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Remarks and Instructions

Remarks:

All LAG Manual and CD Holders:

To download the March 2003 LAG manual changes in their entirety electronically, go to:
<http://www.wsdot.wa.gov/TA/Operations/LAG/LAGHP.HTM>. This site also includes an option to download just the March 2003 revisions.

For interim LAG, GSP and other updates for local agencies, consider subscribing to our LAGG list serve. This is a great resource for your agencies LAG manual contacts. <http://lists.wsdot.wa.gov/guest/RemoteListSummary/LAGGL>.

The Local Agency Federal Aid Project Prospectus, Form 140-101 EF, has been revised. Local agencies should immediately use the form included in the March 2003 LAG manual revisions and CD.

In the September 2002 revision, Chapter 9 of the 1997 Construction Manual was included on the CD to address acceptance and assurance procedures. Once again we have included it on the March 2003 Engineering Publications CD. This is only an interim step. We are drafting additions to the LAG manual that address the use of acceptance and assurance procedures in combination with current WSDOT Construction Manual procedures. You will be notified as changes occur.

If you have LAG **contact changes**, either additional or replacement contacts, it would be appreciated if you would complete and return a "Local Agency Guidelines, Request Form and LAG Contact Update" or email Ron Pate at paterd@wsdot.wa.gov. This will enable us to have a correct listing of current LAG manual holders and CD contacts, along with who to notify of updates.

If you have questions with LAG manual content, please contact Ron Pate at paterd@wsdot.wa.gov or (360) 705-7383.

Instructions:

Page numbers and corresponding sheet-counts are given in the table below to indicate portions of the *Local Agency Guideline* that are to be removed and inserted to accomplish this revision.

Chapter	Remove		Insert	
	Pages	Sheets	Pages	Sheets
Contents	vii-xv	5	vii-xv	5
Appendix 14.62	13-14	1	13-14	1
Appendix 21.43	7-8	1	7-8	1
Appendix 21.46	15-18	2	15-18	2
Chapter 24	15-16	1	15-16	1
Chapter 24	21-26	3	21-26	3
Chapter 26	1-6	3	1-6	3
Chapter 27	1-2	1	1-2	1
Chapter 42	1-2	1	1-2	1
Appendix 42.31	3-4	1	N/A	N/A
Design Standard Cover Page	1	1	N/A	N/A
Design Standard Title Page	1	1	1	1
Design Standards Contents	i-ii	1	i-ii	1
Design Standards	3-24	11	3-16	7
Chapter 43	1-2	1	1-2	1
Chapter 44	1-2	1	1-2	1
Form FWHA 1273	11-12	1	11-12	1
Chapter 46	1-4	2	1-4	2
Appendix 46.41	5-6	1	5-6	1
Chapter 52	1-4	2	1-4	2

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Contents

	Page	Revision Date
Foreword	i	Sept. 2002
Local Agency Guidelines Committee Members	ii	Feb. 2002
Local Agency Guidelines Committee Members E-mail Listing	iii	Feb. 2002
Comment Request Form	v	June 2000
Acronyms	1	July 2001
Guidelines Overview		
Chapter 11 Introduction		
Purpose	11-1	July 1999
Organization of the Manual	11-1	July 1999
Updating Process	11-1	July 1999
Chapter 12 FHWA Funding Programs		
12.1 General Discussion	12-1	Feb. 2002
12.2 Coordination With Planning Agencies	12-1	Feb. 2002
	12-2	Feb. 2002
	12-3	Feb. 2002
12.3 Non-NHS Funding Sources	12-4	Dec. 2000
	12-5 to 7	Feb. 2002
	12-8	June 2000
12.4 FHWA Discretionary Programs	12-9	Feb. 2002
	12-10	June 2000
	12-11	Dec. 2000
12.5 Transfer of STP, Enhancement, and CM/AQ Funds to the Federal Transit Administration (FTA)	12-12	Dec. 2000
12.6 Appendixes	12-12	Dec. 2000
12.62 MPO Planning Flow Chart	12-13	June 2000
12.63 Map of MPOs	12-14	Feb. 2002
12.64 Map of RTPOs	12-15	June 2000
12.65 MPO/RTPO Directory	12-16 and 17	Feb. 2002
	12-18 and 19	Dec. 2000
12.66 STP Lead Agencies	12-20	June 2000
12.67 Six Year Transportation Improvement Program Instructions	12-21 and 22	Dec. 2000
12.68 Six Year Transportation Improvement Program Sheet	12-23	Dec. 2000
Chapter 13 Becoming Certified to Administer FHWA Projects		
13.1 General Discussion	13-1	June 2000
13.2 Certification Acceptance Features	13-1	June 2000
13.3 Certification Acceptance Requirements	13-1	June 2000
13.4 Application for Certification Acceptance	13-1	June 2000
13.5 Certification Acceptance Compliance	13-2	Dec. 2000
Certification Acceptance Qualification Agreement (2 pages)		Sept. 2002
Certification Acceptance Interview Form (4 pages)		July 1999

		Page	Revision Date
Chapter 14	Developing Projects Using the Local Agency Guidelines		
14.1	General Discussion	14-1	June 2000
14.2	Project Development Process Overview	14-1	June 2000
14.3	Standards	14-2	July 1999
14.4	Projects Within Interstate Rights-of-Way	14-3	July 2001
14.5	Project Development Process Flow Chart and Checklist	14-3	July 2001
14.6	Appendixes	14-3	July 2001
	14.61 Project Development Process Flow Chart	14-5	July 1999
	14.62 Project Development Checklist	14-6 and 7	July 1999
		14-8	July 2001
		14-9	July 1999
		14-10	Sept. 2002
		14-11	Sept. 2002
		14-12	July 2001
		14-13	July 1999
		14-14	March 2003
		14-15	June 2000
		14-16 to 18	July 1999
		14-19	Sept. 2002
		14-20	July 1999
 General Project Development			
Chapter 21	The Project Prospectus		
21.1	General Discussion	21-1	Dec. 2000
21.2	Procedure for Submitting the Planning/TDM Application Package	21-1	Dec. 2000
21.3	Procedure for Compiling the Project Application Package	21-1	Dec. 2000
21.4	Appendixes	21-1	Dec. 2000
	21.41 Prospectus Submittal Checklist	21-3	Feb. 2002
	21.42 Instructions for Project Application Transmittal Items	21-4	Feb. 2002
		21-5	July 1999
	21.43 Instructions for Completing Project Prospectus	21-6	July 1999
		21-7	March 2003
		21-8	Sept. 2002
		21-9 and 10	July 1999
	21.44 List of County Code Numbers and WSDOT Region Numbers	21-11	July 2001
	21.45 List of City Code Numbers	21-12 to 14	July 2001
	21.46 List of Urban Area Numbers	21-15	July 1999
	21.47 Local Agency Federal Aid Project Prospectus	21-16 to 18	March 2003
 Chapter 22	 The Local Agency Agreement		
22.1	General Discussion	22-1	Dec. 2000
22.2	Preparation Procedure	22-1	Dec. 2000
22.3	Supplemental Agreement	22-1	Dec. 2000
22.4	Appendixes	22-1	Dec. 2000
	22.41 Local Agency Agreement	22-3 to 6	July 2001
	22.42 Instructions for Preparing Local Agency Agreement	22-7 and 8	Feb. 2002
	22.43 Local Agency Supplemental Agreement	22-9	Dec. 2000
	22.44 Instructions for Preparing Supplemental Agreement	22-10	Dec. 2000
	22.45 Sample Withholding Resolution for Construction Financing Method B	22-11	July 1999

