/or inspecting on a LPA project. The cost of advertising, selecting, negotiating, hiring, and managing the firm is eligible for federal participation. The cost must be in conformance with the requirements of 2 CFR 200. The procurement, management and administration of engineering and design related services must comply with the requirements outlined in 23 CFR 172.

8.5.1 Consultant Selection Procedures

The LPA's procedures for procuring, managing and administering professional services must be reviewed and approved by NDOT. NDOT is tasked with ensuring that the procedures are compliant with 23 CFR 172.

If the LPA does not have approved procedures and still wishes to use consultant services, it may:

1. Work with NDOT to establish NDOT approved procedures;
2. Use the procedures outlined in NDOT's LPA Professional Services Procedures;
3. Use local funds, the funds would not count towards the required match for federal funds

8.5.2 Construction Professional Service DBE Goal

NDOT will establish a DBE Goal for construction professional services for construction management, construction support, testing and/or inspecting in conformance with its established DBE Program.

The LPA must provide the proposed scope of services, the estimated cost of those services and the anticipated duration of the services.

The LPA Coordinator will complete the required request for the DBE goal for the construction professional services. NDOT's Contract Compliance Office will establish the goal for the construction professional services contract. The LPA Coordinator will forward the goal to the LPA.

CHAPTER 9 - CONTRACTING LANGUAGE

9.1 Bid Document Requirements

When using federal funds on a construction project, there are a several federal requirements that apply and must be included in the project contract with the contractor. NDOT provides the required language and sample language that satisfies the requirements to the LPA. The LPA is responsible for ensuring that all the requirements are included in its bid documents and agreements.

NDOT has developed a checklist to help ensure that the appropriate language is included in federal-aid contract bid documents. The most current checklist can be obtained from the LPA Coordinator.

9.2 Form FHWA-1273

FHWA has put many of the federal requirements into Form FHWA-1273. Form FHWA-1273 covers many aspects of federal law including but not limited to the Civil Rights Act, the Copeland Act, the Davis Bacon Act, and the Fair Labor Standards Act. In conformance with 23 CFR 633.102(b), an unaltered copy of the most recent version of FHWA-1273 must be physically incorporated in all contracts for a federal-aid highway construction project regardless of the dollar amount of the contract and, if required, appropriate subcontracts and purchase orders.

The LPA is responsible for including it in its primary contracts for construction. In addition, the LPA is responsible for making the prime contractors aware that Form FHWA-1273 is to be included in any subcontracts they may have. It is also the responsibility of the LPA to ensure that Form FHWA-1273 is included in the subcontracts.

9.3 Title VI/Nondiscrimination Assurances

As part of the LPA's Title VI program, the LPA will work to prevent discrimination in all its programs and activities. The LPA assures that it will not engage in discriminatory practices, that LPA programs, facilities and activities are free of discrimination. In addition, the LPA must include clauses related to nondiscrimination in every contract. General Clauses are contained in Appendices A and E of the Department of Transportation Order 1050.2A, shown below:

Appendix A of Department of Transportation Order 1050.2A Language:

"During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** *The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-*

discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** *The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.*
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** *In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.*
4. **Information and Reports:** *The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.*
5. **Sanctions for Noncompliance:** *In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:*
 - a. *withholding payments to the contractor under the contract until the contractor complies; and/or*
 - b. *cancelling, terminating, or suspending a contract, in whole or in part.*
6. **Incorporation of Provisions:** *The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such*

direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.”

Appendix E of Department of Transportation Order 1050.2A Language:

“During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- *Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.*
- *The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);*
- *Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);*
- *Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;*
- *The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);*
- *Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);*
- *The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);*
- *Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;*
- *The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);*

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- *Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;*
 - *Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);*
 - *Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq)."*

9.4 Equal Employment Opportunity

LPAs administering Federal-Aid projects are required to adhere to Equal Employment Opportunity (EEO) statutes and regulations. These can be found at 49 CFR Part 26. The LPA is also subject to applicable laws, regulations and executive orders and are legally obligated to ensure compliance as well.

The federal requirement is primarily addressed in Form FHWA-1273, however NDOT has some additional language that is required to be incorporated into the bid documents:

- Standard Equal Employment Opportunity Constructions Contract Specifications (Executive Order 11246)
- Executive Order 11246 – Subpart B Contractor’s Agreement
- Additional Contract Provisions Equal Employment Opportunity – Training Special Provisions

9.5 Copeland Act

The Copeland Act of 1934 was created to stop the practice of contractors and subcontractors requiring employees to give up part of the salary in order to continue working. Form FHWA-1273 includes the requirements of the Act for federal aid construction contracts.

All contractors on federally funded projects are required by the U.S. Department of Labor to submit weekly payrolls. The weekly payrolls must include the employee’s full name, employee number, classification code, hourly wage rate, hours worked, gross wages, itemized deductions and net wages. With each payroll submittal, the contractor must include a Statement of Compliance which certifies that the payrolls are correct and complete, that the wage rates paid are not below those required by the wage rates established in the contract, and that each laborer or mechanic’s classification conforms to the work performed.

In addition to the required payroll data listed above, NDOT requires additional information to support reporting and tracking purposes. The LPA will incorporate the additional language shown in:

- Additional Contract Provisions - Supplement to the Weekly Certified Payrolls

9.6 Davis-Bacon Act

The Davis-Bacon Act ,and Related Acts, apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Department of Labor (DOL) defines mechanics and laborers as those employees who perform manual labor on the site of work.

Once the LPA establishes the project bid opening date and is ready to advertise the project for bidding, the LPA must check with the NDOT Contract Compliance Office at (775) 888-7497 for the latest wages. The LPA must ensure the latest State and Federal wage rates for the County or Counties where the project is being constructed is in the bid documents and the contractor is using the higher of the two wages.

In addition, the DOL requires that an amendment for a general wage rate be included on a Federal-aid contract if notification of the change is published in the Federal Register 10 days or more prior to the opening of the bids. The LPA is responsible for checking for with the NDOT Contract Compliance Office to determine if there were changes in the wage rates.

9.7 State Forms

The following documents must be incorporated into the bid documents. These documents must be completed, signed and submitted by the prime contractor in order to be considered a responsive bid:

- All bidders shall submit information on subcontractors which will be paid an amount exceeding five percent (5%) of the total bid on the “BIDDER SUBCONTRACTOR INFORMATION – exceeding five percent (5%)” form provided by the [insert LPA name], no later than the bid opening time.
- Within two (2) hours after bid opening time, the three (3) apparent lowest bidders shall submit information on subcontractors which will be paid an amount exceeding one percent (1%) of the total bid or \$50,000, whichever is greater, on the “BIDDER SUBCONTRACTOR INFORMATION - exceeding one percent (1%)” form provided by the [insert LPA name]

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- Within two (2) hours after bid opening time, the three (3) apparent lowest bidders shall submit information on subcontractors which will be paid an amount exceeding \$250,000, on the “BIDDER SUBCONTRACTOR INFORMATION - (For subcontractors exceeding \$250,000.00)” form provided by the [insert LPA name]. [Required only if the total bid amount is greater than \$25 million]
 - The three (3) apparent lowest bidders shall submit information on all subcontractors and suppliers that submitted a proposal to the bidder on the “LIST OF SUBCONTRACTORS AND SUPPLIER BIDDING” form provided by the [insert LPA name], by 5:00 pm local time, on the next business day following the bid opening.

9.8 Federal Forms

The following documents must be incorporated into the bid documents. These documents must be completed, signed and submitted by the prime contractor with its bid in order to be considered a responsive bid:

- Affidavit Required Under Section 112(c) - Non-Collusion, Debarment and Suspension Affidavit
- Certification Required by Section 1352 of Title 31 United States Code - Restrictions of Lobbying Using Appropriated Federal Funds

9.9 Disadvantaged Business Enterprises

Local public agencies administering Federal-Aid projects are required to adhere to Disadvantaged Business Enterprise (DBE) requirements. Businesses must be certified as an eligible DBE firms prior to contract award by the Nevada Unified Certification Program (NUCP) to compete as DBE firms on these projects. Applications are processed through the Contract Compliance Office and presented to the NUCP for approval. These firms must be owned and controlled by socially and economically disadvantaged individuals as defined by Title 49 CFR Part 26. A current list of DBEs can be found at <http://nevadadbe.com/website/dbe-vendors.php>.

9.9.1 Contracts with a DBE Goal

For contracts where the DBE goal is set greater than zero, the LPA shall include the following language in the bid documents:

“The bidder's attention is directed to the Code of Federal Regulations, 49 CFR, Part 26. This project is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs; Final Rule.” The Contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR, Part 26 have an equal opportunity to participate in the performance of the contracts and subcontracts financed in whole or in part with Federal funds.”

Bidders are required to submit the Bidder DBE information form provided by the [insert LPA name] at the time of bid submittal. Good Faith Effort (GFE) supplemental documentation must be submitted to [insert LPA name] no later than 5:00 pm on the next business day following the bid opening.”

The LPA must include the following in its bid package:

- Additional Contract Provisions Disadvantaged Business Enterprise in Federal-Aid Highway Construction

The LPA must also incorporate the following documents into the bid documents. These documents must be completed, signed and submitted by the prime contractor in order to be considered a responsive bid:

- All bidders shall submit information on DBEs on the “Bidder Disadvantaged Business or Small Business Enterprise (DBE/SBE) Information” form provided by the [insert LPA name], no later than the bid opening time.
- A bidder unable to meet the DBE/SBE goal shall also submit documentation which outlines in detail good faith efforts to meet the goal, no later than 5:00 pm on the next business day following the bid opening

The contractor should also be prepared to provide copies of the DBE bid quotes and the DBE letters of commitment, if they are among the 3 lowest bidders.

9.9.2 Contracts with No/Zero DBE Goal

For contracts where the DBE goal is set at zero or a goal does not apply, the LPA shall include the following language in the bid documents:

“In accordance with Title VI of the Civil Rights Act of 1964 and Title 49 Code of Federal Regulations Part 26, the [insert LPA name] notifies all bidders and proposers that it will affirmatively ensure that certified Disadvantaged Business Enterprises (DBE) firms will be afforded full opportunity to submit bids and proposals and will not be discriminated against on the basis of race, color, sex, age, disability, or national origin in consideration for an award. Although there is no contract specific goal associated with this contract, the [insert LPA name] encourages Contractors to also ensure non-discrimination in the award and administration of subcontracts to help remove barriers to the participation of DBEs and to assist in the development of firms that can compete successfully in the marketplace outside the DBE program.”

The LPA must include the following in its bid package:

- Additional Contract Provisions Disadvantaged Business Enterprise in Federal-Aid Highway Construction

9.10 On-the-Job Training

On-the-Job Training (OJT) and/or Apprenticeship Training Programs (ATP) may be used as an affirmative action tool to assist contractors to meet their EEO obligations. The contractor should make full use of training programs to increase the skills of minorities and women employees and applicants for employment.

For projects that NDOT has established a goal for trainees, the LPA shall include the following in the bid documents:

- ADDITIONAL CONTRACT PROVISIONS EQUAL EMPLOYMENT OPPORTUNITY

9.11 Prompt Payment

Prompt payment and return of retainage provisions are required under the DBE Program for federally assisted projects. Although created under the DBE program, these provisions apply to all subcontractors not just DBEs. The LPA shall include language requiring the prime contractor to pay all subcontractors within thirty (30) days of the prime contractor's receipt of payment from the LPA.

In addition, the language must cover the prompt return of retainage, when a portion of the payment owed to either the prime or the subcontractor is held pending the satisfactory completion of work. The satisfactory completion of work is defined as all tasks specified in the contract or subcontract has been accomplished and that the LPA has accepted the work.

9.12 Buy America

Buy America provisions apply to all Federal-aid construction projects. The regulations require use of domestic steel and iron in federally funded construction projects. The following specifications shall be incorporated into the bid documents:

"In accordance with Title 23 CFR 635.410, permanently incorporated steel and/or iron materials on Federal-Aid projects shall be domestically produced regardless of the percentage they comprise in a manufactured product or form they take.

Minimal use of foreign steel materials will be permitted provided the cost of said materials does not exceed 1/10 of 1% of the total contract cost or \$2,500.00, whichever is greater. The combined cost of foreign steel

and/or iron materials will be the value of the materials as they are delivered to the contract, documented by invoice or bill of sale to the contractor. Submit for review a request to use foreign materials prior to their use. Do not incorporate any foreign steel materials into the project without approval.

To qualify as domestic steel, all manufacturing processes, including manufacture, fabrication, grinding, drilling, welding, finishing, coating, and assembly of product containing steel and/or iron materials, must have been performed in the United States. To further define the coverage, a domestic product is a manufactured steel and/or iron materials construction material that was produced in one of the 50 states, the District of Columbia, Puerto Rico, or in the territories or possessions of the United States. Raw materials used in the steel and/or production may be imported. Raw materials are materials such as iron ore, limestone, waste products, etc. which are used in the manufacturing process to produce steel and/or iron materials products. Waste products include scrap; i.e., steel no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, steel trimmings from mills or product manufacturing, and the like. Extracting, crushing, and handling the raw materials which are customary to prepare them for transporting are exempt from Buy America. The use of foreign steel or iron billets is not acceptable under Buy America.

Provide a Certificate of Materials Origin, using NDOT form 020-095, certifying materials comply with the Buy America requirements as specified above. Submit the certification prior to installation of the material. Unless a Certificate of Materials Origin has been provided, the materials will be considered of foreign origin.”

9.13 Additional Federal Requirements

When using federal-aid funds on a project, the LPA should be aware that it must follow federal requirements. In the event that there is a conflict between state and/or local requirements and federal requirements, federal requirements shall take precedence.

9.13.1 Bidder Preference

The specifications or bidding procedures shall not provide preference to local contractors or local laborers, therefore the contract may not contain bid preference clauses. Nor may the language restrict contractor competition by requiring a state license at the time of the bid award.

