

The Federal-aid Process



Project Authorization / Funds Obligation

FHWA commitment that Federal funds are available for the project

1. Preliminary Engineering (PE)
2. Right of Way acquisition (ROW)
3. Construction

- **Required prior to incurring any expenses**
 - Work done before the date of FHWA Division authorization is NOT eligible for reimbursement

Planning Phase

- 23 CFR 450: Federally mandated planning process.
- Metropolitan Planning Organizations and SDOTs
- Identification of a Transportation Needs
- Long Range Transportation Plans: Contains Programs and Projects

Programming Phase

- Transportation Improvement Program (TIP)
- Statewide Transportation Improvement Program (STIP)
- Project Must Be Programmed in the STIP to Receive FHWA Project Authorization

Preliminary Engineering Phase (PE)

- Obtain PE Authorization.
- Solicitation and Hiring of Professional Engineering Firm including Advertising
- Preparation of Conceptual and Final Design
- Environmental Analysis
- Preparation of Bidding Document (Plans, Specifications and Estimate (PS&E))

CEQ NEPA defines Classes of Action

- Environmental Impact Statements (EIS) – When you know there will be significant environmental impacts
- **Categorical Exclusion (CE)** - When you know there will not be significant environmental impacts
- Environmental Assessment (EA) – When you don't know

Design Standards

- National Highway System (NHS): 23 CFR 625.4
- Projects off the NHS, the design, construction, maintenance and operation must be in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards. (23 CFR 625.3(2))
As a minimum, FHWA requires design standards meet minimum AASHTO criteria.
- Americans with Disabilities Act (ADA)

Right-of-Way Phase

- Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act)
- Uniform Act applies when Federal dollars utilized in any phase of a project.
- **ROW Certification** Required to Advance Project.

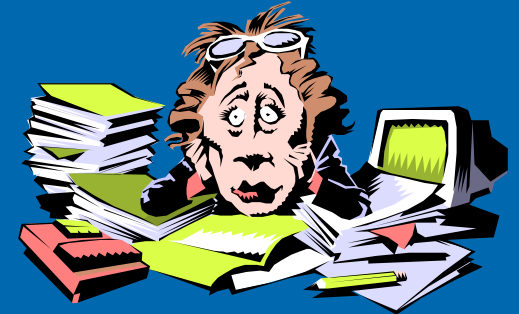
Plans, Specifications & Estimates

- **PS&E Package (not an all-inclusive list)**
 - FHWA Form 1273
 - Buy America
 - Standardized Changed Condition Clauses
 - DBE
 - Environmental Commitments
 - WZ Traffic Control plan
 - NO local preferences for contractors or materials (w/ some exceptions for materials)
 - Regulatory Permits
 - Engineers Estimate

- Certification (PS&E)

Engineer's Estimate

- Applies to Federal-aid highway projects on the National Highway System (NHS)
- Essential to FHWA project approval
 - Estimate of financial obligation
 - Evaluation of bids for unbalancing
 - Comparison basis for award
- Estimate accuracy tracking
 - FHWA goal - EE +/- 10% of low bid 50% of time
- Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation"



<http://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm>

Ineligible Items

➤ Non-Conforming Material that Agency Accepts

- Material not meeting specifications
- Items not installed according to specifications
- “Experimental” Proprietary product (without approved experimental feature work plan)
- Public Interest Finding (PIF) not processed:
 - Patented / proprietary product
 - Force Account

➤ Work that has been performed prior to the date of FHWA authorization or approval

Federally Required Provisions Form FHWA 1273

- A “Convenient collection” of Federal Regulations
- Required for all Federal-Aid **CONSTRUCTION** projects, regardless of size, location, or funding source
- Physically incorporated in PS&E
- Also Applies to Subcontracts and Purchase Orders
- No modifications
- Failure to include the FHWA-1273 could result in the loss of federal-aid funding