	Page	Revision Date
Chapter 23		
Progress Billing (Reimbursement Costs)		
23.1 General Discussion	23-1	Feb. 2002
23.2 Billing Procedures for Local Agency Ad and Award and Agency Force Work	23-1	Feb. 2002
23.3 Billing Procedures for State Ad and Award	23-1	Feb. 2002
23.4 Number and Timing of Submittals	23-1	Feb. 2002
23.5 Identification of Federal Aid Participating and Nonparticipating Charges	23-1 to 3	Feb. 2002
23.6 Appendixes	23-3	Feb. 2002
23.61 Sample Form PPC2, "Federal Aid Request for Payment"	23-5	Feb. 2002
23.62 Instructions for Completing Form PPC2	23-6 and 7	Feb. 2002
Chapter 24		
Environmental Processes		
24.1 General Discussion	24-1	Feb. 2002
24.2 Project Classification	24-2 and 3	Feb. 2002
	24-4 to 6	Feb. 2002
24.3 Procedures for Class I Projects	24-7	June 2000
	24-8	July 1999
	24-9	Nov. 1999
	24-10	July 1999
	24-11	Nov. 1999
	24-12	June 2000
24.4 Procedures for Class II Projects	24-13	Nov. 1999
24.5 Procedures for Class III Projects	24-13	Nov. 1999
24.6 Project Reevaluation	24-14	Nov. 1999
24.7 Biological Assessments	24-15	Feb. 2002
	24-16	March 2003
	24-17 to 20	Nov. 1999
24.8 Section 106 Process	24-21	August 2000
	24-22	March 2003
	24-23 and 24	March 2003
24.9 Project Reviews	24-25	March 2003
24.10 Appendixes	24-26	March 2003
24.101 Instructions for Completing the Environmental Classification Summary	24-27 and 32	Sept. 2002
24.102 Biological Assessment Coordination Process	24-33	Sept. 2002
24.103 ESA Species Listings Requests — Agency Contacts	24-34	Sept. 2002
24.104 ESA Species Listings Request Letter Template	24-35	Sept. 2002
24.105 "No Effects" BA Letter Template	24-36	Sept. 2002
24.106 "May Affects" BA Template	24-37 to 40	Sept. 2002
24.107 7(d) Request Letter Template	24-41	Sept. 2002
24.108 Definitions	24-42	Sept. 2002
24.109 27 Tribes and Treaty Ceded Areas of Washington	24-43	Sept. 2002
24.110 Local Agency Environmental Classification Summary	24-44 to 50	Sept. 2002
Chapter 25		
Right-of-Way Procedures		
25.01 General Discussion	25-1	Sept. 2002
25.02 Right-of-Way Acquisition Procedures	25-2	Sept. 2002
25.03 Voluntary Acquisition	25-2	Sept. 2002
25.04 Funds for Right-of-Way	25-2	Sept. 2002
25.05 Appraisal	25-3 and 4	Feb. 2002
25.06 Title	25-5	Feb. 2002
25.07 Negotiations	25-5	Feb. 2002
25.08 Donated Property	25-6	Sept. 2002

	Page	Revision Date
25.09 Administrative Settlements	25-6	Sept. 2002
25.10 Relocation	25-7	Sept. 2002
25.11 Right-of-Way Certification	25-7	Sept. 2002
25.12 Property Management	25-7	Sept. 2002
25.13 Document Retention	25-8	Sept. 2002
25.14 Appendixes	25-8	Sept. 2002
25.142 Right-of-Way Procedures	25-9 and 10	July 1999
25.143 Right-of-Way Project Funding Estimate Sample	25-11 to 12 25-13	July 1999 Feb. 2002
25.144 True Cost Estimate Sample	25-14 to 16	July 1999
25.145 Appraisal Report Forms (Sample)	25-17 and 18	July 1999
25.146 Appraisal Waiver Procedure (Sample)	25-19 to 22	July 1999
25.147 Review Appraiser Form (Sample)	25-23 and 24	July 1999
25.148 Donation Statements (Sample)	25-25 and 26	July 1999
25.149 Certification #1 (Sample) — All Right-of-Way Acquired	25-27	July 1999
25.150 Certification #2 (Sample) — Right to Occupy All Right-of-Way Acquired	25-28 and 29	July 1999
25.151 Certification #3 (Sample) — All Right-of-Way Not Acquired	25-30 and 31	July 1999
25.152 Coordinators Worksheets (Sample)	25-32 to 34	July 1999
25.153 Federal Aid Requirement Checklist	25-35 and 36	July 1999
25.154 Process Flow Chart	25-37	July 1999
25.155 Government Agreement for Aid	25-39 to 42	Dec. 2000

Chapter 26 Disadvantaged Business Enterprises

26.1 General Discussion	26-1	March 2003
26.2 Procedures	26-1 to 4	March 2003
26.3 Consultant Agreement Goals	26-5	March 2003
26.4 Appendixes	26-5 and 6	March 2003
26.41 Quarterly Report of Amounts Credited as DBE Participation	26-7	Dec. 2000
26.42 Disadvantaged Business Enterprise Utilization Certification	26-8	Dec. 2000

Chapter 27 Equal Employment Opportunity and Training

27.1 General Discussion	27-1	Dec. 2000
27.2 Training	27-1	Dec. 2000
27.3 Contract Administration	27-2	March 2003
27.4 Monitoring During Construction	27-2	March 2003
27.5 Compliance Review	27-3	Sept. 2002

Special Project Development

Chapter 31 Using Consultants

31.1 General Discussion	31-1	Nov. 1999
31.2 Advertisement/Solicitation	31-1	Nov. 1999
31.3 Pre-Award Audits	31-2	June 2000
31.4 Consultant Selection Process	31-2 31-3 31-4 31-5	June 2000 Nov. 1999 June 2000 Sept. 2002
31.5 Standard Agreement and Exhibits	31-5	Sept. 2002
31.6 Supplements to the Agreement	31-5	Sept. 2002
31.7 Oversight of the Agreement and Project Closure	31-6	Sept. 2002