9.13.2 Required Self Performance

The contractor shall perform, with its own organization, contract work amounting to not less than thirty percent (30%) 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).

9.13.3 Contractor Licensure

When federal aid funds are used in a project, the LPA must conform to FHWA's competitive bidding policy. The LPA cannot require any procedures or requirements that restrict competition. While the LPA can require a license before a contract can be signed, it cannot require that a bidder be licensed in order to submit a bid or for that bid to be considered for award.

9.13.4 Differing Site Conditions

Every federally funded project must contain a clause for the equitable adjustment of the contract for differing site conditions. The LPA may use NDOT's language below or its own language that meets the intent:

“Differing site conditions. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall immediately notify the other party in writing of the specific differing conditions before the conditions are disturbed and before the affected work is performed.

Upon written notification, conditions will be investigated, and if determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. Notification of the determination of whether or not an adjustment of the contract is warranted will be given.

No contract adjustment which results in a benefit to the contractor will be allowed unless the required written notice is provided.”

9.13.5 Suspension of Work Ordered by the Engineer

Every federally funded project must contain a clause providing for the adjustment of contract terms if the performance of all or a portion of the work is suspended or delayed by the Engineer for an unreasonable period of time. The LPA may use NDOT's language below or its own language that meets the intent:

“Requests for additional compensation due to the ordered suspension of work shall be based on the following:

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1. *If the performance of the work is suspended or delayed by written order for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and believing that additional compensation and/or contract time is due as a result of such suspension or delay, submit in writing a request for adjustment within 7 days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.*
 2. *Upon receipt, the request will be evaluated. If agreed that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, and adjustment (excluding profit) and modification to the contract will be made in writing accordingly. Notification of the determination of whether or not an adjustment of the contract is warranted will be made.*
 3. *No contract adjustment will be allowed unless the request for adjustment was submitted within the time prescribed.*
 4. *No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.”*

9.13.6 Material Changes in the Scope of the Work

Every federally funded project must contain a clause providing for the adjustment of the contract terms due to an alteration of the work or in the quantities that significantly changes the character of the work. The LPA may use NDOT’s language below or its own language that meets the intent:

“Changes. The Engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agree to perform the work as altered.

The right is reserved to increase or decrease any or all of the items in the estimate of approximate quantities as shown in the proposal. Should any items contained in the proposal be found unnecessary for the proper completion of the work, written order may be given to eliminate such items from the contract, and such actions shall in no way invalidate the contract. When a contractor is notified of the elimination of items, actual work done and all costs incurred will be reimbursed, including mobilization of materials before said notification.

Significant Changes in the Character of Work. If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon before the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made wither for or against the contractor in such amount as the Engineer may determine to be fair and equitable.

Any such price adjustment will be determined by documented proof of an increase or decrease in actual costs. Documentation for an increase in costs shall include a breakdown showing the basis of the unit bid price.

Failure to give notification in writing of a change in character of work and subsequent performance of said work will be considered as a waiver thereof and payment will be made at the contract unit price for the actual quantity of the work performed. If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid as provided elsewhere in the contract.

The term “significant change” shall be construed to apply only to the following circumstances:

- 1. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction, or*
- 2. When an item of work is increased in excess of 125% of the original contract quantity and the item of work after the increase, exceeds a value of \$50,000 or 5% of the original contract cost, whichever is the lesser amount, either party to the contract may seek a unit price adjustment. Any allowance due to the increase in quantity shall apply only to that portion in excess of 125% of the original contract item quantity.*
- 3. If a major item of work, decreases below 75% of the original contract quantity, either party to the contract may seek a unit price adjustment. However, the total payment shall not exceed that which would be made for 75% of the original proposal quantity at the contract unit price. Price adjustments for decreases of other than major contract items will not be allowed.” The term “major contractor item” shall be construed to be any individual bid item included in the proposal that has a total cost equal to or greater than \$50,000 or 5% of the total contract cost, whichever is the lesser amount. The total contract costs shall be computed on the basis of the proposal quantities and contract unit prices.”*

9.14 NEPA Requirements

The bid documents must include any required environmental mitigations to address environmental impacts caused by the project. Such mitigations may include restrictions

on work both in time or location, or additional items of work which are incorporated in the plans and specifications.

In addition, all federally funded projects completed under the LPA Program shall include the following clauses:

“Migratory Bird Treaty Act Requirements. Vegetation/structure removal shall be conducted to conform with the Migratory Bird Treaty Act (MBTA) to avoid impacts to listed migratory birds (50 CFR 10.13) that may be actively utilizing vegetation/structures for nesting. When possible, vegetation/structure removal should not occur during avian breeding season (generally February 15 through August 31 for Southern Nevada Projects) (generally March 1 through July 31 for Northern Nevada Projects). Raptors and owls may begin nesting as early as January. If vegetation/structure removal shall occur during avian breeding season, nesting surveys shall be conducted by a biologist with experience in bird identification, general nesting behavior, nest and egg identification, and knowledge of habitat requirements for migratory birds. The survey shall be conducted a maximum of 14 days prior to land disturbance. Submit a copy of the biologist’s survey report and the biologist’s curriculum vitae.

If nesting sites are found within the project limits, the [insert LPA name] will determine a suitable buffer area around the nest site. The buffer area around the nest site will be flagged as an avoidance area. Disturbance shall not occur within the flagged avoidance area while the nest is occupied.

Bird nests containing eggs and/or young shall not be disturbed until after the young have left the nest, including swallows nesting on structures, and bats using structures for roosting. The contractor may take preventative measures prior to avian breeding season to ensure that birds do not create nests on structures.

The contractor shall be responsible for project delays ensuing from a failure to take into account bird nesting season and/or safeguard structures from bird nest construction. Approval shall be obtained prior to commencement of any contract-related activity resulting in the disturbance or removal of unoccupied nests. Do not commence vegetation/structure removal until written approval is obtained.

The contractor shall be responsible for all costs incurred related to compliance with the MBTA, bird nesting surveys, establishment and maintenance of nest avoidance areas, bird nesting preventive measures, or removal of unoccupied swallow nests on structures.”

“Archeological and Paleontological Objects. The contractor shall be responsible for the preservation of archeological and paleontological objects, including all ruins, sites, buildings, artifacts, or other objects of antiquity encountered during construction.

When such objects are encountered, immediately cease operations and give notification that such objects exist. The Engineer will notify the Manager of the Cultural Resource Section of the Nevada Department of Transportation. Reschedule construction/operations to avoid the section until given written notification to proceed with operations.”

9.15 Additional State Requirements

The specifications must name NDOT, its officers, employees, and consultants as an “additional insured” on its general liability and automobile liability policies.

NDOT has developed many standard specifications to address numerous federal requirements on its projects. The LPA Coordinator will provide a copy of the most current specifications for use by the LPA. The LPA should incorporate those specifications into its specifications.

In addition, NDOT has developed language it uses in its notice to contractors when releasing a contract for bid. This language provides additional direction and guidance to the contractor when bidding on a federal-aid contract. The LPA Coordinator will provide a copy of the most current language to the LPA. The LPA shall incorporate this additional language into its bid package.

CHAPTER 10 - CONTRACT ADVERTISEMENT/AWARD

10.1 Introduction

Once the final design is complete and all environmental work and right of way acquisition has been completed, the project is ready to move to the next phase of project delivery, the advertisement for construction. 23 CFR 635.309 requires several items be completed prior to the contract advertising.

10.2 LPA Submittals

In order for the project to advance to the advertisement of a project for bid, the LPA must complete several requirements. NDOT will base its decision to start the process to authorize the advertisement on the completion of these items.

10.2.1 Final Plan, Specification and Estimate Submittal

The LPA shall submit a copy of the complete bid package to the LPA Coordinator for a final review. The complete package shall include plans, project specifications, contracting language and construction cost estimate, which includes construction engineering.

At this time, all required federal language shall also be included in the submittal. Any environmental mitigations shall be incorporated into the project design and specifications.

10.2.2 Submittal Checklist

The LPA shall submit a copy of the completed LPA Checklist to the LPA Coordinator with the completed bid package. The LPA must indicate where in the documents the requirements are addressed. The most current checklist can be obtained from the LPA Coordinator.

10.2.3 NDOT Occupancy Permit

If the LPA's project is located on or abuts NDOT right-of-way, the LPA must acquire a NDOT occupancy permit. It must acquire the permit prior to NDOT requesting authorization for federal funding. See Chapter 7 for more information regarding NDOT's occupancy permit process.

10.2.4 Certification Requirements

At this point the LPA must have completed the required environmental documentation and permitting and have submitted it to NDOT. For information on the LPA's environmental documentation and permitting see Chapter 5.

In addition, the local agency must have submitted its right-of-way, utility and railroad

certifications to the LPA Coordinator. For information on the LPA's right-of-way, utility and railroad certification requirements see Sections 6.7, 6.8 and 6.9.

10.2.5 Project End Date

In conformance with 2 CFR 200, the LPA is responsible for providing an anticipated end date for federal participation in project costs. The LPA should develop a process for determining the end date. It should take into consideration the normal advertisement, bid analysis and review, bid award process, bid disputes and other factors that can delay the start of the project or the completion of the project. It is recommended that the LPA include some leeway in their estimate to provide a conservative but reasonable end date. For more information about the project end date see Section 14.6.

10.3 Processing Memorandum

NDOT's Processing Memo sets the date for submittal of the Agreement Estimate Memo to the Financial Management Division, the date NDOT certifications of conformance with environmental, right-of-way, utility and railroad requirements are to be completed and the date of release of the project to the LPA for advertisement. It also requests the assignment of a NDOT Resident Engineer to oversee the construction management of the project for NDOT.

In addition, the Processing Memo identifies the end date for federal participation on the LPA project. The end date is based on the end date provided by the LPA and additional time added for NDOT's processes in reviewing, accepting and closing out LPA projects.

Once the final submittal has been approved by the LPA Coordinator and the LPA has provided the required certifications and project end date, the Principal Road Design Engineer over LPA Section works with the Road Design Administrative Assistant to prepare and initiate the Processing Memo.

The Processing Memo should be generated four (4) to six (6) weeks prior to the project release to the LPA.

10.4 Agreement Estimate Memo

The LPA Coordinator prepares the Agreement Estimate Memo, using the estimate provided by the LPA. The Principal Road Design Engineer over LPA Section will review and approve the memo before it is sent to Financial Management. Financial Management will program the construction phase of the project and seek authorization from FHWA.

The Agreement Estimate Memo also provides the opportunity to adjust the funding of the preliminary engineering and right-of-way phases. The overall funding availability for the project is identified in the LPA Agreement.

In order for the authorization to be approved, the LPA project must be in the State Transportation Improvement Program (STIP), showing the funding in the correct phase and federal fiscal year for the requested authorization approval.

10.5 Notice to Proceed with Advertisement

Upon approving the bid package and receiving FHWA's authorization for construction, the LPA Coordinator will issue a notice to proceed via e-mail. This is followed by a formal written notice to proceed, issued by the Principal Road Design Engineer. The notice to proceed will include the LPA's end date for federal participation.

Once the notice to proceed has been issued, the LPA may proceed with the advertisement of the contract. The LPA has ninety (90) calendar days from the federal authorization of funds to advertise the project.

The LPA shall not advertise the project before receiving the notice to proceed.

10.6 Construction Coordination Meeting

The LPA Coordinator will arrange a construction coordination meeting after the NTP for advertisement and prior to the Award of the contract. The LPA Project Manager, associated construction staff, the NDOT Resident Engineer and NDOT's Contract Compliance shall attend.

This meeting allows for the staff of both agencies responsible for the construction project administration to meet and to discuss various aspects of the construction administration. The meeting agenda includes a review of the agreement, coordination of responsibilities, required construction documentation and processing (including Buy America and DBE goals), reporting requirements, the project close out process, and the construction cost estimate.

10.7 Bid Documents

The LPA will provide NDOT with a minimum of three copies of the advertised bid documents. The LPA Coordinator will forward a copy to the NDOT Resident Engineer assigned to the project and a copy to the NDOT Contract Compliance Office. In addition to the bid documents, the LPA Coordinator will provide the NDOT Resident Engineer and the Contract Compliance Office a copy of the LPA Agreement and amendments.

Electronic copies of these documents may be submitted in lieu of paper copies.

10.8 Advertising Process

Federal law requires that Federal-aid contracts be awarded using a competitive contracting method. One of the corner stones of Federal-aid contracting is that construction contracts are awarded based on fair and open competition to a responsible

contractor who submits the lowest responsive bid.

The LPA may follow its local advertising procedures. However, the minimum advertising period is three (3) weeks. The LPA must provide a copy of the advertisements to the NDOT LPA Coordinator.

10.9 Current Wage Rates

The wage rates for the contract shall be those in effect at ten (10) days prior to the bid opening. A supplemental to the bid documents must be made if there are changes in wage rates in the time period between the advertise date and ten (10) days prior to the bid opening.

The LPA is responsible for checking for with the NDOT Contract Compliance Office to determine if there are changes in the wage rates. If, the LPA shall issue a supplemental to the bid documents to address the change in the wage rates.

10.10 Bid Opening

All federal aid highway construction projects require a public bid opening. The LPA must open the bids publicly and read aloud either the item-by-item, or by total amount. If a bid is not read aloud, the LPA must identify the bidder and the reason for not reading the bid. At the bid opening, the LPA should identify the apparent low bid.

10.11 Bid Analysis

Once bids have been opened, the LPA must analyze the bids. These four primary factors must be considered as a part of the bid analysis.

10.11.1 Responsible Bidder

The LPA must determine that the bidder is responsible. A responsible bidder is a bidder who has the financial means and is physically organized and equipped to undertake and complete the contract. A bidder may be considered not responsible due to unsatisfactory past performance, failure to meet the LPA's qualification requirements, or because of State or Federal suspension/debarment action.