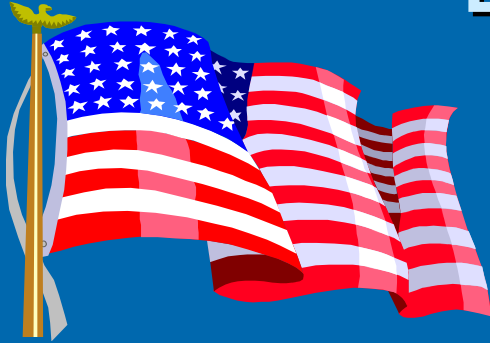
Prevailing Wages

- When is a project covered by prevailing wages?
 - Davis-Bacon and Related Acts
 - \$2,000.00
 - Covers “Laborers and Mechanics” work performed directly on the site of work
 - Construction, alteration or repair of public buildings or public works
 - No wage updates
 - Must be in proposal
 - Wage Decisions: <http://www.wdol.gov/>

DBE Contract Compliance

- The following examples illustrate situations where the DBE is not performing a commercially useful function.
 - The DBE does not actually perform, manage, or supervise the work in its subcontract
 - The DBE uses employees of the prime contractor or another subcontractor
 - DBE uses equipment of another subcontractor on the project without a lease agreement
 - A DBE uses supervisors of the prime contractor or another subcontractor
 - The DBE is not responsible for the execution of a precise element of the work of the contract

Buy America



- 23 CFR 635.410
- All Federal-aid construction projects

- IRON & STEEL only
 - all manufacturing processes must take place domestically
 - includes coatings on these materials
 - Covers materials permanently incorporated into project.
 - Minimal Use Exemption = 0.1% (contract value) or \$2500 (whichever is greater)

- Covers all contract items including 100% State funded. Keep material certification records.

- Waivers have to be given by FHWA Headquarters

Federally Required Contract Clauses and Conditions

➤ Restriction of competition

- 23 CFR §635.110: Licensing and Qualification of Contractors
- No procedure or requirement may operate to restrict competition, prevent the submission of a bid or prohibit the consideration of a bid submitted by any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed..

Construction Authorization for IMPP Projects:

- ✓ STIP
- ✓ Categorical Exclusion (PA)
- ✓ ROW Certification
- ✓ PS&E (FHWA Approval
not required)

Method of Construction (contracting method determination)

- 23 CFR 635.104
- 23 CFR 635 Subpart B
- All Federal-aid construction projects
- **Competitive Bidding** the Key Tenet
- FHWA Policy: Contractors should furnish and select material sources

Exceptions

- Force Account (Not Permitted under IMPP Agreement)
- Publically-Owned Equipment
- Patented/Proprietary Products
- Agency-Owned or Designated Material Sources
- Designated Disposal Sites

Public Interest / Cost Effectiveness Findings

- Applies to all Federal-aid highway construction projects
- FHWA approval for Federal oversight projects; can be delegated to STA for all others
- Written documentation supporting finding
 - FHWA considers effect or possible precedent set

Patented/Proprietary Products

➤ **Not** Federal-Aid eligible unless:

- Specified in contract with “reasonable” number of acceptable (or “equal”) products or materials.
- If no Alternative products, Public Interest Finding (PIF) required based on one of the following:
 - System synchronization (w/ PIF)
 - i.e. Coordinate with w/existing facilities (Functionally, Aesthetically)
 - No equally suitable alternative (w/PIF)
 - New product for experimental/research (w/PIF)
 - FHWA procedures include approved work plan

Agency Preference for Product or Materials Source

- 23 USC 112, 23 CFR 635.409
- All Federal-aid construction projects

*Cannot give preference to in-State or local materials sources, including labor.
(Preferences Restrict Competition)*

Advertising for Bids

Federal Construction Authorization is needed
Prior to the Advertisement for Bids

- Following Approved PS&E and Cleared ROW and Utilities.
- Publish Minimum of 3 Weeks Prior to Bid Opening
- Shorter Advertising Periods may be approved by FHWA.