	Page	Revision Date
31.8	Appendixes	31-6 Sept. 2002
		31-7 Sept. 2002
31.81	Sample Advertisement	31-9 Nov. 1999
		31-10 Feb. 2002
31.82	Sample Record of Negotiations	31-11 Nov. 1999
31.83	Information Required in Agreements for Non-CA Agencies	31-12 Nov. 1999
31.84	Sample Invoice Tracking Sheet	31-13 Nov. 1999
31.85	WSDOT Performance Evaluation Consultant Services	31-14 Nov. 1999
	Performance Evaluation Instructions	31-15 Nov. 1999
	Consultant Services Evaluation Supplement	31-16 to 19 Nov. 1999
31.86	Sample Personal Services Contract for Appraiser	31-20 to 22 Nov. 1999
31.87	Sample Consultant Agreement for Negotiation Services	31-23 to 30 Nov. 1999
31.88	Independent Estimate for Consulting Services	31-31 Dec. 2000
31.89	Local Agency Standard Consultant Agreement	31-32 to 39 Dec. 2000
	Exhibit A-1	31-40 Dec. 2000
	Exhibit A-2	31-41 Dec. 2000
	Exhibit A-3	31-42 Dec. 2000
	Exhibit A-4	31-43 Dec. 2000
	Exhibit B-1	31-44 Dec. 2000
	Exhibit B-2	31-45 and 46 Dec. 2000
	Exhibit C-1	31-47 and 48 Dec. 2000
	Exhibit C-2	31-49 to 51 Dec. 2000
	Exhibit C-3	31-52 and 53 Dec. 2000
	Exhibit C-4	31-54 Dec. 2000
		31-55 July 2001
	Exhibit C-5	31-56 Dec. 2000
	Exhibit D-1	31-57 Dec. 2000
	Exhibit D-2	31-58 Dec. 2000
	Exhibit E	31-59 Dec. 2000
	Exhibit F	31-60 Dec. 2000
	Exhibit G	31-61 Dec. 2000
	Exhibit G-1	31-62 Dec. 2000
	Exhibit G-2	31-63 Dec. 2000
	Exhibit H	31-64 Dec. 2000
31.90	Supplemental Agreement	31-65 Dec. 2000
31.91	Supplemental Signature Page for Standard Consultant Agreement	31-66 Dec. 2000
Chapter 32	Railroad/Highway Crossing Program	
32.1	General Discussion	32-1 Sept. 2002
32.2	Selection of Appropriate Warning Devices	32-1 Sept. 2002
32.3	Project Development Process	32-2 Feb. 2002
		32-3 Sept. 2002
32.4	Other Projects With Railroad Involvement	32-4 Feb. 2002
32.5	Appendixes	32-4 Feb. 2002
32.51	Signal Design — Shoulder Section (Metric/English)	32-5 July 1999
32.52	Signal Design — Curb Section (Metric/English)	32-7 July 1999
32.53	Railroad/Highway Grade Crossing Protection Sight Distance Diagram and Gate Warrant Form (Metric/English)	32-9 July 1999
32.54	Railroad Project Data Form	32-11 July 1999
32.55	Washington State Short Line Contact List	32-12 June 2000
32.56	Sample Letter — Type 3 Party Agreement	32-13 July 1999
32.57	Local Agency Railway Agreement	32-15 and 16 Dec. 2000

	Page	Revision Date
Chapter 33		
Emergency Relief Program		
33.1 Steps Following a Disaster	33-1	Feb. 2002
33.2 FHWA’s Emergency Relief Program Guidelines	33-2	Feb. 2002
33.3 Reimbursable Expenses	33-3 and 4	Feb. 2002
	33-5	July 1999
33.4 Types of Emergency Relief Work	33-6 to 9	July 1999
33.5 Contracts	33-9	July 1999
33.6 Additional Project Requirements	33-9	July 1999
33.7 Funding	33-10	July 1999
33.8 FEMA Program Guidelines	33-10	July 1999
33.9 Appendixes	33-11	Dec. 2000
33.91 Local Agency Proclamation	33-13	July 1999
33.92 Governor’s Proclamation	33-14	July 1999
33.93 Local Agency Damage Inspection Report	33-15	Dec. 2000
Chapter 34		
Bridge Selection and Scoping		
34.1 General Discussion	34-1	Feb. 2002
34.2 Bridge Replacement Committees	34-1	Feb. 2002
34.3 Bridge Funding	34-1	Feb. 2002
	34-2	Feb. 2002
34.4 Bridge Selection	34-3	June 2000
34.5 Bridge Scoping	34-4	June 2000
34.6 Appendixes	34-5	June 2000
34.61 Sample C3R Review Form	34-7	Feb. 2002
34.61A Criteria for Bridge Candidates	34-8	Feb. 2002
34.61B Bridge Rehabilitation Criteria	34-9	June 2000
34.62 BRAC Bridge Funding Questionnaire	34-10	June 2000
34.63 Bridge Rehabilitation/Replacement Worksheet	34-11	June 2000
34.64 Bridge Construction Costs	34-12	June 2000
Design		
Chapter 41		
General		
41.1 General Discussion	41-1	July 1999
41.2 New Construction/Reconstruction Projects	41-1	July 1999
41.3 3-R Projects (Resurfacing, Restoration, and Rehabilitation)	41-2	Dec. 2000
41.4 2-R Projects (Resurfacing and Restoration)	41-3	Feb. 2002
41.5 Low Volume Roads and Streets	41-3	Feb. 2002
41.6 Deviations	41-3	Feb. 2002
41.7 Appendixes	41-4	June 2000
41.71 Safety Checklist — A Guideline for 2-R and 3-R Projects	41-5 and 6	July 1999
41.72 Sample Deviation Analysis Format	41-7	June 2000
Chapter 42		
Design Standards		
42.1 General	42-1	March 2003
42.2 City and County Design Standards	42-1	March 2003
42.3 Appendixes	42-1	March 2003
42.31 City and County Design Standards		
Contents	i	March 2003
Introduction	1 and 2	Sept. 2002
Committee Membership	3	March 2003
Design Standards for New Construction and Reconstruction	5	Feb. 2002
Roadway Geometrics	6	March 2003
Bridge Criteria	7	March 2003
Other Criteria	7	March 2003
Roadway Elements	8	March 2003