10.11.2 Responsive Bid

The bid must be considered responsive. A responsive bid is a bid that meets all the requirements of the advertisement and proposal. Some common reasons a bid may be found non-responsive include failure to sign the bid in ink; failure to provide the required bid bond; failure to submit required forms or certification; and failure to commit to achieving the DBE contract goal or adequately demonstrate a good faith effort to meet the DBE contract goal.

The LPA must clearly identify all the requirements for the bid proposal that the bidders must comply with in order for their bid to be considered responsive.

10.11.3 Competitive

The number of bids received may or may not justify re-advertising the contract. Determining whether there is sufficient competition depends on many factors, including bidder interest in the work, location of the work, and current market conditions.

10.11.4 Bid Review

The LPA must develop and use an engineer's estimate for analyzing the bids received. The engineer's estimate is used as the bench mark to compare all the bids against. This estimate should reflect the amount that the LPA considers fair and reasonable.

As the LPA analyzes the apparent low bid, it should look at any irregularities observed in individual bid items or with the overall bid. A bid may be considered irregular when the bid differs from the engineer's estimate in a manner that seems unreasonable.

The LPA should pay special attention to unbalanced bids. There are two types of unbalanced bids:

- A mathematically unbalanced bid – contains lump sum or unit bid items that do not reasonably reflect the actual costs to construct the item
- A materially unbalanced bid – creates reasonable doubt that awarding the bid to that bidder will result in the lowest ultimate cost to the government.

The LPA should consider rejecting an unbalanced bid when it cannot be reasonably explained, or that it has reasonable doubt that it would result in the lowest overall cost to the government. It should consider the potential savings if the contract is re-advertised.

10.12 DBE Goal Requirements

For contracts with a DBE goal greater than zero, the LPA must also consider the contractor's commitment to meeting the established DBE goal. The contract shall be awarded to the contractor with the lowest responsive and responsible bid that meets the required DBE goal or provides a good faith effort. This is the case even if there are lower bids submitted by contractors that do not meet the DBE goal or make an approved good faith effort.

Prior to awarding a bid, NDOT's Contract Compliance Office will review the DBE information provided by the contractors and make a determination of compliance with DBE goal requirements. The LPA shall provide the bid submittals by the 3 lowest responsive and responsible bidders, including:

- Bidder Disadvantaged Business Or Small Business Enterprise (DBE/SBE) Information form

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- LIST OF SUBCONTRACTORS AND SUPPLIER BIDDING - form
 - BIDDER SUBCONTRACTOR INFORMATION – exceeding five percent (5%) form
 - BIDDER SUBCONTRACTOR INFORMATION - exceeding one percent (1%) form
 - BIDDER SUBCONTRACTOR INFORMATION - (For subcontractors exceeding \$250,000.00 form
 - DBE quotes and confirmation letters
 - Good Faith Effort documentation, if applicable

The NDOT's Contract Compliance Office will provide the results of its review to the LPA and the LPA Coordinator. The LPA cannot award the contract until it has reviewed and considered the results of the DBE review.

10.12.1 Administrative Reconsideration

In the event that the NDOT finds the lowest bidder failed to meet the required DBE goal or to make a good faith effort and the LPA decides not to award the contract to that bidder, the LPA must notify the unsuccessful bidder of its decision. It must also inform the unsuccessful bidder that it has the right to an administrative reconsideration. The bidder must provide the LPA a written request for an administrative reconsideration. The LPA should establish a reasonable time period within which the written request must be submitted.

Once an administrative reconsideration has been requested, then the LPA must request one through the LPA Coordinator. The LPA Coordinator shall relay the request to the Deputy Director of Southern Nevada who will arrange and conduct the reconsideration. A formal finding of the administrative reconsideration will be provided to the LPA.

The LPA cannot award the contract until the formal finding has been received.

10.13 Contract Award

The LPA may follow its standard procedures for awarding a contract, so long as those procedures are modified to comply with Federal requirements, when applicable. The contract must be awarded to the bidder providing the lowest responsive and responsible bid. In considering which bid is the lowest responsive bid, the LPA must ensure that all required forms were completed and submitted by the required deadline.

Under the terms of the Stewardship Agreement, the authority to award a contract has been delegated to NDOT. In the case of the LPA program, the authority has been further delegated to the LPA. Unless the agreement states otherwise, the LPA does not need NDOT concurrence in the award.

CHAPTER 11 – CONSTRUCTION ADMINISTRATION

11.1 Introduction

The LPA is responsible for construction administration of the LPA project and needs to ensure that Federal requirements are met and that the public's interests are protected. The construction administration of a project covers construction project management, contract administration and safety and operations.

Construction project management refers to how a LPA oversees construction, including all the activities for completing construction of the project within its scope, schedule, budget and quality requirements. This includes but is not limited to testing, inspecting, documentation and contract modifications.

Contract administration refers to how a LPA ensures that all project contract obligations are met and fulfilling reporting requirements. This includes compliance with contract provisions including but not limited to those related to nondiscrimination, payroll issues, jobsite posters, Buy America provisions, and DBEs.

Safety and operations refers to how the LPA helps to ensure a safe job site and safely perpetuates traffic flow during construction. This includes but is not limited to work-zone traffic control reviews, worker safety and transportation management plans.

While the LPA has been delegated authority to complete the construction administration on LPA projects, NDOT still retains the overall responsibility for compliance with federal requirements (23 CFR 105).

11.2 NDOT Staffing

NDOT assigns a Resident Engineer (RE) to the project to provide oversight and to ensure that the LPA is following federal requirements. NDOT's RE provides a similar oversight role to the LPA as the FHWA provides on NDOT administered contracts. The RE is assigned by the District in which the project is located.

The LPA Coordinator shall provide NDOT's RE with copies of the Cooperative (LPA) Agreement, amendments to said document and copies of the plans, specifications and bid documents.

During the construction period, NDOT's RE may review all test results, project documents, payroll accounting, and traffic control.

The NDOT RE has the authority to shut down the project within NDOT's Right of Way. If the terms of the Cooperative Agreement and policies and procedures as defined by NDOT are not followed, it is within the NDOT RE's authority to enforce compliance.

11.3 LPA Staffing

The LPA must provide competent, experienced staff that certifies the contract work is constructed in accordance with the plans and specifications. Although the LPA may employ a consultant to provide construction engineering services, such as inspection or survey work on a project, the LPA shall provide a Project Manager who is a full-time agency employee who shall be the “employee in responsible charge “of the project.

The LPA Project Manager must be identified and contact information provided to the NDOT LPA Coordinator and the NDOT RE. The LPA Project Manager is responsible for staying in contact with NDOT’s RE on a weekly basis beginning at award and keeping the RE informed of the project status, contract modifications and/or changes to the contracts prior to implementation and direct any questions about the federal requirements to the RE.

The LPA Project Manager must notify NDOT’s RE when the LPA’s contractor has been issued the notice to proceed, when the construction work has started, major milestones, and major construction meetings, issues on the project, the final walk through inspection and the acceptance of the work.

In addition, the LPA Project Manager shall provide NDOT’s RE a notice of when construction will begin at least two weeks prior to the start of construction.

Every month, the LPA Project Manager must prepare and submit to the NDOT RE an update of the status of the project construction. The update shall include a summary of the work performed over the past month, the percent of work and time completed, the time charged, and the projected completion date. This report shall include quantities paid to date, test reports highlighting test failures with the associated remediation, status of contract modifications, and pertinent information the NDOT’s RE needs to know.

11.3.1 Employee in Responsible Charge

In conformance with 23 CFR 635.105 (c)(4), the LPA must have an “employee in responsible charge” of the construction project, including projects that have consultants on it.

This must be a full-time employee of the LPA. The employee does not have to be dedicated full-time to the project.

The “employee in responsible charge” supervises all construction project administration activities and coordinates with NDOT’s Resident Engineer and typically performs the following activities:

- Has a familiarity with the day-to-day project operations
- Approves contract modifications

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- Performs field reviews with a frequency appropriate for the size and complexity of the project
 - Performs final inspection to compare against the plans and specifications
 - Reviews project finances
 - Directs staff to perform construction project administration and ensure it is done satisfactorily

Additional guidance can be found in FHWA Guidance Memo: Responsible Charge issued August 4, 2011.

For projects located within NDOT right-of-way, the “employee in responsible charge” shall be a professional engineer registered in Nevada.

11.4 Documented Procedures

Part of good construction administration is documentation. It is important that the LPA have documented procedures and practices that are used to ensure compliance with applicable standards.

11.4.1 NDOT Documented Procedures

The LPA has the option of performing construction administration using NDOT’s procedures outlined in the NDOT Construction Manual and the NDOT Documentation Manual.

- NDOT’s Construction Manual provides information on Acceptance Testing, Informational Testing and Independent Assurance (IA) Testing based on the application, quantities and testing frequencies.
- NDOT’s Documentation Manual provides information including but not limited to documenting materials, quantities, survey information, test results and any required corrections, checking certified payrolls

NDOT’s procedures must be used by the LPA when it does not have NDOT approved procedures of their own.

11.4.2 LPA Documented Procedures

A LPA may elect to use its own procedures to administer a federal-aid construction project. However, those procedures must be approved by NDOT prior to their use.

If a LPA elects to use its agency’s procedures, it must submit its procedures for inspection, sampling, testing, which includes independent assurance testing, and for construction administration documentation to the Principal Road Design Engineer over the LPA Section. The Principal Road Design Engineer over the LPA Section shall forward the procedures to NDOT’s Construction Division for review and written approval. NDOT’s Construction Division will provide a written approval to the Principal

Road Design Engineer over the LPA Section. A copy of the approval will be forwarded to the LPA.

The procedures should be submitted each year in September for use in the upcoming year; however, they may be submitted any time throughout the year. The approval of a LPA's procedures is valid for the year from November 1st to October 31st. If the procedures are revised within that year, the LPA must re-submit its procedures for approval.

11.5 Preconstruction Conference

While a preconstruction conference is not a federal-aid requirement, NDOT recommends that the LPA consider conducting one as a best practice. If the LPA chooses to conduct a preconstruction conference with the contractor, then it should conduct it no later than one week prior to beginning construction. The LPA Project Manager must invite NDOT's RE, NDOT's Contract Compliance, NDOT's LPA Coordinator and the Contractor's Personnel to the preconstruction conference. The invitation to the preconstruction conference shall be sent out no later than 2 weeks prior to the conference. Following the conference, a copy of the agenda and minutes must be sent to each invitee within one week of the meeting.

If the project is identified as a PoDI or PoCI by FHWA, then FHWA may require an invitation to the preconstruction conference as well as a copy of the agenda and minutes.

NDOT can provide a copy of a sample agenda for reference by the LPA.

11.6 Other Conferences

The LPA Project Manager should coordinate with NDOT's RE and the Contractor to determine if any of the following conferences will be necessary based on the nature of the project:

- Preliminary survey – Discussion shall include verification of Right of Way, preservation of control monuments and benchmarks
- Construction staking – Discussion shall include survey stakeout of roadway alignment, drainage facilities and structural items based on plan sheet data or CADD renderings
- Environmental – Discussion shall include dust control, preparation and implementation of the Storm Water Pollution Protection Plan, biological concerns, avoidance areas and reporting requirements
- Concrete pavement pre-pave
- Structural concrete pre-pour
- Plantmix pavement pre-pave
- Outside Permitting such as water well waivers, dust permits, use of private property by the contractor including any environmental requirements, etc.

11.7 LPA Construction Project Management

As stated earlier construction project management refers to how the LPA manages all of the activities for completing construction of the project within its scope, schedule, budget and quality requirements. This includes but is not limited to testing, inspecting, documentation and contract modifications.

11.7.1 Asphalt Concrete and Cement Mix Designs

NDOT's Materials Division will review and approve asphalt concrete and cement concrete mix designs for LPA Projects within the NDOT's Right of Way. If needed, the Materials Division can provide mix design assistance to the LPA. The LPA Project Manager should coordinate this effort with NDOT's RE.

11.7.2 Buy America Certification

The LPA is responsible for enforcing the Buy America provisions of the contract in accordance with 23 CFR 635.120(d). The contract documents require that the contractor provide a definitive statement about the origin of all products covered by Buy America prior to payment for the item or installation. The LPA Manager must request a "Buy America" certificate from the contractor for each item incorporating iron and steel products. NDOT has developed a Buy America Certification Form for use on NDOT and LPA construction projects. (Appendix B)

11.7.3 Contractor Claims/Disputes

The LPA must follow the claims procedure contained in the federal regulations (23 CFR 635.124).

The NDOT/FHWA Stewardship Agreement delegates claim approval for projects on the NHS to NDOT without regard to who provides the contract administration. On these projects, NDOT has responsibility for reviewing all claims and ensuring they meet FHWA regulations (23 CFR 635.124). A release of claims shall be provided prior to close out of the construction contract.

For projects off the NHS, LPAs have been delegated the responsibility to approve or deny claims. NDOT approval is not required but adherence to federal regulations is still required. LPA Projects are subject to process reviews by the FHWA, which determines if regulations are being met. Projects with federal funding are subject to review and must meet the requirements of 23 CFR. Funds over and above the amount in the agreement required to settle claims are the sole responsibility of the LPA.

Claim settlements made must be documented on a properly executed contract modification, following the contract modification process as shown in Section 11.7.4.

11.7.4 Contract Modification Process

Contract modifications are changes made to the specifications, plans and/or estimate established at the time of award. Modifications may be required to address changes to the plans after the construction contract is signed, to address conditions in the field, or to add items not originally anticipated during the design. Contract modifications include changes that are covered by the approved budget of the LPA and may not require a formal approval through the LPA's governing board.