Bid Opening & Tabulation

- 23 CFR 635.113
- All Federal-Aid construction projects
- Federal Law states
...“Bid openings shall be public and read aloud”...
- Select Lowest Responsive And Responsible Bidder



Suspension & Debarment

- Debarred firms and/or individuals are prohibited from award of **ANY** contract requiring the consent of USDOT
 - Prime contract
 - Lower tier transactions:
 - Exceeding \$25,000 or
 - Where a person can exert critical influence (i.e. Auditing, inspection, quality assurance)

Excluded Parties List System

<https://www.epls.gov/>

Responsive Bids


Some reasons for not reading a bid due to bidding irregularities may include:

- failure to sign the bid
- failure to furnish the required bid bond
- failure to include a unit bid price for each item
- failure to include a total amount for the bid
- failure to prepare the bid in ink
- failure to submit a non-collusion affidavit
- failure to commit to the achievement of the DBE contract goals or demonstrate good faith efforts to do so

Bidding

- Negotiation with contractors, during the period following the opening of bids and before the award of the contract shall not be permitted. (23 CFR 635.113(a))

Concurrence in Award

- Authorization to proceed with construction on FHWA Oversight Projects
 - Prerequisite for Federal-aid participation
 - Under IMPP, FHWA Concurrence not required.
- 

Subcontractor Agreements

- 23 CFR 635.116
- Prime Contractor must perform at least 30% of the work
- Subcontract must be in the form of a written agreement containing all the requirements and pertinent provisions of the prime contract .
- FHWA 1273 must be physically included in each subcontract

Project Staffing & Supervision

- Project must be adequately staffed & suitably equipped to undertake & satisfactorily complete the work; and
- Full-time employee of public agency must be in responsible charge of project

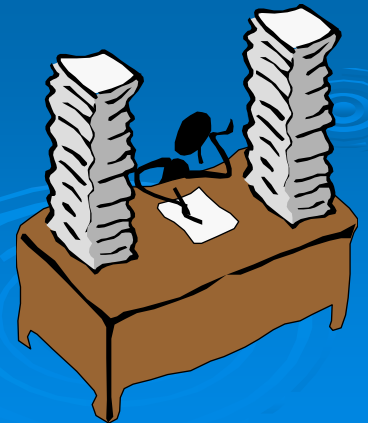


Pre-Construction Meeting

- Required by NCDOT
 - After Contract Award
 - Before Start of Work
- Attended By
 - Sponsor's Person in Responsible Charge
 - Construction Inspector
 - Contractor
 - NCDOT and FHWA Area Engineer
 - Consultant(s)
 - Any Affected Regulatory Agencies

Inspection and Documentation

- Procedures for inspection & documentation
 - NCDOT Construction Manual & other guidelines
 - Electronic record keeping
 - Regular review of records
- Major areas of documentation
 - Daily diaries or Inspector's daily reports
 - Method of Measurement & Basis of Payment
 - Estimated vs. final quantities
 - Materials submittals (certificates of compliance, test reports, etc)
 - QC, QA, Acceptance, IA
 - Shop drawings
 - Payroll and DBE Records
 - Work zone safety & traffic control
 - Change Orders, Extensions of Time
 - Claims



Job Site Posters - Contract Admin - Construction - FHWA - Windows Internet Explorer

http://www.fhwa.dot.gov/programadmin/contracts/poster.cfm

U.S. Department of Transportation
Federal Highway Administration

Construction

Quality Management & Coordination Details Safety Materials Contract Administration

FHWA > Engineering > Construction > Contract Admin > Job Site Posters

Job Site Posters

Required US Department of Labor posters are available on the USDOL website at <http://www.dol.gov/osbp/sbrefa/poster/matrix.htm>. FHWA posters are available at <http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm>. The revision dates shown in this listing were current as of 11/27/2007.