	Page	Revision Date
Geometric Cross-Section for Two-Way Roads and Streets (English Units)	9	March 2003
Design Standards for 3-R Projects	10	March 2003
Definitions	10	March 2003
General Discussion	11	March 2003
Design Standards for 2-R Projects	13	March 2003
General	13	March 2003
Design Parameters	13	March 2003
References for New Construction and Reconstruction, 3-R, and 2-R Standards	15	March 2003
Addresses to Acquire Reference Materials	16	March 2003
Chapter 43 Location and Design Approval		
43.1 General Discussion	43-1	March 2003
43.2 Requirements for Design Approval	43-1	March 2003
43.3 Bridge Design Approval	43-1	March 2003
	43-2	March 2003
43.4 Value Engineering	43-3 to 4	July 1999
43.5 Additional Data Required for Special Projects	43-4	July 1999
43.6 Design Approval Notices	43-4	July 1999
43.7 Appendixes	43-4	July 1999
43.71 Sample Request to Publish Notice of Design Approval	43-5	July 1999
43.72 Sample FHWA Project Notice of Approval of Location and Design	43-6	July 1999
43.73 Sample Format — VE Assessment Report	43-7	July 1999
Chapter 44 Plans, Specifications, and Estimates		
44.1 General Discussion	44-1	Feb. 2002
44.2 PS&E Requirements	44-1	Feb. 2002
44.3 Documents Requiring Professional Stamps	44-2	March 2003
44.4 Contract Plans	44-3	Sept. 2002
44.5 Specifications	44-3	Sept. 2002
44.6 Estimates	44-4	Sept. 2002
44.7 Appendixes	44-4	Sept. 2002
44.72 Sample Proposal (Metric/English)	44-5 to 8	Dec. 2000
44.73 Sample Contract	44-9 and 10	Dec. 2000
44.74 Sample City Letter of Financial Responsibility	44-11	Feb. 2002
44.75 Sample County Letter of Financial Responsibility	44-12	Dec. 2000
44.76 Sample Estimate and Grouping (Metric/English)	44-13 to 20	Dec. 2000
44.77 Permits	44-21 to 23	Dec. 2000
44.78 Local Agency Plans Preparation Checklist	44-24 to 27	Dec. 2000
44.79 Subcontractor List	44-28	Dec. 2000
44.80 Disadvantaged Business Enterprise Utilization Certification	44-29	Dec. 2000
Chapter 45 State Advertising and Award Procedures		
45.1 General Discussion	45-1	Feb. 2002
45.2 Submittals	45-1	Feb. 2002
45.3 Procedures	45-1 and 2	Feb. 2002
Chapter 46 Local Advertising and Award Procedures		
46.1 General Discussion	46-1	Sept. 2002
46.2 Procedures	46-1 and 2	March 2003
46.3 Submittal of Award Data	46-3	March 2003
46.4 Appendixes	46-3	March 2003
46.41 Sample Request for Concurrence to Award	46-5	July 1999
46.41a Sample Advertisement	46-6	March 2003

46.42	Sample Condition of Award Letter (DBE Contract Goals)	46-7	Dec. 2000
46.43	Sample Condition of Award Letter (DBE Prime Contractor)	44-8	Dec. 2000
46.44	Sample Contract Bond	44-9	July 1999

Construction and Post-Construction

Chapter 51	WSDOT Administered Projects		
51.1	General Discussion	51-1	July 1999
51.2	Preconstruction Conference	51-1	July 1999
51.3	Changes and Extra Work	51-1	July 1999
Chapter 52	Local Administered Projects		
52.1	General Discussion	52-1	Sept. 2002
52.2	Preconstruction Conference	52-1	Sept. 2002
52.3	Quality Control	52-1	Sept. 2002
52.4	Progress Payments	52-2	March 2003
52.5	Changes and Extra Work	52-2	March 2003
52.6	Termination of Contract	52-3	March 2003
52.7	Compliance With Federal Contract Provisions	52-3	March 2003
52.8	Physical Completion of Construction	52-3	March 2003
52.9	Appendixes	52-4	March 2003
52.91	Sample Preconstruction Conference Agenda	52-5	July 1999
52.92	Sample Preconstruction Conference Minutes	52-7	July 1999
52.93	Sample Letter Requesting WSDOT Project Inspection and Acceptance	52-8	July 1999
52.94	Sample Materials Certification	52-9	July 1999
52.95	Timeline for Construction Contracts	52-10	July 1999
52.96	Weekly Statement of Working Days Sample Sheet	52-11	Dec. 2000
52.97	Change Order	52-12	Dec. 2000
Chapter 53	Project Closure		
53.1	General Discussion	53-1	Feb. 2002
53.2	Closure	53-1	Feb. 2002
53.3	Project Management Review	53-1	Feb. 2002
53.4	Financial and Compliance Audit	53-2	Feb. 2002
53.5	Appendixes	53-2	Feb. 2002
53.51	Local Agency Documentation Review Checklist	53-3 to 5	Feb. 2002
		53-6	July 1999
53.52	Final Inspection of Federal Aid Project	53-7	Dec. 2000
53.53	Quarterly Report of Amounts Credited as DBE Participation	53-9	Feb. 2002

Miscellaneous

Chapter 61	Local Agency Force Projects		
61.1	General Discussion	61-1	July 1999
61.2	PS&E Requirements	61-1	July 1999
61.3	PS&E Approval	61-1	July 1999
61.4	Fund Authorization	61-1	July 1999
61.5	Contract Number	61-1	July 1999
61.6	Construction Administration	61-1	July 1999
61.7	Project By One Agency for Another Agency	61-2	July 1999
61.8	Appendixes	61-2	July 1999
61.81	Sample Local Agency Force Preconstruction Conference	61-3	July 1999

	Page	Revision Date
Chapter 62	Enhancement Projects and Heritage Corridors Program	
62.1	General Discussion	62-1 Dec. 2000
62.2	Standards	62-2 Dec. 2000
62.3	Special Requirements	62-2 Dec. 2000
62.4	Eligible Projects	62-2 Dec. 2000
62.5	Minimum Contents of Bid Package	62-3 Dec. 2000
62.6	Project Closure Package	62-3 Dec. 2000
62.7	Appendixes	62-3 Dec. 2000
	62.71 Enhancement and Scenic Standards	62-3 Dec. 2000
62.8	References	62-3 Dec. 2000
Chapter 63	The National Highway System	
63.1	General Discussion	63-1 Sept. 2002
63.2	Types of Eligible Projects	63-1 Sept. 2002
63.3	Standards	63-1 Sept. 2002
63.4	NHS Certification Acceptance	63-1 Sept. 2002
63.5	Projects Within Interstate Rights-of-Way	63-1 Sept. 2002
63.6	Project Approval Actions	63-2 July 2001
63.7	NHS Components	63-2 July 2001
63.8	Appendixes	63-2 July 2001
	63.81 List of Local Agency NHS Routes	63-3 July 2001
	63.82 Local Agency NHS Route Terminii	63-4 and 5 July 2001
Chapter 64	Bridge Inspections	
64.1	General Discussion	64-1 June 2000
64.2	Qualifications/Training of Inspection Personnel	64-1 June 2000
64.3	Records and File Requirements	64-1 June 2000
64.4	Inspection Types and Frequencies	64-1 June 2000
64.5	Bridge Load Ratings	64-1 June 2000
64.6	Bridge Scour Analysis	64-1 June 2000
64.7	Quality Assurance Reviews	64-1 June 2000
64.8	Major Bridge Repair Reports	64-1 June 2000
64.9	WSDOT and Other Inspection Services	64-1 June 2000
Chapter 65	Management Systems	
65.1	General Discussion	65-1 July 1999
65.2	Review of Maintenance	65-1 July 1999
65.3	Management Systems	65-1 July 1999
		65-2 June 2000
		65-3 and 4 July 1999
List of Forms		1 July 2001
Acronyms and Glossary of Terms		1 June 2000
Acronyms		1 June 2000
Glossary of Terms		5 Feb. 2002
Index		1 June 2000