A change in scope of work cannot be done via the contract modification process. For a change in scope, the LPA must request approval from the FHWA. Contract modifications that require additional NEPA clearances or work outside the right-of-way certified for the project will not be allowed.

11.7.4.1 Approvals

In conformance with 23 CFR 635.120, any contract modifications have to be approved prior to implementation. Concurrence by the NDOT RE must be obtained prior to commencing work completed under the contract modification, regardless of federal participation to ensure that the modification is consistent with the environmental clearance and right-of-way certification. A signature line for review by NDOT's RE must be included on all contract modifications. The contract modifications must include the following statement in the body of the contract modification:

“Should federal funds not be available to cover these additional costs, or the FHWA decide not to participate in these costs, the LPA agrees to provide the required funds.”

The LPA Project Manager must discuss the proposed contract modification work with the NDOT RE prior to submitting the contract modification.

Once the NDOT RE concurs with the work, the LPA and the contractor shall execute a contract modification addressing the reason for the change order with supporting documentation including who, what, why, when and how the change order work is necessary and include impacts to environmental commitments made on the project. Contract modifications will be reviewed and signed “Reviewed By:” by the NDOT RE for concurrence with the scope of work. The contract modification will be certified and signed by the LPA Project Manager.

Approval by the NDOT RE does not guarantee federal participation in the costs of the modification.

11.7.4.2 Required Documentation

Contract modifications must include the following four elements:

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1. A Description of the work to be performed
 - a. The location and limits of the work added or removed
 - b. A description of each element of work added or removed
 2. Cost of the work
 - a. The cost for each element of work added.
 - i. Analysis of cost is required on all changes paid for based on agreed/negotiated prices or lump sum
 - b. The cost of each element of work removed.
 3. The time to complete the work or the effect on the project schedule
 - a. Additional working days to complete the work
 - b. Reduction in working days due to deletion of work
 4. The method of payment to pay for the work
 - a. Based on bid prices
 - b. Agreed/Negotiated prices
 - c. Lump sum

In addition, it should include a contract modification number for documentation, who is requesting the change, and a narrative explaining the reason for the modification.

11.7.4.3 Cost Analysis

When preparing cost estimates for agreed/negotiated prices or lump sum payment for contract modification work, the LPA Manager should document the analysis and base the analysis on the following:

- The average prices, or historical bid prices for similar work.
- Written independent price quotes from other subcontractors or suppliers.
- Other industry documents can be used in unique circumstances and only after coordinating with NDOT's RE.
- The cost analysis must include invoices or quotes for materials.

11.7.5 Determination and Documentation of Pay Quantities

The documentation of pay quantities must follow NDOT's Documentation Manual or the LPA's documented process that has been approved by NDOT. An example of an acceptable format is located in Appendix C - Attachment H. Quantities which over or under run by 10% and/or \$25,000 must be justified in writing. The LPA Project Manager shall inform the NDOT RE when quantities approach this threshold during their weekly discussion.

It is the responsibility of the LPA Project Manager to certify the quantities and associated payments. It is not NDOT's responsibility to ensure that correct payments have been made. The approval will be the responsibility of the LPA. However, if proper documentation is not supplied, the NDOT RE will not forward the invoice to the LPA Coordinator for processing.

11.7.6 Documentation

Documentation must follow NDOT's Documentation Manual or the LPA's NDOT approved process and should consider the requirements mandated by the Federal Highway Administration. The LPA Project Manager shall certify the accuracy of documentation provided to NDOT. It is the LPA's responsibility to comply with federal requirements.

11.7.7 Inspection

The LPA must inspect of all work performed and materials furnished. Inspections may extend to all or any part of the work and to the preparation, fabrication or manufacture of the work materials. The LPA is responsible for confirming that the contractor's work and site activities conform to the plans and specifications. Part of that responsibility includes documenting the contractor's work.

Inspection duties may include:

- Observing and documenting the contractor's workmanship, materials, and methods for conformance with the plans and specifications
- Communicating the project requirements to the contractor's field staff for work under construction or about to be constructed
- Interpreting the plans and specifications
- Documenting inspection operations in the daily construction report
- Measuring work and materials for payment
- Observing construction operations for compliance with safety regulations, traffic control requirements, and construction-related government regulations

11.7.8 Sampling and Testing

All federal-aid projects on the National Highway System (NHS) are subject to the quality assurance (QA) procedures in 23 CFR 637, Subpart B – Quality Assurance Procedures for Construction. For projects not on the NHS, established procedures approved by NDOT can be used for material acceptance as long as the intent of the the federal requirements are satisfied.

If the LPA is not using the contractor's quality control (QC) test results in the material acceptance process, the LPA must utilize NDOT's Construction Manual and NDOT's Documentation Manual to ensure compliance with federal requirements unless it has developed its own procedures approved by NDOT.

If the LPA is utilizing the contractor's QC test results in the acceptance process, they must hire a qualified testing firm or have sufficient staff to implement the established testing methods and frequencies to perform QA through Verification Testing. For Verification Testing, NDOT requires a minimum frequency of twenty percent (20%) of the contractor's QC Testing frequencies.

Validation of QC data is required if used in the materials acceptance process. This validation requires a statistical comparison between the LPA verification test results and the QC test results. The statistical tests required for validation are the F-test (comparison of variances) and the t-test (comparison of means) which are used together.

The LPA is responsible for developing and implementing Independent Assurance (IA) procedures on QC and QA. IA Testing must be performed by a qualified testing firm not utilized in the Verification and/or Acceptance Testing process. Testing methods, frequencies and documentation must follow NDOT's Construction Manual and Documentation Manual, or the LPA may use their own NDOT-approved.

The LPA Project Manager is responsible for providing certification of the inspection and documentation of the contractor's work. The LPA Project Manager must maintain a summary of the material tests which passed and failed and, in the case of failure, mitigation measures taken (ex. liquidated damages, remove and replace, etc.). Test failures shall be brought to the attention of the NDOT RE on a weekly basis and test reports made available for NDOT.

The contractor personnel, LPA personnel and consultants involved in sampling and testing must be qualified/certified by the Western Alliance for Quality Transportation Construction (WAQTC)/Nevada Alliance for Quality Transportation Construction (NAQTC) and/or certified by the American Concrete Institute (ACI) as a Concrete Field Technician – Grade I for projects which fall within the NDOT Right of Way and those projects located on the National Highway System.

11.7.9 Shop Drawings

Shop Drawings are specific details that consist of working plans that show how items not included in the contract plan documents will be constructed. The contractor prepares shop drawings (also known as working drawings) that supplement the plans to show the means and methods proposed to complete the work. This should include the details of construction, specifications, design notes and materials necessary to complete the work. Some examples are: drawings, diagrams, illustrations, samples, schedules, calculations, structural steel drawings, pre-stressing shop drawings, bearings, expansion joints, false work review, rebar placement and data that provide details of the construction of the work and details to be used for inspection.

Shop drawings are submitted by the contractor for formal review by the LPA Project Manager and returned for action. For any construction within NDOT right-of-way, shop drawings shall also be submitted to NDOT for review and concurrence. The LPA's Design Engineer who performed the structural design shall review and provide feedback on whether they are acceptable or need revisions. The Design Engineer shall mark the shop drawings "reviewed," "reviewed as noted" or "resubmit" as appropriate. Work shall not be performed until the shop drawings are approved by the LPA's Design Engineer. Documents and drawings shall be available for review by the NDOT Structural Division and copies of material certifications shall be sent to the LPA Coordinator.

11.8 Contract Administration

The LPA is required to monitor contracts to ensure compliance with legal, contractual and regulatory requirements including reporting requirements of the contract. This includes but is not limited to:

- Prevailing wages
- Subcontractors
- Prompt payments
- Equal Employment Opportunity and employment practices
- DBE
- Title VI
- Jobsite posters

NDOT has developed standard forms, requests and reports for conducting contract administration on NDOT administered projects. The LPA is encouraged to use these in its efforts to ensure compliance with federal and state laws. They can be accessed at: <http://www.nevadadbe.com/website/contract-compliance.php>.

NDOT requires that the LPA use B2GNow software for collecting, monitoring and reporting information regarding DBE, prompt payments, and payments to subcontractors made by both contractors and subcontractors. Access to the software for the LPA, contractors and subcontracts is provided at no cost.

11.8.1 Certified Payrolls

Prevailing wage requirements and submission of certified payrolls are applicable to all prime contractors, subcontractors, service providers and owner operators on all LPA construction projects over \$2,000. It is the LPA's responsibility to check payrolls to ensure compliance with the prevailing wage rates. If the LPA's investigation shows violations, it shall write a determination. The written determination must be provided to NDOT's External Civil Rights and Contract Compliance Office for approval.

11.8.2 DBE Compliance

The LPA has the responsibility to review and enforce DBE requirements on its contracts. The enforcement responsibilities include monitoring and verifying that the work that was proposed to be completed by a DBE certified firm is completed by that firm. It must approve any changes to the DBE subcontractors prior to the prime contractor changing subcontractors. The LPA may impose sanctions against the prime contractor for failure to use the DBE subcontractor or get approved changes in DBE subcontractors.

11.8.2.1 Commercially Useful Function Reviews

In order for a DBE contractor payment to be counted toward the DBE goal, the DBE contractor must be performing a commercially useful function (CUF). A DBE is

performing a CUF when it is responsible for execution of the work of the contract and carries out its responsibilities by actually performing, managing and supervising the work involved, consistent with standard industry practices.

It is the LPA's responsibility to ensure that the DBE is performing a CUF. The LPA shall perform CUF reviews for each DBE working on the LPA projects. CUF reviews should be done when the DBE first begins work, throughout the course of the contract while the DBE is on site, and a final CUF at the completion of the DBE's work. For DBEs that will only be on site for a short time, a single CUF performed when the DBE first starts is acceptable. For multi-year contracts, the CUF must be completed as stated above for each year the DBE performs work on the contract. In addition, if the DBE is performing more than one operate of work, then a separate CUF review must be completed for each type of work.

The LPA may use NDOT's Commercially Useful Function (CUF) Form (NDOT Form 052-073) (Appendix B) to complete the required CUF reviews or develop its own form. When using NDOT's form, replace the RE with the LPA Project Manager. Completed CUF reviews must be forwarded to the NDOT RE. Any issues or concerns should be discussed with the NDOT RE, who may then request assistance from NDOT's External Civil Rights and Contract Compliance Office.

11.8.2.2 Modifications to DBE contracts

Any modification to the contract that results in a reduction of work done by a DBE firm or the termination of a DBE firm shall require approval by the LPA. Concerns about meeting the DBE goal participation should be discussed with NDOT's External Rights Section prior to approving the changes.

11.8.3 Form FHWA-1391

Contractors working on federally funded projects must complete an annual work force utilization report for the United States Department of Labor. Any contractor or subcontractor actively working on the project during the last payroll period in July must complete form FHWA-1391 and submit it to the LPA Project Manager. The LPA Project Manager shall forward these completed forms to NDOT's RE by August 15. NDOT's RE must forward the form to the Contract Compliance Section by August 30.

If a contractor and/or a subcontractor did not work during this period, the LPA Manager must provide NDOT's RE with a notice listing the contractors and subcontractors who did not work and stating that they are not required to submit a report. NDOT's RE will forward this information to NDOT's Contract Compliance Section

If the LPA is utilizing LCPTTracker, to monitor contractor certified payroll and workforce, then it should generate the workforce utilization summary report. It should generate FHWA Form 1392 and submit that to NDOT's RE who will then forward it to NDOT's Contract Compliance Section.

If a contractor does not provide this form, it is in breach of the contract and may have money withheld or pay a penalty for failing to provide required documentation. If the LPA does not provide this form, future reimbursement requests may be held until such time as the form is provided.

11.8.4 Job Site Posters

To make sure that are aware of the legal protections available to them, Federal-aid construction contracts require the display of many Federal and State posters on the job site. These posters must be visibly displayed, easily seen and readily accessible to all of the contractor's employees at the worksite.

Typically, the poster board is located outside. If so, it should be covered to protect the postings from weather exposure. The poster boards needs to be located in an area where the employees are most likely to gather, such as near the contractor's field office. The contractor's employees must be able to free look at the information without question, suspicion or influence.

The LPA is responsible for ensuring that the posters are properly displayed on the job site and that the contractor has provided any required information on the posters, such as contact names or telephone numbers. The LPA Project Manager shall ensure that the posters are legible, contain all required information and the information is current.

The posters required on Federal-Aid construction project job sites can be accessed at: <http://www.fhwa.dot.gov/programadmin/contracts/poster.cfm>.

11.8.5 Prompt Payment

The LPA is responsible for ensuring the prime contractor is paying their subcontractors within the contractual thirty-day (30) timeframe and that it is returning any retainage that it may have held. If the LPA finds that the prime contractor is not in compliance with the prompt payments and return of retainage contract provisions, it must initiate enforcement actions in conformance with NDOT's DBE Program.

The LPA may contact NDOT's Contract Compliance Section for suggestions on how to monitor its contracts for compliance. In addition, NDOT's Contract Compliance Section can provide information on the enforcement actions available under NDOT's DBE Program.

11.8.6 Subcontracting

In order to ensure that the subcontractors being proposed for a project are qualified for the work, and are not debarred from performing work on a federal-aid contract, the LPA must approve each subcontract in accordance with 23 CFR 635.116. Furthermore, the LPA must ensure that all the required Federal requirements have been included in the subcontract document.

11.8.6.1 Requests to Sublet

The contractor must receive approval from the LPA to sublet. The LPA may use NDOT's "Request to Sublet" (NDOT Form 052-023) (Appendix B) and/or a "Request to Utilize a Service Provider" (NDOT Form 052-061 and/or NDOT Form 052-061A) (Appendix B) for each subcontractor is proposes to use on the project as well as for trucking companies and for non-bid item work, excluding trucking for approval by the LPA. The LPA may develop its own forms for this purpose as well. When using NDOT's form, replace the RE with the LPA Project Manager.