OFCCP 1420 Revised 2008	Equal Opportunity is the Law	Required by Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; 38 U.S.C. 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; 41 CFR Chapter 60-1 .42; 41 CFR 60-250.4(k); 41 CFR 60-74 1.5(a); and FHWA-1273, §II(3)(d). Available at USDOL website in English, Spanish, and Chinese by telephone at 1-888-9-SBREFA, or by email at Contact-OSBP@dol.gov .
	Contractor's EEO policy statement	Required by 41 CFR 60-741.44 through FHWA-1273, §II(1)(b).
	Letter appointing contractor's EEO officer for project	Required by 41 CFR 60-741.44 through FHWA-1273, §II(1)(b).
FHWA-1022 Revised 9/1994	Notice - Federal Aid Projects	False statements notice Required by 18 CFR 1020 and 23 CFR 635.119 Available on FHWA website.
FHWA-1495 Revised 1981	Wage Rate Information	May be substituted for WH-1321 per FHWA-1273, §IV(1)(a). Available on FHWA website.
WH-1321 Revised 1/1986	Notice to Employees	Davis-Bacon wage rate poster Required by 29 CFR 5.5(a)(1) and FHWA-1273, §IV(1)(a) Enforcement by STA and/or USDOL. Available at USDOL website, by telephone at

Events

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Contact

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

<http://www.fhwa.dot.gov/economicrecovery/whistleblowersposter>

Work Zone Traffic Control - Implementation



Change Orders

- Provides for Equitable Adjustment of the Contract
- The standardized changed condition clauses in 23 U.S.C. 112(e) must be included verbatim in all contracts, unless State statute prohibits their inclusion. Or, an alternate clause developed by the STA may be used.
- The regulation requires the use of three different clauses (23 CFR 635.109):
 - Differing Site Conditions Clause
 - Suspensions of Work Ordered by the Engineer
 - Material Changes in the Scope of the Work

Measurement of Pay Quantities

- Appropriate quantities of completed work
 - Measured in units per contract
 - Material delivered and incorporated into work
 - Based on weight/mass or volume
- Adequate assurance that quantities of completed work are accurate
- Initial source documents pertaining to pay quantities must be retained & made a matter of record

Definitions

Quality Control - QC

- Also called process control. Those actions and considerations necessary to assess and adjust production and construction processes so as to control the level of quality being produced in the end product.
- All contractor/vendor operational techniques and activities that are performed or conducted to fulfill the contract requirements. 23 CFR 637B

Definitions

Quality Assurance – QA

- All those planned and systematic actions necessary to provide confidence that a product or facility will perform satisfactorily in service.

Acceptance Program

- All factors that comprise the State transportation department's determination of the quality of the product as specified in the contract requirements. These factors include verification sampling, testing, and inspection and may include results of quality control sampling and testing.

Progress Payments

- 23 U.S.C. 121
- 23 CFR 635.122
- Compensation For Work Performed
- Generally Monthly
- Include Stockpiled Material
- Support Documentation
- Prompt Pay Provision



Claims

- 23 CFR 635.124: Applies to NHS Projects.
- Demand for Additional Compensation that is Formally Submitted Outside of the Normal Process for Change Approvals.
- Eligibility for and Extent of Federal-aid Participation Determined on a Case-by-Case Basis.
- Burden of Proof to Document the Reasonableness of a Claim Remains Vested in the NCDOT.

Liquidated Damages

- 23 CFR 635.127: Applies to NHS Projects.
- Provision provides a mechanism for the contracting agency to recover costs associated with a contract time overrun.
- An STA is required to incorporate liquidated damages provisions into its Federal-aid NHS contracts as a condition of the project agreements.

NCDOT Final Inspection and Final Acceptance

- NCDOT Final Inspection completed after any deficiencies are resolved
- Final Acceptance
 - Accept quality of work (Letter of Acceptance)
 - All required documents, certifications and other requirements satisfied as contained NCDOT Construction Manual and Specifications Book
- Final Payment
 - Starts the Records Retention clock (3 years)

FHWA Contract Administration Core Curriculum

CACC Manual & Reference Guide - Contract Admin - Construction - FHWA - Windows Internet Explorer

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

Contract Administration Core curriculum

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**Contract Administration Core Curriculum
Participant's Manual and Reference Guide 2006**

[PDF Version](#) (0.6 mb)

Please contact Douglas Townes, FHWA Resource Center, Construction and Project Management Team (404-562-3914; Douglas.Townes@dot.gov) regarding the scheduling of Contract Administration Core Curriculum Course presentations and hard copies of the course manual.

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Questions?

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