- _____ Form FHWA-1273 and latest amendment included
- _____ Log of test borings
- _____ Training requirements
- _____ EEO requirement clauses
- _____ For steel, included Buy America requirement
- _____ Traffic control special provisions
- _____ Specialty items
- _____ General special provisions and amendments arranged in order and indexed
- _____ Project proposal
- _____ Federal Aid Proposal Notices (2 pages)
- _____ Noncollusion Declaration
- _____ Contract
- _____ Certification for Federal Aid Contracts (Lobbying)
- _____ DBE Utilization Certification
- _____ Engineer's estimate complete
- _____ Documentation for each item in engineer's estimate
- _____ Justification for nonparticipating items
- _____ Detailed documentation for lump sum items available in project files
- _____ Estimate to Regional Highways and Local Programs Engineer
- _____ Training goal set by Assistant Secretary for Highways and Local Programs
- _____ DBE goal set by Assistant Secretary for Highways and Local Programs
- _____ Approval of local agency supplied materials
- _____ Sources approved by approving authority
- _____ Approval of stockpiling by Assistant Secretary for Highways and Local Programs (when payment is requested for material when stockpiling aggregates, etc., for use on a future federal aid project)
- _____ Distribution of preliminary plans as determined by local agency

- _____ _____ Field review of PS&E (State Ad and Award only)
- _____ _____ For tied bids, letter from approving authority
- _____ _____ For State Ad and Award, financial responsibility letter with PS&E documents sent to Regional Highways and Local Programs Engineer
- _____ _____ PS&E approved by approving authority
- _____ _____ Plans, contract specifications and estimate stamped, signed, and dated, and on file in the local agency office
- _____ _____ State and federal wage rates added to ad plans
- _____ _____ PS&E sent to Regional Highways and Local Programs Engineer

Request Construction Funds (Chapter 14)

<u>Initials</u>	<u>Date or N/A</u>	
_____	_____	Project in STIP
_____	_____	Send letter with the following attachments to Regional Highways and Local Programs Engineer requesting construction funds:
_____	_____	Supplement to Local Agency Agreement, if project includes other phases
_____	_____	Letter of right-of-way certification
_____	_____	Final FHWA approval of environmental documents

Local Ad and Award

Advertise for Bids (Chapter 46)

_____	_____	Get Highways and Local Programs Contract Number _____ from Regional Highways and Local Programs Engineer
_____	_____	Approve ad period of less than 3 weeks
_____	_____	Publish notice of bid opening
_____	_____	Date of publication for sealed bids

Bid Opening (Chapter 46)

_____	_____	Issued addendum (if within one week of bid opening, bid opening should be delayed)
_____	_____	Opened Bids
_____	_____	Prepared bid tabulation sheet
_____	_____	Checked submitted bids for tabulation errors
_____	_____	Completed bid and bidders tabulation sheet
_____	_____	Checked DBE participation project goals — verify DBE certification status
_____	_____	Determine responsive bid
_____	_____	Determine contractor qualifications
_____	_____	Contractor registered by Washington State Department of Labor and Industries
_____	_____	Contractor licensed as required by the laws of the state of Washington
_____	_____	<u>Excluded Parties Listing System checked and documented - (http://epls.arnet.gov)</u>
_____	_____	Award recommendation sent to approving authority
_____	_____	When low bid is over engineer's estimate, submit justification and letter of award recommendation to approving authority
_____	_____	Submit supplement to Local Agency Agreement
_____	_____	Supplement approved by Assistant Secretary for Highways and Local Programs

Date	Form is filled out.
Local Agency Project Number	Limited to eight (8) alpha/numeric characters that your agency identifies.
Federal Employer Tax ID Number	Required. Indicate the agency's tax identification number.
Agency	Required. This is your agency's name.
Federal Program Title	Enter the program number or title from the following list: 20.205 Highway Planning and Construction 20.209 Public Land Highways Most local agency projects are 20.205.
Project Title	Write the project's title, as shown in TIP/STIP.
<u>Project Latitude and Longitude</u>	<u>Enter the project start and end latitude and longitude in the format below:</u> <u>Latitude N XX-XX-XX.XX Longitude W XXX-XX-XX.XX</u>
Project Termini	Indicate the beginning and ending limits of the section to be improved. For railway/highway grade crossing projects, show the name of the railroad involved. For intersection projects write the name of the crossroad.
From: To:	Indicate MP to MP or KP to KP.
Length of Project	Project's length in miles or kilometers.
Award Type	Mark the appropriate type.
Federal Agency	Indicate where the federal funds are coming from FHWA, etc.
City Number	For a city project, write the city number from Appendix 21.45.
County Number	Write your county number from Appendix 21.44.
County Name	Write the county the project is in.
WSDOT Region	Locate your WSDOT region number from Appendix 21.44 or 21.45.
Congressional District	Indicate the number of the congressional district or districts in which this project is located.
Legislative District	Indicate legislative district(s).
Urban Area Number	For projects inside urban areas, locate the appropriate urban area number from Appendix 21.46.
TMA/MPO/RTPO	For projects inside urban areas (population greater than 50,000), give the code which represents the MPO for your area. Code MPO BFCG Benton-Franklin Council of Governments RTC Regional Transportation Council PSRC Puget Sound Regional Council SRTC Spokane Regional Transportation Council YVCOG Yakima Valley Conference of Governments TRPC Thurston Regional Planning Council WCCOG Whatcom County Council of Governments CWCOG Cowlitz-Wahkiakum Council of Governments
Total Estimated Cost	Required for each phase of the project; estimate to the nearest hundred dollars.
Local Agency Funding	Required for each phase of the project; estimate to the nearest hundred dollars.
Federal Funds	Required for each phase of the project; estimate to the nearest hundred dollars.
Phase Start Date	Enter the month and year which expenditure for the phase will begin.

Description of Existing Facility

In one or two paragraphs, give a detailed description of the existing facility including but not limited to: (1) type, pavement, lane and shoulder width, horizontal and vertical alignment; and (2) condition of existing surfacing and roadway within project limits, and on adjacent sections at each end of the project. Note any substandard existing alignment and grade or other project deficiencies.

Description of Proposed Work

Check whether the project is new construction, 3-R or 2-R as described in Chapter 42. Explain the nature of the improvement proposed such as widening of existing roadway for additional lanes or left-turn channelization; or to provide signalization to an intersection. Give the purpose of the improvement, such as upgrade facility to current standards, or to remedy a hazardous situation, or reduce congestion. Indicate the major work involved, such as grading, surfacing, bridge construction, drainage, etc. Give a contact person for the project in case there are questions.