The LPA must approve the request prior to the contractor entering into a contract and/or the start of work.

11.8.6.2 Subcontract Agreements

In conformance with 23 CFR 635.116(b), the LPA must review and approve all subcontract agreements prior to the contractor entering into a contract. The subcontract agreements must include the bid items the subcontractor is performing, along with the corresponding amounts. It must also include all applicable federal contract provisions to the subcontract and the prevailing wages assigned to the contract.

11.9 Safety and Operations

The LPA has the responsibility to ensure a safe job site and optimal traffic flow during construction. Safety and operations includes the transportation management plan (TMP), work-zone traffic control, and worker safety. The LPA Project Manager is responsible for monitoring safety requirements, notifying the contractor of any concerns and meeting regularly with the contractor to discuss safety issues.

11.9.1 Transportation Management Plan (TMP)

The components of a TMP vary greatly and depend on the project. The more significant the impact, the more detailed the TMP should be.

For projects with anticipated significant traffic impacts, the TMP consists of a temporary traffic control plan, a transportation operations component and a public information component.

- A TMP is required on a federal-aid construction contract; or
- The contract provisions must include the requirement for the contractor to develop a TMP based on the LPA's TMP requirements.

For projects determined to have less than significant traffic impacts, the TMP may consist only of a temporary traffic control plan or the requirement for the contractor to develop a temporary traffic control plan based on the LPA's TMP requirement. The temporary traffic control plan should address traffic safety and maintain traffic through

the work zone with various devices such as signs, traffic drums, traffic cones, and flaggers.

11.9.1.1 Traffic Control

Methods of handling traffic must be reviewed and approved by the LPA's Project Manager prior to implementation. For projects located within NDOT right-of-way, additional review and approval of the traffic control plan must be done by NDOT's District Traffic Engineer prior to implementing any work. The LPA must verify traffic control is in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) and contract requirements.

The LPA must make traffic control reviews on a regular basis; observing installation of signs and traffic control devices; documenting the markings, devices and signs that exist during the project; maintain a detailed record of the placement and spacing of signs and other traffic control devices on daily reports; and confirming the continued conformance with the traffic control plan. Issues arising from traffic control are the responsibility of the LPA. NDOT's RE will provide guidance if requested by the LPA.

The Federal Highway Administration (FHWA) published the Work Zone Safety and Mobility Rule (the Rule) on September 9, 2004 in the Federal Register (69 FR 54562). This Rule updates and renames the former regulation on "Traffic Safety in Highway and Street Work Zones" in 23 CFR 630, Subpart J. State and local governments that receive Federal-aid highway funding are required to comply with the Rule. NDOT's policy can be found in the "Work Zone Safety & Mobility Implementation Guide" dated April 3, 2105.

11.9.2 Worker Safety

Both the LPA Project Manager and the contractor are responsible for safety on the worksite. The contractor holds weekly jobsite meetings with all project personnel to discuss work safety issues. The LPA Project Manager should designate a representative to attend the contractor's weekly safety meetings. The meeting should be documented by the LPA's representative

The contractor is responsible for the safety of his or her employees, including subcontractors and vendors. The contractor must comply with all safety regulations governed by the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) and ensure the safety and convenience of the public throughout the work zone. The contractor must submit a project-specific safety plan to the LPA Project Manager before project work begins. At least once during each construction season, the contractor must also complete an OSHA safety checklist form, NDOT form 040-028, "Safety Inspection Checklist – Contractor Operations." The contractor conducts the inspection and completes the form in the presence of an LPA representative.

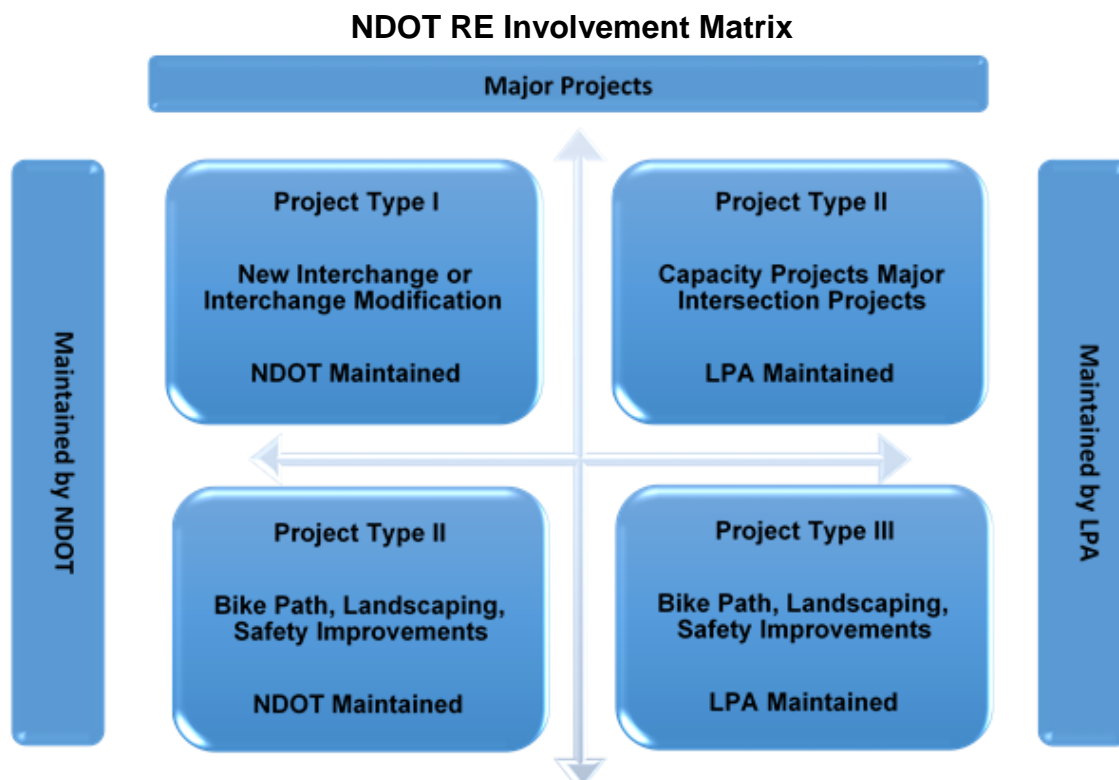
The LPA Project Manager is responsible for the safety of their crew and all LPA employees on their project. The LPA supplies required personal protective equipment, such as hard hats, safety goggles, hearing protection, respiratory protection, and reflective vests to its crew members.

11.10 NDOT Oversight

NDOT is responsible for ensuring the LPA’s adherence to applicable federal laws and requirements. NDOT does this by reviewing subcontracts, performing periodic onsite reviews, reviewing proposed contract modifications, reviewing DBE payments, reviewing and forwarding invoices for construction payments, answering questions and being aware of the project status. The NDOT RE is responsible for participating in the final inspection and generating the project acceptance by NDOT.

The NDOT RE receives and reviews the invoices for construction engineering and construction costs and forwards them to the LPA Coordinator for processing the payment. The relationship between the NDOT RE and the District in the oversight of LPA Projects is the same as with other NDOT projects.

The matrix below estimates the NDOT RE level of involvement on a LPA Project. The highest level represented, the upper left corner, may entail three (3) to four (4) hours per week by phone with another two (2) hours of face-to-face meetings every week plus review of all submittals and shop drawings. The lowest oversight may entail a once a month drive through and a 5-minute phone call every month. This matrix is based more on project types than construction dollars.



11.10.1 Onsite Reviews

NDOT's RE shall make periodic site visits to document the progress of the work, oversee contract compliance and check quality of work. Based on the above matrix, the estimated site visit frequency is:

- Project Type I - Once a week plus project milestones
- Project Type II - Bi-Weekly plus project milestones
- Project Type III - Once a month plus project milestones

The frequency may be adjusted to account for shorter contract construction periods. An inspection report shall be completed by the NDOT RE for each site visit (Appendix C, Attachment D). A copy of these reports should be forwarded to the LPA Coordinator and District in a timely manner.

The NDOT RE conducts spot reviews of the LPA documentation to ensure that the LPA is monitoring contractor compliance with the contract plans and specifications. In addition, the NDOT Re is reviewing the LPA's efforts in enforcing contract requirements such as certified payroll and DBE compliance.

11.10.2 Contract Modifications

In conformance with 23 CFR 635.120, any contract modifications have to be approved prior to implementation. NDOT's RE reviews contract modifications proposed by the LPA for concurrence. The NDOT RE concurrence must be obtained prior to commencing work completed under the contract modification, regardless of federal participation. NDOT's RE reviews the contract modification to ensure that the modification is consistent with federal requirements, environmental clearances and the right-of-way/utility certifications.

The LPA Project Manager discusses the proposed contract modification work with NDOT's RE prior to the LPA submitting the contract modification. Once the NDOT RE concurs with the work, the LPA and the contractor shall execute a contract modification addressing the reason for the change order with supporting documentation including who, what, why, when and how the change order work is necessary and include impacts to environmental commitments made on the project. The NDOT RE reviews contract modifications and supporting documentation such as the cost analysis. The NDOT RE signs the contract modification for concurrence with the scope of work.

The NDOT RE does not provide approval for the use of federal funds for the costs of modifications.

11.10.3 Traffic Control

For LPA projects located on NDOT Right-of-way, traffic control plans are reviewed through the permitting process by NDOT District permitting staff. NDOT's RE reviews traffic control set-ups during construction on NDOT-maintained highways at a frequency

commensurate with the complexity of the project. NDOT's RE may recommend changes to the traffic control plans and set-up to address any issues observed. NDOT is not responsible for issues arising from an improper traffic control setup by the contractor.

11.10.4 LPA Invoices

The NDOT RE reviews the construction related invoice submitted by the LPA. NDOT's RE reviews the invoice to assure the quantities and items billed seem reasonable for the amount and type of work completed during that billing cycle. NDOT's RE forwards the LPA's invoice and supporting documentation with a recommendation for payment to the LPA Coordinator.

If the proper documentation and/or the required information has not been provided to the NDOT RE, the invoice will not be forwarded for payment. The final invoice will not be processed until the project has been accepted by NDOT and the required close out documentation has been received from the LPA.

CHAPTER 12 - CONSTRUCTION CLOSE OUT

12.1 Construction Close out

Once a LPA construction project has been completed, the LPA must initiate the construction close out process. The construction close encompasses the final inspection, final acceptance and the final payment for construction related project costs.

12.2 Final Inspection

The LPA Project Manager develops a punch list for remaining items of work or areas within the project limits requiring clean up. Once the punch list has been completed, the LPA Project Manager coordinates a final inspection with NDOT's RE.

If the project was a PoDI, NDOT's RE must notify the FHWA of the time and date of the final inspection.

The NDOT RE will conduct the final inspection in the company of the LPA and complete the final inspection report. The NDOT RE is responsible for generating the final acceptance letter and forwarding said letter to the LPA Project Manager.

The NDOT RE sends the final inspection report, the project acceptance letter and the project closeout documents to the LPA Coordinator.

12.3 Closeout Documentation

Part of the closing out the construction phase of a LPA project includes the completion of documentation by both the LPA and NDOT. This documentation must be completed prior to NDOT processing the final invoice for the project.

12.3.1 NDOT Closeout Documentation

Once the punch list is completed, the NDOT RE completes the following documents:

- Final Acceptance Report (Appendix C, Attachment F)
- Final Acceptance Letter (Appendix C, Attachment G)

The NDOT RE collects the required closeout documentation from the LPA Project Manager and forwards them with NDOT's closeout documents to the LPA Coordinator.

12.3.2 LPA Closeout Documentation

Upon acceptance of the project, the LPA Project Manager submits a project acceptance letter to the contractor and sends a copy to the NDOT RE. Standard requirements for the acceptance letter can be found in NDOT's Construction Manual. The letter shall identify documents to be submitted by the contractor.

The LPA Project Manager prepares As-Constructed plans and submits one copy of the As-Constructed plans to NDOT's RE. If the project is within NDOT's Right of Way, the LPA must submit two half-size (11" x 17") sets of the As-Constructed plans to the NDOT RE. The As-Constructed plans must be received prior to the final acceptance of the project.

The LPA Project Manager LPA will complete and sign the following closeout documentation and provide them to NDOT's RE:

- Contract Compliance Checklist (Appendix C, Attachment A)
- Final Material Acceptance Test Summary (Appendix C, Attachment B)
- Final Quantity Report (Appendix C, Attachment C)

12.4 Final Invoice

Upon completion of the closeout documentation, the LPA shall submit its final invoice. The final invoice shall be marked as such. For more information regarding the processing of the final invoice see Section 14.8.

CHAPTER 13 - CIVIL RIGHTS

13.1 General

Local public agencies, as recipients of federal funds, must comply with civil rights requirements to ensure fair and equitable delivery of programs and services. For the LPA, the civil rights requirements are primarily Title VI, Equal Employment Opportunity and Training, Disadvantage Business Enterprise (DBE), and the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

13.2 Title VI

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, and national origin in the provision of benefits and services. Additional nondiscrimination laws include the Federal-aid Highway Act of 1973, which added sex (gender) as a protected class; Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, which prohibits discrimination on the basis of disability; and the 1975 Age Discrimination Act, which prohibits discrimination on the basis of age.

The Civil Rights Restoration Act of 1987 clarified the broad institution-wide application of Title VI and other nondiscrimination statutes. The term “program or activity” means all of the operations of Federal-aid recipients, sub recipients, and contractors, whether such programs and activities are federally funded or not.

The LPA is required to comply with the U. S. Department of Transportation’s Title VI regulations contained in 49 CFR Part 21, and the FHWA regulations contained in 23 CFR 200. In addition, the LPA is expected to address Environmental Justice and Limited English Proficiency in accordance with Executive Orders 12898 and 13166, respectively.