Design Approval

On all federal aid transportation projects, agencies should place location and design report in the project file before requesting approval to acquire right-of-way or the preparation of the PS&E.

A project design cannot be approved before the environmental considerations have been approved by FHWA.

In most cases, the Project Prospectus serves as the location and design report.

A CA agency Professional Engineer with the appropriate approval authority signs and dates the form, indicating design approval.

A Non-CA agency will send the form to their respective Region Local Programs Engineer for design approval.

When there is a subsequent change to the project design, an amended location-design approval is required.

Geometric Design Data

Refer to design report data and/or Chapter 42.

Accidents

Enter the required accident information in the appropriate blanks according to the following definitions.

There are three categories of accidents differentiated by increasing degrees of severity — property damage, injury, and fatal. An accident, irrespective of the number of vehicles involved or the number of persons killed or injured, is entered as one accident and defined as follows:

- a. Property Damage Accident: If there is damage to one or more vehicles or property, with no injuries and no fatalities, this equals one property damage accident.
- b. Injury Accident: If one or more persons are injured, regardless of property damage, this equals one injury accident.
- c. Fatal Accident: If one or more persons are killed regardless of property damage, this equals one fatal accident.

Examples:

1. Vehicle leaves roadway and hits utility pole, but driver is not hurt.

Category: Property Damage Acc.

2. Vehicle slows on roadway, is hit from behind and pushed into vehicle ahead. Two persons are injured.

Category: Injury Accident (two persons injured)

1. Seattle and Everett
2. Spokane
3. Vancouver
4. Pasco, Kennewick, Richland
5. Yakima, Union Gap, Selah
6. Olympia, Lacey, Tumwater
7. Bremerton, Port Orchard
8. Bellingham
9. Kelso, Longview
10. Aberdeen, Cosmpolis, Hoquiam
11. Walla Walla, College Place
12. Pullman
13. Wenatchee, East Wenatchee
14. Port Angeles
15. Centralia, Chehalis
16. Camas, Washougal
17. Ellensburg
18. Moses Lake, Grant County
19. Oak Harbor
20. Shelton
21. Anacortes
22. Mount Vernon, Burlington
23. Cheney
24. Sunnyside
25. Ephrata
26. Clarkston
27. Toppenish
28. Port Townsend
29. Tacoma
30. Sedro Woolley
31. Grandview
32. Enumclaw
33. Ferndale
34. Lynden
35. Otis Orchards



Washington State
Department of Transportation

Local Agency Federal Aid
Project Prospectus

Prefix	Route	()	Date	
Federal Aid Project Number				
Local Agency Project Number		(WSDOT Use Only)	Federal Employer Tax ID Number	

Agency	Federal Program Title <input type="checkbox"/> 20.205 <input type="checkbox"/> 20.209 <input type="checkbox"/> Other
Project Title	Start Latitude N _____ Start Longitude W _____ End Latitude N _____ End Longitude W _____
Project Termini From	To
From: _____ To: _____	Length of Project _____ Award Type <input type="checkbox"/> Local <input type="checkbox"/> Local Forces <input type="checkbox"/> State <input type="checkbox"/> Railroad
Federal Agency <input type="checkbox"/> FHWA <input type="checkbox"/> Others	City Number _____ County Number _____ County Name _____ WSDOT Region _____
Congressional District _____	Legislative Districts _____ Urban Area Number _____ TMA / MPO / RTPO _____

Phase	Total Estimated Cost (Nearest Hundred Dollar)	Local Agency Funding (Nearest Hundred Dollar)	Federal Funds (Nearest Hundred Dollar)	Phase Start Date	
				Month	Year
P.E.					
R/W					
Const.					
Total					

Description of Existing Facility (Existing Design and Present Condition)	
Roadway Width	Number of Lanes

Description of Proposed Work		
<input type="checkbox"/> New Construction <input type="checkbox"/> 3-R <input type="checkbox"/> 2-R	Roadway Width	Number of Lanes

Local Agency Contact Person	Title	Phone
Mailing Address	City	State WA Zip Code

Design Approval By _____ Approving Professional Engineer
Title _____ Date _____

Agency	Project Title	Date				
Geometric Design Data						
Description	Through Route	Crossroad				
Federal Functional Classification	<input type="checkbox"/> Urban <input type="checkbox"/> Rural	<input type="checkbox"/> Principal Arterial <input type="checkbox"/> Minor Arterial <input type="checkbox"/> Collector <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Access Street/Road	<input type="checkbox"/> Urban <input type="checkbox"/> Rural	<input type="checkbox"/> Principal Arterial <input type="checkbox"/> Minor Arterial <input type="checkbox"/> Collector <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Access Street/Road		
	Terrain <input type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain		<input type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain			
Posted Speed						
Design Speed						
Existing ADT						
Design Year ADT						
Design Year						
Design Hourly Volume (DHV)						
Accident - 3 Year Experience						
Year	Property Damage Accidents	Injury Accidents		Fatal Accidents		Total Number of Accidents
		Number of Accidents	Number of Injuries	Number of Accidents	Number of Fatalities	
Performance of Work						
Preliminary Engineering Will Be Performed By			Others	Agency		
			%	%		
Construction Will Be Performed By			Contract	Agency		
			%	%		
Environmental Classification						
<input type="checkbox"/> Final <input type="checkbox"/> Preliminary <input type="checkbox"/> Class I - Environmental Impact Statement (EIS) <input type="checkbox"/> Class II - Categorically Excluded (CE) <input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement <input type="checkbox"/> Projects Requiring Documentation (Documented CE) <input type="checkbox"/> Class III - Environmental Assessment (EA) <input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement						
Environmental Considerations						
DOT Form 140-101 EF Revised 12/2002						

Agency	Project Title	Date
Right of Way		
<input type="checkbox"/> No Right of Way Required * All construction required by the contract can be accomplished within the existing right of way.	<input type="checkbox"/> Right of Way Required <input type="checkbox"/> No Relocation	<input type="checkbox"/> Relocation Required
Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project		
FAA Involvement Is any airport located within 3.2 kilometers (2 miles) of the proposed project? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Remarks		
This project has been reviewed by the legislative body of the administration agency or agencies, or it's designee, and is not inconsistent with the agency's comprehensive plan for community development.		
Agency _____		
Date _____	By _____ <div style="text-align: center; font-size: small;">Mayor/Chairperson</div>	
Page 3 of 3		
DOT Form 140-101 EF Revised 12/2002		

If the reevaluation identifies changes in the proposed project, the affected environment, the anticipated impacts, or the proposed mitigation measures, which result in significant impact that were not evaluated in the original EIS, a new or supplemental document is prepared and circulated. Other types of changes including those which substantially reduce the project's impacts, do not require the preparation of a supplement. For additional guidance on project reevaluations, refer to 23 CFR 771 and WSDOT's *Environmental Procedures Manual*.

24.7 Biological Assessments

The Endangered Species Act (ESA) does not allow for **grandfathering**. Any federal action is subject to Section 7 of the ESA, whether or not it is already approved and/or underway. On all federal aid projects under construction the local agency, must evaluate the BA's done for the project, update them if needed, and submit them to Region Local Programs office to forward to FHWA, with a copy to NMFS and/or USFWS.

FHWA must fulfill its responsibilities under the ESA, including coordination with NMFS prior to approval of NEPA. In turn NEPA approval (Documented Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD)) is required, by FHWA regulation, prior to FHWA approval of funding for right-of-way purchase or construction. In order to sign a final Environmental Impact Statement (EIS) or final Environmental Assessment (EA), the FHWA Transportation and Environmental Engineer will need to verify that the document includes the results of the BA required under the ESA. In order to complete the NEPA process by signing a ROD, FONSI, or Documented CE the FHWA Transportation and Environmental Engineer will need to verify that the requirements above have been met, including completion of coordination with NMFS.

For the interim and on a project by project basis, local agencies can request an exception to some of the requirements listed above. FHWA will consider requests to sign NEPA documents, prior to the completion of the biological assessment consultation process, to allow for right-of-way acquisition. FHWA will not authorize construction funding for these projects, however, until the Section 7 consultation requirements have been met. In order to utilize the exception, the project must be able to meet the following requirements:

- The NEPA document (final EIS, FONSI, CE) must:
 - Demonstrate a reasonable project effort to achieve full compliance with the ESA prior to final EIS, FONSI, or CE approval. At a minimum, this would include informal consultation and the submittal of a Biological Evaluation or Assessment to NMFS or USFWS with detail appropriate to address the ESA issues.
 - Identify and describe the meetings held in an attempt to resolve the issues.
 - Outline the concerns/position of NMFS or USFWS and the areas of agreement and disagreement with

supportive documentation, such as agency letters and meeting minutes.

- The NEPA document (final EIS, FONSI, CE) must:
 - Describe the project features and mitigation measures which have been incorporated into the project to avoid, minimize, and/or compensate for project biological impacts.
 - Describe that NMFS or USFWS suggested features and measures, and hopefully, show that the differences between what has been incorporated into the project and what is being requested are not dissimilar.
 - Outline the reasons why full compliance cannot be achieved prior to final EIS, FONSI, or CE approval.
 - Outline a process of further agency coordination that will reasonably result in ESA compliance.

FHWA will only approve final EIS, ROD, FONSI, or CEs where the above requirements have been met and the consequences of delay outweigh the risks. The risks to FHWA will be defined as:

- Any substantial changes to the project as a result of changes in mitigation requirements, may require a supplemental NEPA document to address the changes.
- Right-of-way may be purchased but cannot be used.
- Even if changes required to meet Section 7 do not trigger supplemental documents or change RW needs, they could increase the cost of the project substantially.

FHWA will consider requests to sign NEPA documents for those projects that meet the conditions above. In order to utilize this exception, the local agency must submit to the Region Local Programs office all documentation detailing compliance with the above listed requirements and a written request, signed by the agency's Approving Authority, requesting agreement from FHWA to utilize this exception for the agency's project. After WSDOT Headquarters Highways and Local Programs determines that the project meets all requirements, they will send it to FHWA for concurrence of the request to allow for right-of-way acquisition prior to completion of Section 7 consultation. Upon FHWA concurrence with the local agency's request, FHWA will advise Highways and Local Programs, who will initiate authorization of federal funding for right-of-way acquisition.

Due to the requirements of agencies to meet their responsibilities under the ESA, the following are the interim procedures. These procedures are continually being reviewed and revised which will result in updates by WSDOT Headquarters Highways and Local Programs. Appendix 24.108 provides some definitions of the environmental references.

.71 Species Listings. The agency must request ESA species listings to assist in assessing a project's environmental impacts from the National Marine Fisheries Service (NMFS), the United States Fish and Wildlife Service (USFWS), the Washington State Department of Natural Resources (DNR), and the Washington State Department of Fish and Wildlife (WSDFW). (Appendix 24.103) These requests are for the agency's entire jurisdiction and will be applied to all of the agency's federal aid projects. These requests must be updated every six months. (Appendix 24.104) Federal and state resource agencies generally have 30 days to respond to a species listing request. The species listings for the NMFS must be obtained from the Region Local Programs office.

For species which are proposed for listing, but not yet listed, any federal action must be evaluated to determine whether it jeopardizes the continued existence of the species. For projects which will not be completed before the proposed listing could take effect, the species should be treated as if it were listed with a conditional effect determination.

Until the project is completed, the agency must request updated species listings from NMFS, USFWS, DNR, and WSDFW, every six months. Agencies needing assistance obtaining species listings should contact their Region Local Programs Engineer. If any species listings or locations have changed, the BA shall be updated appropriately. Verification of the requests will be included as part of the agency's project management review.

.72 Project Evaluation. Section 7 of the ESA requires that any federal aid project must be evaluated to determine its effects on listed or proposed species and/or critical habitat. The species information and completion of the ECS Part 5 will assist the agency in completing a project evaluation. The evaluation is a guide to assess the project's impact to any listed species or critical habitat.

If the evaluation determines the need to consult with a biologist, the biologist will:

- Conduct a field review.
- Assess the impacts on all listed species and habitat.
- Make an "effect" determination for each listed species.
- Write the biological assessment.

Depending upon the evaluation and the extent of the project's impacts, the effect determination (Section 24.73) will be one of three conclusions:

- No Effect
- May Affect, Not Likely to Adversely Affect
- May Affect, Likely to Adversely Affect

The agency will report on the impacts of the project through either:

- a. "No Effects" letter BA. Typical items to include in the letter are:
 - Species listings;
 - A signed ECS;
 - Brief discussion of the project, its impacts, and justification for the "no effect" determination.
- b. Complete BA report. Typical items to include in the report are:
 - A brief description and location of the project;
 - Construction information including when the work will be completed;
 - Description of listed species or habitat within the project area;
 - Evaluation of the potential "effects" on listed species or critical habitat;
 - Assertion of "effect" determinations for each listed species;
 - Development and recommendations of conservation and mitigation measures;
 - Bibliography.

The decision to do a BA depends on the level of potential impacts to streams or surface waters which are within the geographical range of the listed species or population. A BA report should be done when projects cross streams (bridges, culverts), require any construction activity within the active channel (retaining walls, riprap, channel relocations), cause the discharge of additional stormwater or other drainage directly to streams through surface channels without soil or other filtration, significantly increase the volume of surface runoff to salmon streams, result in the removal or alteration of riparian vegetation areas adjacent to streams with listed populations, or when listed species or critical habitat are present.

.73 Effect Determinations. If a federal aid project is in an area where there are species designated as Threatened or Endangered, the ESA requires that FHWA make a determination of the effect of the project on the listed species or critical habitat. FHWA must make this determination of effect in consultation with NMFS (for marine species) or USFWS (for all terrestrial and freshwater species). Part 5 of the ECS includes a checklist which will assist the agency in the determination of effect.