In effect, FHWA Title VI Program assures nondiscrimination in programs and activities of agencies receiving Federal financial assistance. It is illegal to discriminate on the basis of race, color, national origin (including Limited English Proficiency), sex, age, disability and low income status.

13.3 Disadvantage Business Enterprise

The Disadvantage Business Enterprise (DBE) program is a program created to remedy past and current discriminations. It is intended to create a “level playing field” for minority and women owned firms and disadvantaged firms to compete for federal transportation funded contracts.

It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE), as defined in Title 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, have an equal opportunity to participate in the performance of federally financed contracts or subcontracts. To accomplish this goal, agencies involved in the

development of Federal-Aid projects must take appropriate measures to ensure DBE firms are encouraged to compete for construction contracts, procurement contracts, grants, services, financial aid, or other benefits, and that DBE firms have access to these opportunities.

Actions to ensure compliance with this policy must be approved by the FHWA and cannot be delegated to the state or LPA. The NDOT DBE program, as approved by the FHWA, establishes procedures for complying with state and federal policies, and applies to Federal-Aid projects.

NDOT's Contract Compliance Office administers the program and its implementation. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, sex or handicap in the award and performance of NDOT assisted contracts. Regulations require that NDOT set an annual state-wide federal-aid DBE participation goal. LPA projects contribute to meeting this annual state-wide goal. As such, the LPA may be required to incorporate and manage DBE goals in its contracts for professional services and construction.

Only firms that “fully” meet the eligibility requirements are permitted to participate as a DBE. The eligibility criteria include:

1. The firm must be a small business, for profit
2. The firm must be at least 51 percent owned by socially and economically disadvantaged individuals
3. The firm must be controlled by socially and economically disadvantaged individuals

A firm must be certified through the Nevada Unified Certification Program (NUCP) in accordance with 49 CFR Part 26. A current list of eligible DBEs can be found at <http://nevadadbe.com/website/dbe-vendors.php>.

13.4 Title VII Equal Employment Opportunity and Affirmative Action

Title VII of the Civil Rights Act of 1964 prohibits discrimination based race, color, and national origin in employment. Similar to Title VI, the definition of discrimination has been expanded to include sex, religion, age, and disability.

Equal Employment Opportunity (EEO) and affirmative action are required on federally funded construction contracts and are intended to prevent discrimination in conformance with Title VII. It is illegal for federal-aid construction contractors to discriminate in their employment practices or against individuals for the purposes of employment. This applies to employment practices related to hiring, upgrading, demoting, transferring, recruitment, recruitment advertisement, layoffs, and terminations, rates of pay or other forms of compensation and the selection for training.

Federal policy requires that Federal-Aid Construction Contracts include specific requirements to implement the Title VI program, related civil rights laws, and

regulations. These requirements are included in FHWA Form 1273 (Required Contract Provisions Federal-Aid Construction Contract Provisions) and apply to contractors, subcontractors and suppliers.

On-the-Job Training (OJT) and/or Apprenticeship Training Programs (ATP) may be used as an affirmative action tool to assist contractors to meet their EEO obligations. Similar to the DBE goals, NDOT in conformance with 23 CFR 230 Subpart A may assign a specific number of trainees and training hours to be included in the bid items of the contract. The goals are set based on the dollar amount of the project and the type and amount of work to be completed. The project bid documents shall include the goals. The LPA must enforce the use of trainees and training hours on its LPA projects.

NDOT is responsible for administering the EEO program for Federal-Aid projects and construction contracts and projects and will monitor the LPA and its contractors for compliance as part of normal project management reviews. Guidelines are included in the NDOT Construction Manual.

13.5 Americans with Disabilities Act (ADA) and Section 504

The Americans with Disabilities Act (ADA) was signed into law in 1990. The ADA builds upon the requirements of Section 504 of the Rehabilitation Act and is an important civil rights legislation that prohibits discrimination against people on the basis of disability. This act ensures people with disabilities have equal rights and opportunities as able-bodied people. The ADA is comprised of the following five titles that cover different aspects of public life:

- Title I (Employment)
- Title II (State and Local Government)
- Title III (Public Accommodations)
- Title IV (Telecommunications)
- Title V (Miscellaneous Provisions)

Title II of the ADA which applies to state and local governments and the programs, services and activities they provide. Local public agencies must ensure their programs, services and activities provided to the public are accessible to individuals with disabilities regardless of the source of funding. Under Title II, LPAs with more than 50 full time employees must meet the following requirements:

- Designate an ADA/Section 504 Coordinator responsible for coordinating LPA's efforts to comply with and carry out its responsibilities under Title II
- Make available to applicants, participants, beneficiaries, and other interested parties information regarding Title II and its applicability to the services, programs or activities of the LPA (Notice to the Public)
- Complete a self-assessment of services, policies and practices on compliance with the requirements of Title II

-
- Adopt and publish a grievance procedure for complaints alleging any action that violates Title II
 - Develop a Transition Plan to address how and when the LPA will correct the identified accessibility deficiencies

In addition to ADA, LPAs must comply with Section 504 of the Rehabilitation Act of 1973 (Section 504). Section 504 makes it illegal for the federal government, federal contractors and state and local governments receiving federal funds to discriminate on the basis of disability. It requires state and local governments ensure persons with disabilities have equal access to any programs, services or activities receiving federal funding. It also requires them to ensure their employment practices do not discriminate on the basis of disability.

CHAPTER 14 – ACCOUNTING

14.1 General

The uniform administrative requirements, cost principles and audit requirements for Federal awards to LPA is established under 2 CFR 200. 2 CFR 00 sets forth the uniform administrative requirements for grant and cooperative agreements, the cost principles for determining allowable costs, and audit requirements pursuant to the Single Audit Act Amendments of 1996.

14.2 System for Award Management and Data Universal Numbering System

Each recipient of federal funds is required to be registered in the System for Award Management (SAM) using their Data Universal Numbering System (DUNS) number. NDOT will verify through SAM that the LPA has an active DUNS number prior to entering into the Cooperative (LPA) Agreement and prior to making payments to the LPA for federal-eligible costs.

The LPA may register for a DUNS number and register in SAM at <http://www.grants.gov/web/grants/applicants/organization-registration.html>.

14.3 Direct costs

A direct cost is a cost for an item or service specifically and entirely for a federal-aid project. In general, direct costs must be reasonable, necessary and allocable to the specific federal-aid project. The eligibility of the selected items of cost is subject to the accounting policies and principles outlined in 2 CFR 200.

14.3.1 Salaries and Wages

Costs of salaries, wages and related payroll expenses incurred by the LPA staff that are actively engaged in direct project-related activities are considered eligible costs for federal participation and match requirements. However, the cost of salaries, wages and related payroll expenses of the LPA associated with maintenance, general administration, supervision and other overhead costs are not eligible for reimbursement.

14.3.2 Employee Leave and Holidays

The costs of leave such as annual, sick, military, jury, etc. that is earned, accounted for and used in accordance with established procedures are also considered eligible costs for federal participation and match requirements. The cost of such leave must be a liability of the LPA; must be equitably distributed to all activities and the pro rata cost distributed to a federal-aid project must be representative of the amount that is earned and accrued while working on the project.

14.3.3 Social Security, Retirement and Other Payroll Benefits

The costs incurred for social security, retirement, group insurance premiums and similar items applicable to salaries and wages of the public employees engaged by the LPA working on federal-aid projects may also be eligible costs for federal participation and match requirements. The costs for such benefits must be a liability of the LPA and must be equitably distributed to all activities and the pro rata cost distributed to a federal-aid project must be representative of the amount that is earned and accrued while working on the project.

If these costs are not automatically calculated and captured within the LPA's accounting system, these benefits must be submitted for review and approval on an annual basis for each employee working on a federal-aid project. Once approved these costs will be considered part of the direct costs and shall not be included in any indirect costs the LPA may seek approval for on federal-aid projects. Any benefit costs incurred prior to NDOT's approval are not considered eligible project costs.

14.4 Indirect Costs

Indirect costs are a cost of an item or service that benefits more than one project, program, and activity. These may include costs incurred by the LPA for the accounting system and activities, buildings and grounds, general office equipment, maintenance and the costs for salaries and other compensation for employees who perform those duties.

A LPA is not required to charge indirect costs on a federal-aid project. It may include them as a reimbursable item on a federal-aid project but doing so does not increase the amount of federal funding available on the federal-aid project. If a LPA wishes to include indirect costs as an eligible project cost, it must meet all the requirements of 2 CFR 200.412 through 2 CFR 200.417. The LPA must develop an Indirect Cost Allocation Plan (ICAP). The ICAP must identify the methods the LPA will use to calculate its indirect cost allocation and how it will consistently allocate indirect costs to all projects.

The LPA's indirect cost must be reviewed and approved by its Cognizant Federal Agency. This approved rate must be submitted to NDOT prior to the approval of the Cooperative (LPA) Agreement between the two agencies. Approved negotiated indirect cost rate can apply for a one-time extension of up to four years without further negotiation.

The LPA must submit its indirect costs on an annual basis to NDOT for acceptance. NDOT's acceptance is good for one federal fiscal year. The indirect costs must be accepted by NDOT before indirect costs can be charged on a LPA project. Any indirect costs incurred prior to NDOT's acceptance are not considered eligible project costs.

14.4.1 De Minimis Rate

For a LPA that receives less than thirty-five million dollars (\$35,000,000) in direct federal funding, they can request the use of a de minimis overhead rate. In order to qualify for the de minimis rate of ten percent (10%), the LPA must never have had a negotiated indirect rate.

14.5 Single Audit

A LPA that expends \$750,000 or more of federal funds during the LPA's fiscal year is required to obtain a single audit. The single audit must be done in compliance with the requirements of 2 CFR 200. If the LPA expends less than \$750,000 a year in federal funds, it is exempt from the audit requirements for that year, but its records must be available for review or audit by NDOT, FHWA, the U.S. Department of Transportation's Inspector General, and the Comptroller General of the United States or any of their duly authorized representatives.

The LPA shall provide NDOT's Accounting Division with a copy of its single audit each year it has an active LPA project.

14.6 Project End Date

In accordance with the requirements of 2 CFR 200, any programming action will require the inclusion of an end date for federal participation in project costs. A LPA project may have multiple programming actions, i.e. design, right of way and construction. The end date is the last date that federal funds will participate in eligible costs incurred on the project. Eligible project costs incurred prior to end date may be reimbursed even if the invoice is received after the end date, as long as they are submitted within ninety (90) days of the end date.

The LPA shall develop a process for determining the end date. It should take into consideration the project schedule including any required processes to ensure that federal requirements have been met and other factors that can delay the start of the project or the completion of the project.

NDOT will add additional time to the LPA developed end date to account for its processes for reviewing, accepting and auditing the project.

The project end date may be adjusted if there is a delay in the project that is beyond the control of the LPA or there is a change in the project scope that may extend the date of completion. An extension or modification of the project end date must be approved by FHWA. A request for an extension or modification must be accompanied by a written justification.

14.7 Invoicing

The LPA Program is a reimbursement program. The LPA must incur and pay the project costs prior to seeking reimbursement from NDOT. The LPA invoices NDOT in accordance with the Cooperative (LPA) Agreement.

14.7.1 LPA Responsibility

The LPA submits an invoice for one hundred percent (100%) of eligible costs, noting the percentage of the local funding match. The LPA should ensure that invoices are submitted in a timely manner to prevent a project from becoming inactive in the federal finance system and potentially having the unexpended federal funds de-obligated and the project closed.

The invoice should include the following information:

- The name of the LPA submitting the invoice.
- The name of a contact person within that LPA, in case of questions.
- The address of the LPA.
- The name of the contact person within NDOT.
- NDOT's project number provided in the "Notice to Proceed."
- The federal project number provided in the "Notice to Proceed."
- The agreement number provided in the "Notice to Proceed."
- A brief description of the project, i.e. installing lighting on U.S. 50.
- The time period the invoice covers beginning to end.
- The total eligible costs of the project for that time period.
- A description of the phase of work, i.e. preliminary design, construction engineering and/or construction.
- Auditable support documentation such as copies of LPA's employee time sheets or consultant invoices.
- Identify final invoice as such

Invoices for design and right of way activities shall be submitted to NDOT's LPA Coordinator for processing of payment.

Invoices for construction activities shall be submitted to NDOT's Resident Engineer for review and recommendation for payment. Construction invoices must include a monthly summary of quantities on the form (Appendix C, Attachment H). NDOT's Resident Engineer will forward the invoice to the NDOT LPA Coordinator for processing of payment after reviewing it.

In order for NDOT to process payments to a LPA, the LPA must have a vendor number through the Nevada State Controller's Office at http://controller.nv.gov/VendorServices/Electronic_Vendor_Registration.html.

14.7.2 NDOT Responsibility

Upon receipt of an invoice, the LPA Coordinator will date stamp the invoice showing when it was received. The LPA Coordinator will then review the invoice to ensure that the documentation supports the costs being invoiced. The LPA Coordinator will document the appropriate payment and the required federal match. The payment and the corresponding match will be shown on the invoice. The LPA Coordinator will sign the invoice to show approval of payment and complete the required paperwork to initiate a payment voucher. The complete invoice packet will be provided to the Administrative Assistant in the Road Design Division for entry into NDOT's payment voucher system and processed per NDOT's standard practices.

If the invoice is incomplete or has errors, the LPA Coordinator will work with the LPA to correct the invoice. The LPA Coordinator will add a note to the invoice indicating the issue and the date it was resolved. Once the issue is resolved, the invoice will be processed as outlined above. The invoice can not be processed until the issue is resolved.

14.8 Final Invoice

The LPA shall submit its final invoice within ninety (90) days after the completion of the project. The LPA must clearly identify the final invoice as such. The completion of the project is considered the acceptance of the project by NDOT's Resident Engineer. If a plant establishment period is included in the project and the project was considered substantially complete and accepted prior to the end of the plant of establishment period, the end date of the plant establishment period will be considered the completion of the project. Invoices received after the ninety (90) days may not be deemed eligible for reimbursement.

14.9 Final Payment

Prior to processing the final invoice, the NDOT LPA Coordinator will ensure that all the required close out documents have been completed and that NDOT has accepted the project. Then, the NDOT LPA Coordinator will determine the estimated total project costs including previous invoices, NDOT's cost to date, the estimated NDOT audit costs, and the final invoice. After establishing the estimated required match to the NDOT's costs, the NDOT LPA Coordinator will determine how much is available for the final payment.

The NDOT LPA Coordinator will complete the final invoice memo to be included with the final invoice and payment voucher for NDOT's Accounting Division. In addition, the LPA Coordinator will generate a final payment letter to be sent to the LPA. The letter provides the details of the total project costs and the final payment and notifying the LPA that an audit will be conducted.

CHAPTER 15 - PROJECT CLOSEOUT

15.1 Introduction

Project closeout is the process that “closes out” the financial award for a LPA. It is done once all applicable administrative actions and all the required work of the LPA project has been completed. The final invoice is typically the trigger for the start of the project closeout process.

There are three main steps in the project closeout:

1. Final Acceptance
2. Final Voucher
3. Records Retention

15.2 Project Final Acceptance

The final project acceptance for a LPA project with a construction phase occurs at the completion of the construction work and is done by NDOT’s RE. For other LPA projects that do not involve construction, the final acceptance varies with the type of projects. Typically, a LPA NEPA project’s final acceptance is contingent upon the final environmental document approval. For equipment type LPA projects, the final acceptance will be based upon the receipt of the equipment and the LPA final invoice.

The final acceptance indicates the NDOT has agreed that the project has been completed in accordance with the project authorization based on the scope of work and/or the approved plans and specifications, including any authorized changes.

15.3 Final Audit

The LPA Coordinator will initiate a request for an audit of the LPA agreement/project through NDOT’s Audit Services’ SharePoint site once the final invoice has been processed.

Internal Audit will audit the payable portion of the agreement. Following this audit, the Accounting Division will tabulate final costs and bill the LPA or work with the LPA Coordinator to issue payment for the balance of the project. NDOT’s Accounting Division will generate and submit to the FHWA the final voucher.

15.4 Agreement Closeout

Once NDOT’s Internal Audit Division completes the audit of the LPA agreement/project, NDOT’s Accounting Division determines the remaining balance of the agreement/project.

If it is determined that the LPA is entitled to additional funds, NDOT’s Accounting Division will notify the LPA Coordinator and provide the final payment amount. The LPA

Coordinator will process the final payment based on the audit findings. After processing the final payment, the LPA Coordinator will initiate the agreement closeout by completing the request through NDOT's Agreement Services' SharePoint site.

If it is determined that the LPA has been overpaid or paid for ineligible costs, NDOT's Accounting Division will generate an invoice and bill the LPA. Once payment has been received from the LPA, NDOT's Accounting Division will initiate the agreement closeout by completing a request through NDOT's Agreement Services' SharePoint site.

The LPA agreement is closed out once the agreement closeout form is signed by all required parties within NDOT.

15.5 Final Voucher

NDOT's Accounting Division initiates the final voucher submittal to FHWA. This is the final financial transaction with FHWA. This step is initiated once NDOT's audit of project costs is complete and a payment is made to the LPA for any remaining funds due to the LPA or the LPA has provided a payment for any overpayments or payments for ineligible project costs.

15.6 Records Retention

Once the final voucher has been processed and approved by FHWA, the records retention period begins. Federal regulations require that all federal-aid project records are retained for a minimum of three years following the last "action" on the project. The LPA must maintain its records associated with the agreement/project during this three year period. These records must be available for review or audit by NDOT, FHWA, the U.S. Department of Transportation's Inspector General, and the Comptroller General of the United States or any of their duly authorized representatives.

15.7 Project Archiving

The NDOT LPA Coordinator will archive the workbooks and the construction documents in accordance with NDOT's Record Retention Guidelines.

APPENDIX A

ENVIRONMENTAL GUIDANCE

Historic Properties and Cultural Resource Compliance

This information and the attached outlines are provided as guidance for compliance with Section 106 of the National Historic Preservation Act (NHPA) for LPA Projects. Each federal project is required to complete NHPA Section 106 as a requirement for funding. The NHPA Section 106 process for FHWA projects or FHWA funding is detailed in the 2014 Nevada Transportation Programmatic Agreement (PA), available at the NDOT Cultural Resources website:

http://www.nevadadot.com/About_NDOT/NDOT_Divisions/Engineering/Environmental_Services/Cultural_Resources.aspx

This guide has proven to be an effective method and process for successfully completing LPA Projects through NDOT and FHWA.

The first step in this process is to develop a firm scope for the project. For the purpose of this process, project scope means the 3-dimensional footprint (i.e., how wide, long, high and deep). For projects involving structures in historic areas, the shape, color and texture of the structure and other appurtenances are important in the compliance process. If the scope of the project changes in the middle of this process, then much of the Section 106 compliance work completed to that date becomes wasted time, money and effort.

Once a firm scope for the project is developed, contact the Manager of the Cultural Resource Section (MCRS) Environmental Services Division, NDOT, for a review of the project's compliance needs (775) 888-7666. The MCRS will need the scope of the project for review, which must include the following exhibits:

1. A parcel map, available from the County Assessor's Office.
2. A written description of the scope of the project,
3. If the project is in an urban area, the following maps are required:
 - a) A general area map showing the street names and network around the project area. A standard city map works well for this purpose.
 - b) A small-scale map showing the specific footprint of the project.
 - c) Aerial photographs, if available, are very helpful.
 - d) Any other maps or plans specific to the project that are available at the time would be helpful.
4. If the project is outside of an urban area, the following maps are required:
 - a) On a 1:100,000 scale topographic map (USGS 30 x 60 Minute Quadrangle) a general area map showing the location of the project.
 - b) On a 7.5-minute (1:24,000 scale) USGS topographic map, the specific footprint of the project.
 - c) Aerial photographs showing the location of the project, if available, are very helpful.
 - d) Any other available maps or plans specific to the project are also be helpful.

After reviewing the project's scope, the MCRS will notify the LPA of the type and level of cultural resource review, inventory and/or evaluation that the LPA will be required to complete in order for NDOT to certify the project for federal funding through the LPA program. Depending on the scope and potential impacts of the project, the following may need to be completed:

1. A project screening form, per the PA
2. A Cultural Resource Inventory and/or evaluation report, per the PA
3. A Historic Structure/Architectural survey and/or evaluation per the PA

A Native American Consultation is also required and will be completed by NDOT on behalf of FHWA. The Native American Consultation will commence once the screening form has been completed and accepted by the State Historic Preservation Office (SHPO).

Once notified of the types of inventory and/or evaluations needed, the LPA must acquire the services of an archaeologist, a cultural anthropologist/ethnographer, and/or an architectural historian either from existing staff or through a consultant agreement. The various inventories and evaluations must be conducted by, or under the direction of, an individual who qualifies under the Secretary of the Interior's Professional Qualification Standards (36 CFR Part 61, Appendix B or the most recent publication of the Standards has been in the Federal Register, Vol. 62, No. 119, June 20, 1997, Pages 33, 708-33, 723).

As these individuals are hired, the LPA must have them contact the MCRS to consult on the range of work that will be needed from their particular discipline for the project. At this time, the Area of Potential Effects (APE) is established for each of the inventory types.

Generally, the APE for cultural resource inventory will be the right-of-way or footprint of the project itself. This includes existing and new right-of-way, construction easements and utility easements necessary for the project, construction staging areas and non-commercial material sources. The indirect APE for a historic structure/architectural survey is the project's functional view shed, sometimes this can encompass a substantial area. The LPA and their consultants are strongly encouraged to consult with the MCRS before setting the indirect APE to keep costs contained for the project.

Once the scope of work, direct APE and any indirect APE are established, the LPA or their consultants completes the screening form and submits the form, APE maps, and overview photos (and/or Google Earth imagery) to the MCRS. The MCRS will review the form and request any needed revisions for submittal to SHPO on behalf of the FHWA. Once submitted to SHPO, the SHPO has two business days to comment on the proposed APE and level of cultural inventory.

If the project involves reports for a federal land management agency (BLM, USFS, etc.) each agency identified will also be given the opportunity to comment on the proposed APE, indirect APE and level of inventory via the screening form. The MCRS will submit

the screening form to the federal land management agency on behalf of FHWA. The federal land management agency has 10 business days to comment.

It is at this stage of the process that the specific inventories, etc. needed for the project should be conducted by the LPA. Information for each of those processes is attached to this introduction of the overall process and in the 2014 Transportation PA Handbook.

When the results of the specific inventories are known, the LPA must consult with the MCRS to determine the format and number of copies of the reports, maps, photographs, etc. that are needed. The required inventory and site form templates to be used for FHWA projects are included in the 2014 Transportation PA Handbook. The LPA will also be required to submit GIS shapefiles for the project.

Once the reports are in solid draft form, the LPA forwards them to the MCRS for review. The MCRS will review the reports and ask for any revision that will be necessary to submit the report on behalf of the FHWA to the SHPO for review and comment.

After any necessary revisions are completed on the reports, the LPA must forward the required number of reports to the MCRS for assembly of the Section 106 review package for the project. Formal review and certification by the NDOT/FHWA and the SHPO can take 60 to 90 days, depending on NDOT and FHWA project load and priorities. Additionally, it is not uncommon for the SHPO to request more information after reviewing the submitted reports. After that information is developed and the reports are updated, they are resubmitted to the SHPO for review and concurrence.

Common Terms Used in the Compliance Process:

36 CFR 800 Regulations: Can be found at www.achp.gov/regs.html

PA: 2014 Transportation Programmatic Agreement: the document that defines the S106 process for LPA (and other) projects: Can be found at http://www.nevadadot.com/About_NDOT/NDOT_Divisions/Engineering/Environmental_Services/Cultural_Resources.aspx

MCRS: The Manager of the Cultural Resource Section, Environmental Services Division, at NDOT's Carson City offices

EPM: The Environmental Program manager for the FHWA. This individual is the "agency official" referred to in the 36 CFR 800 regulations

SHPO: The State Historic Preservation Office or officer also referred to in the 36 CFR 800 regulations

APE: The Area of Potential Effects 36 CFR 800.16(d)

For additional information, contact: Environmental Services Division
Nevada Department of Transportation
1263 S. Stewart St.
Carson City, NV 89712
(775) 888-7013

Process for Cultural Resource Site Inventory and Evaluation

This outline is provided to provide guidance to the LPA on the process necessary for the LPA to complete a cultural resource site inventory and/or evaluation for federal undertakings. This process is directed by the regulations (36 CFR 800) that implement the National Historic Preservation Act. Those regulations can be found at www.achp.gov/regs.html

1. To initiate the inventory process, obtain the services of an archaeologist from staff or through a consultant agreement. The inventory must be conducted by, or under the direction of, an individual who qualifies as an archaeologist under the Secretary of the Interior's Professional Qualification Standards (36 CFR Part 61, Appendix B, or the most recent publication of the Standards has been in the Federal Register, Vol. 62, No. 119, June 20, 1997, Pages 33,708-723).
2. In consultation with the MCRS, establish what the project's APE will be for the site inventory. Generally, the APE for site inventory will be the right-of-way or footprint of the project itself. This includes existing and new right-of-way, construction easements, and utility easements necessary for the project, construction staging areas and non-commercial material sources.
3. Conduct appropriate background review to determine if the APE has been inventoried before and what are the expectations on what could be found in uninventoried areas.
4. In consultation with the MCRS, prepare a screening form with appropriate maps and images for SHPO review prior to conducting any fieldwork.
5. Obtain all necessary permits to conduct a ground site inventory. This generally applies if lands are controlled by federal land management agencies.
6. Conduct a site inventory of uninventoried areas in the APE, record and evaluate all located cultural resource sites for eligibility for the National Register. Normally, all new site inventories will be done using Class III inventory procedures as defined in the Nevada BLM's Cultural Resources Inventory General Guidelines, and sites will be recorded using the Intermountain Antiquities Computer System (IMACS).
 - a) For previously inventoried areas, relocate any sites within the present APE, update the existing site record to current standards (IMACS) and evaluate the site for eligibility to the National Register.
7. Produce an appropriate cultural resource site inventory report.
 - a) The LPA archaeologist should consult with the MCRS to determine the format and number of copies needed at each stage of review, comment and approval.
 - b) All reports, IMACS, ARA forms, maps, photos and shapefiles will be prepared using the 2014 Transportation PA, available at

8. The size, complexity and cost of site inventory and evaluation reports increase with the number and type of cultural resource located within the project's APE. As the complexity of a report increases, it is to the project proponent's advantage to ensure that its archaeologist is working closely with the MCRS and SHPO to ensure that the report they are producing will be adequate for the regulatory needs of the proposed project.
9. Once the inventory and evaluation report is in a solid draft form, forward the report to the MCRS for review. The MCRS will review the report and ask for any revision that will be necessary to submit the report through the FHWA to the SHPO for review and comment.
10. If there are cultural resource sites within the APE that are recommended as eligible to the National Register, then the criteria of adverse effect may be applied and analyzed (36 CFR 800.5).
11. If the project reaches the point where it may result in adverse effect to an eligible historic site, consult at length with NDOT's project manager, the manager of the Cultural Resource section, and FHWA's Environmental Program manager regarding the practicality of the proposed project. Although projects are often completed when they have adverse effects to historic sites, the project's timeline and cost often increase beyond what is practical for enhancement or LPA Projects. For information on the complexity of projects proceeding under adverse effect, review 36 CFR 800.5 through 800.6.

APPENDIX B

CONSTRUCTION FORMS



Nevada Department of Transportation
Certification of Material Origin
(Required for Acceptance of Steel and Iron Materials)

Contract	SR
Section	
Contractor	
Subcontractor / Supplier	
Materials: Bid Item	Quantity
Description	

The following Certification of Materials Origin is made for the purpose of establishing materials acceptance under Contract Provisions entitled "Buy America." Materials as described above are furnished for use in compliance with the certification as noted in 1 or 2 below. Buy America regulation may be found in the 23 CFR 635.410. Unless a Certificate of Materials Origin has been provided to the Engineer, the materials shall be considered of foreign origin.

- 1. The materials covered by this certification are American-Made with all manufacturing processes entirely within the United States of America.
- 2. The materials furnished for this project under this certification contain steel or iron manufactured, all or in part, outside the United States of America, or its trail of manufacture cannot be certified.

The Description and Country of Origin of these materials is as follows:
The Invoice Cost for the above described foreign-made materials is:

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

_____	_____
Contractor / Subcontractor / Supplier Name	Phone #
_____	_____
Authorized Corporate Official Signature	Date
_____	_____
	Location

ATTACHMENT: MILL TEST REPORTS

Commercially Useful Function Form



COMMERCIALLY USEFUL FUNCTION (CUF) PROJECT SITE REVIEW CUF FORM

Per 49 CFR 26.55, "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation..." This form is for the purposes of reviewing DBEs for compliance with the CUF requirements for credit.
Resident Engineer's will perform CUF reviews on DBE a federally-assisted construction project. The review should be conducted when the DBE first begins work. Monitor compliance through the course of the project.

Contract/Project No(s): County(ies): Prime Contractor: DBE Superintendent/Foreman: DBE Start Date:	Resident Engineer: NDOT Reviewer: Reviewer Title: Review Date: DBE Anticipated Completion Date:
--	---

DBE Name:

Provide a brief description of the DBE's scope of work:

	Yes	No
Supervision Does the DBE have a superintendent/foreman on project? Does the superintendent/foreman work exclusively for the DBE? If not, who does he/she work for? Who does the superintendent/foreman report to?	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
Employees Does the DBE have employees on the job? Do they appear on DBE payrolls? If not, why? Do they appear on prime contractor's payroll? Who Assigns work to them?	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Performance Has any other contractor performed any of the DBE's work? If yes, who and what work items?	<input type="checkbox"/>	<input type="checkbox"/>
Equipment Whose name appears on the equipment? Does DBE own or lease equipment? Does DBE use prime contractor's equipment?	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
CUF Does it appear the DBE is performing a CUF? If DBE is not performing a CUF, contact Contract Compliance Office	<input type="checkbox"/>	<input type="checkbox"/>

COMMENTS:

Reviewer Signature _____

R.E. Signature _____

Request to Sublet Forms

STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION

REQUEST TO SUBLET

Requests to subcontract at all tiers are to be made on this form.

Date: _____

NDOT Contract No. _____ Project No. _____

Project Location: _____

The undersigned contractor hereby requests permission to sublet the following work items, which are a portion of the aforementioned contract,

to _____ Nevada Contractors' License No. _____

When contract items are to be sublet, contract unit prices and/or amounts are to be shown in the following tabulation.

Item Number	Quantity	Unit	Item Description (If the item subcontracted is a partial performance, indicate the percentage of the Total Amount Contracted for the Item)	Unit Price	Total Amount Contracted for the Item

Total amount sublet

Less amount of specialty items sublet

Equals the total amount applicable to the 50% limitation

It is agreed and understood, that the executed subcontract will contain, by inclusion all of the pertinent provisions, terms and/or requirements of the contract number indicated and will be subject to the terms and requirements thereof.

Name of contractor requesting to sublet Authorized signature of requesting contractor Date: _____

Qualifications of subcontractor: Has the subcontractor performed similar work? If so with whom and in what amount? _____

The subcontracting contractor is to furnish a signed copy of this request to sublet and a subcontract agreement to the NDOT resident engineer overseeing the contract. There must be a written approval of the request to sublet and the subcontract agreement signed by an authorized NDOT representative prior to the subcontractor actually starting work on the project.

FOR NDOT DEPARTMENT USE ONLY:

NDOT Contract amount

Less the total amount of specialty items for the contract

Equals contract amount applicable to the 50% limitation

Total amount sublet to date including this request is _____ for a total of _____ % of the permissible amount that can be sublet.

Approved by: _____ Date: _____
Contract Compliance Manager or Chief or Assistant Construction Engineer

Print Form

APPENDIX C

CONSTRUCTION CLOSEOUT DOCUMENTS

NDOT Resident Engineer Package

The LPA Program was developed by the FHWA and the NDOT for Federal-aid project review, oversight and administration. The provisions of the Program are applicable to all Federal-aid funding sources. The laws and regulations applicable to the Program include but are not limited to:

- Title 23 United States Code
- Title 49 United States Code
- Title 23 Code of Federal Regulations (Highways - Parts 230, 630 & 635)
- Title 49 Code of Federal Regulations (Transportation)
- Nevada State Laws

In an effort to streamline the process in which the NDOT Resident Engineer oversees LPA Projects, the Construction Office has put together a LPA package for reference. NDOT REs can find the most current forms for their use on Construction's SharePoint Site.

Construction Closeout

Upon completion of the project, the NDOT RE is responsible for the following documents:

Collected from the LPA:

1. Contract Compliance Checklist (Attachment A)
2. Final Material Acceptance (Attachment B)
3. Final Quantity Report (Attachment C)
4. FHWA Form 1391 (Attachment E)

Generated by the NDOT RE:

1. Copies of all Interim Inspection Reports (Attachment D)
2. Final Acceptance Report (Attachment F)
3. Final Acceptance Letter (Attachment G)

These documents will be forwarded to the LPA coordinator in Road Design.

Contract Compliance Checklist for LPA Projects

FEDERAL AID NO.: _____

This checklist must be filled out on any LPA project administered by the NDOT. The agency administering the contract is responsible to ensure that the provisions of Executive Order 11246 are followed. Any Violations or Complaints of EEO Provisions must be reported immediately to the Contract Compliance Division and a report detailing the complaint must be provided.

THE AGENCY ADMINISTERING THE CONTRACT INSURES THAT THE FOLLOWING INFORMATION WAS GATHERED.

THE FOLLOWING SUBCONTRACTOR INFORMATION IS AVAILABLE FOR EACH SUBCONTRACTOR.

	Yes	No	Date
Request to Sublets (All Subs) *DBE Firms must be noted	<input type="checkbox"/>	<input type="checkbox"/>	_____
Subcontract Agreements (list missing or incorrect info on separate sheet)	<input type="checkbox"/>	<input type="checkbox"/>	_____

	Yes	No	Date
CERTIFIED PAYROLL Were Certified Payroll requirements met for Prime Contractor and each Subcontractor?	<input type="checkbox"/>	<input type="checkbox"/>	_____

	Yes	No	Date
EEO REQUIREMENTS Are there employees working on the project during the last week of July?	<input type="checkbox"/>	<input type="checkbox"/>	_____

If yes, Prime and Subcontractor must provide completed FHWA 1391 forms by 2nd week in August and submit them to NDOT.	<input type="checkbox"/>	<input type="checkbox"/>	_____
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	Yes	No	Date
DBE MONITORING RESPONSIBILITIES Are DBE firms working on the project?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Was the DBE goal met?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Did the Prime Contractor Provide Monthly Payment Reports for all subcontractors (DBE and non-DBE subs)	<input type="checkbox"/>	<input type="checkbox"/>	_____

Signature/Title

Date

**Attachment B:
Material Acceptance Letter**

Mr./Ms. [NAME], P.E., Director
Nevada Department of Transportation
1263 South Stewart Street
Carson City, Nevada 89712

Acceptance of
Federal Aid No. [FEDERAL AID NO]

ATTN: [NAME], NDOT Resident Engineer

Dear Sir/Madam:

In reference to Federal Aid No. 0

If no failures occur:

As required by the plans and specifications:

1. All samples have been secured and tested.
2. All certificates of compliance have been secured and filed in our office.
3. All field tests have been taken and results filed in our office.
4. All material tested substantially meet plans and specification requirements.

OR

If failures occur:

As required by the plans and specifications:

1. All samples have been secured and tested.
2. All certificates of compliance have been secured and filed in our office.
3. All field tests have been taken and results filed in our office.
4. All materials tested substantially meet plans and specification requirements with the exception of those items listed below, that were accepted based on the following:
 - a. *List of materials including bid item numbers*
 - b. *List of material acceptance based on liquidated damages, dollar amount, change order number if applicable, etc.*

If you have any questions, please don't hesitate to give me a call at [PHONE].

Sincerely,

[NAME], Agency Representative

**NEVADA DEPARTMENT OF TRANSPORTATION
INSPECTION REPORT FOR LPA PROJECTS**

	INSPECTION TYPE	
	<input type="checkbox"/> INTERIM <input type="checkbox"/> FINAL	
PROJECT ID	FEDERAL AID NO	INSPECTION DATE
PROJECT LOCATION		
INSPECTED BY		IN THE COMPANY OF

QUALITY OF WORK	PROGRESS OF WORK	TIME ELAPSED	WORK COMPLETED
<input type="checkbox"/> SATISFACTORY <input type="checkbox"/> UNSATISFACTORY	<input type="checkbox"/> SATISFACTORY <input type="checkbox"/> UNSATISFACTORY	0.00%	0.00%

<input type="checkbox"/> CHANGE ORDERS (Explain below)	<input type="checkbox"/> LIQUIDATED DAMAGES	<input type="checkbox"/> OVERRUNS	<input type="checkbox"/> UNDERRUNS
CHANGE ORDER NUMBERS:	TOTAL AMOUNT:	ITEMS: TOTAL AMOUNT:	ITEMS: TOTAL AMOUNT:

SCOPE OF WORK:

WORK IN PROGRESS:

TRAFFIC CONTROL:

CHANGE ORDERS:

REMARKS:

**SIGNATURE OF NDOT RESIDENT
ENGINEER :**

DATE:

**Attachment E:
FHWA Form 1391**

FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS ANNUAL EEO REPORT

1. MARK APPROPRIATE BLOCK	2. COMPANY NAME, CITY, STATE:	3. PROJECT NUMBER:	4. DOLLAR AMOUNT OF CONTRACT:	5. PROJECT LOCATION: (County and State)
<input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor				

This collection of information is required by law and regulation 23 U.S.C. 140a and 23 CFR Part 230. The OMB control number for this collection is 2125-0019 expiring in March, 2016.

6. WORKFORCE ON FEDERAL-AID AND CONSTRUCTION SITE(S) DURING LAST FULL PAY PERIOD ENDING IN JULY 20__ (INSERT YEAR)

JOB CATEGORIES	TABLE A																TABLE B					
	TOTAL EMPLOYED		TOTAL RACIAL/ ETHNIC MINORITY		BLACK or AFRICAN AMERICAN		HISPANIC OR LATINO		AMERICAN INDIAN OR ALASKA NATIVE		ASIAN		NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER		TWO OR MORE RACES		WHITE		APPRENTICES		ON THE JOB TRAINEES	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
OFFICIALS	0	0	0	0																		
SUPERVISORS	0	0	0	0																		
FOREMEN/WOMEN	0	0	0	0																		
CLERICAL	0	0	0	0																		
EQUIPMENT OPERATORS	0	0	0	0																		
MECHANICS	0	0	0	0																		
TRUCK DRIVERS	0	0	0	0																		
IRONWORKERS	0	0	0	0																		
CARPENTERS	0	0	0	0																		
CEMENT MASONS	0	0	0	0																		
ELECTRICIANS	0	0	0	0																		
PIPEFITTER/PLUMBERS	0	0	0	0																		
PAINTERS	0	0	0	0																		
LABORERS-SEMI SKILLED	0	0	0	0																		
LABORERS-UNSKILLED	0	0	0	0																		
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

TABLE C (Table B data by racial status)

APPRENTICES	0	0	0	0																		
OJT TRAINEES	0	0	0	0																		

8. PREPARED BY: (Signature and Title of Contractors Representative)	9. DATE	10. REVIEWED BY: (Signature and Title of State Highway Official)	11. DATE
---	----------------	---	-----------------

NEVADA DEPARTMENT OF TRANSPORTATION
FINAL ACCEPTANCE FOR LPA PROJECTS

PROJECT ID	FEDERAL AID NO	FINAL INSPECTION DATE

PROJECT LOCATION

DATE CONTRACT STARTED	DATE CONTRACT COMPLETED	DATE OF ACCEPTANCE BY CONTRACTING AGENCY

SCOPE OF WORK:

--

REMARKS:

Procedures and controls were sufficient to assure that this project has been completed in conformance with the approved plans and specifications including authorized changes and extra work.

--

--	--

SIGNATURE OF NDOT RESIDENT ENGINEER:

DATE:

**Attachment G:
Final Acceptance Letter**

[AGENCY NAME]

[AGENCY ADDRESS]

[CITY | STATE | ZIP]

Acceptance of
Federal Aid No. [FEDERAL AID NO]

ATTN: [NAME], Project Engineer

Dear Sir/Madam:

In reference to Federal Aid No. 0

A field inspection was conducted and all items of work were found to be acceptable and completed within reasonable compliance with the Contract Plans and Specifications. Therefore, the Nevada Department of Transportation accepts this Contract work.

If you have any questions, please don't hesitate to give me a call at [PHONE].

Sincerely,

[NAME], NDOT Resident Engineer

cc: District Engineer
Assistant Resident Engineer
Chief Construction Engineer
District Traffic Engineer LPA
Coordinator