- a. No effect. This conclusion is appropriate if the project has no impact on any listed species or critical habitat and the ECS Part 5 yields a no effect.

For some projects, the local agency may be able to make a no effect determination without a BA report. In this case, a "No Effects" letter BA (Appendix 24.105) stating the basis for the effect determination will be sufficient. The agency would address the type of work

Runoff Manual is based on outdated rainfall data. Section 2-5 of that manual includes a chart which addresses the current safety margin at a later date. In addition, a study is underway to update the rainfall chart.

2. Clearing, Grading and Filling may affect but is not likely to adversely affect listed fish when:
 - The project within ESU/DPS, clears, grades, and grubs within 300 feet of any waterbody (which supports or drains into a listed fish supporting waterbody) but does not include “in water” work, provided:
 - (a) TESC/ SSP is fully implemented (including spill control)
 - (b) “Environmental baseline” is not degraded, including spawning areas (determined by BA), large woody debris, riparian habitat, etc.
 - (c) All other factors evaluated for the project by the project biologist result in a “no effect” or “may affect not likely to adversely affect” determination. This must include an analysis of direct and indirect effects of the action. (A direct and indirect effect analysis must be included which covers the action area. The action area is defined as all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. Thus, if it is a bridge replacement, address the upstream and downstream impacts, bank impacts, construction easement impacts, the road approach impacts, temporary bridge impacts, impacts caused by the detour route, etc.)

Not all projects will be able to meet the above. Some may fall into the “may affect, likely to adversely affect” call.

3. Projects which work within water, may affect but are not likely to adversely affect listed fish if all three of the following conditions are met:
 - Work must be conducted within fish window (Gold & Fish list or as per HPA);
 - Work must occur in a non-spawning or rearing area (as determined by project biologist in conjunction with Washington State Department of Fish and Wildlife Habitat Biologist or Tribal Biologist or other Fisheries Biologist). (The rearing areas include pools, edies, structures, etc., but do not include glides.)
 - The project doesn’t degrade the environmental baseline

c. May Affect, Likely to Adversely Affect

1. Stormwater from new impervious surfaces may affect and is likely to adversely affect when:
 - Less than full treatment for all new impervious surfaces when project is within a subbasin that provides habitat or potential habitat for a listed fish species.
2. Projects which work within water, but do not meet the “not likely to adversely affect” category for instream work will result in an “adversely affect” to listed fish.
3. Clearing, Grading, and Filling may affect and is likely to adversely affect listed fish when:
 - Project is within ESU/DPS and does not fully implement TESC/SSP (including spill control) and is within a subbasin that provides potential habitat for listed fish species.

d. Beneficial Effect

Projects will have a beneficial effect when the stormwater treatment is:

- Treatment + detention for an existing impervious area that is a greater than 40% (new impervious area) within the project limits.

24.8 Section 106 Process

Any project, activity, or program funded in whole or in part, under the direct or indirect jurisdiction of a federal agency, including those carried out on behalf of a federal agency; and those actions requiring a federal permit, license, or approval, are considered to be an undertaking and are, thus, subject to the requirements detailed in Section 106 of the National Historic Preservation Act of 1966.

FHWA must fulfill its responsibilities under Section 106 of the NHPA, prior to the approval of NEPA. In turn, NEPA approval (Documented Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD)) is required, by FHWA regulation, prior to FHWA approval of funding for right of way acquisition or construction. In order to sign a final Environmental Impact Statement (EIS) or final Environmental Assessment (EA), the FHWA Transportation and Environmental Engineer will need to verify that the document includes the results of the consultation requirements under the NHPA. In order to complete the NEPA process by signing a ROD, FONSI, or Documented CE the FHWA Transportation and Environmental Engineer will need to verify that the requirements above have been met, including completion of coordination with State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO), and, if necessary, the Advisory Council on Historic Preservation (ACHP).

Due to the requirements of agencies to meet their responsibilities under the NHPA, the following sections are the interim procedures. These procedures are continually being reviewed and revised which will result in updates by WSDOT Headquarters the Highways and Local Programs.

.81 Identification of Historic Properties. The agency must coordinate with the SHPO/THPO to:

- determine the area of potential effects (APE).
- review existing information on historic properties within the APE.
- seek information, as appropriate, from tribal organizations, Native Hawaiian organizations, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties within the APE.

The local agency must submit a letter containing the following information to the Regional Local Programs Office:

- Description of the project.
- Location of the project, including legal description.
- Age of any structures present, if applicable (i.e., bridges, buildings, etc.).
- Maps and photos.
- A list of Tribes that should be included as potential consulting parties (see Appendix 24.109 for assistance).

The Region Local Programs Office will transmit the letter to WSDOT Headquarters Highways and Local Programs. Upon receipt of the documentation and review, WSDOT Headquarters Highways and Local Programs will transmit the letter to the SHPO and THPO(s), or Tribal cultural resource contact(s), requesting comments or information such as in identifying historic properties within the area of potential effects. WSDOT Headquarters Highways and Local Programs will also transmit a copy of the letter to FHWA. The local agency should include sufficient copies of the documentation, so as to provide two (2) copies each to each identified Tribal government, as well as a copy for the WSDOT Cultural Resource Specialist. If a response from a tribe is not received within thirty (30) days after the delivery date of the initiation of consultation letter, project development will be allowed to move forward. The tribes do have the option, however, of entering consultation at a later date.

The local agency and the Region Local Programs Office will assume the lead in conducting Section 106 consultation with the tribal governments, after WSDOT Headquarters Highways and Local Programs has initiated the consultation process with the written request. FHWA will be available, however, to participate in Section 106 consultation with a tribe to the extent necessary, to ensure the tribe's meaningful participation in the process.

In addition to these requests, a local agency may also be required to search through the physical records located at the Office of Archaeology and Historic Preservation (OAH) for identification of eligible historic properties and archaeological sites, if the project does not fall into one of the categories listed in Section 24.82 (a).

.82 Project Evaluation. Section 106 of the NHPA requires that any federal aid project must be evaluated to determine its effects on historic properties. The information from Section 24.81 will assist the agency in completing a project evaluation. The evaluation is a guide to assess the project's impacts to historic properties.

Depending upon the evaluation and the extent of the project's impacts, the effect determination (Section 24.83) will be one of the following conclusions:

- No historic properties affected.
- Finding of no adverse effect.
- Adverse effect.

The agency will detail the impacts of the project through either:

- a. "No historic properties affected" report. Typical items to include in the report are:
 - Description of undertaking.
 - Description of APE, including photographs, maps, drawings, as necessary.
 - Description of steps taken to identify historic properties.
 - Justification for determination of no historic properties present or affected.

The following list identifies those undertakings that have limited areas of impact which are unlikely to contain properties listed or eligible for inclusion in the National Register of Historic Places. These projects can be considered to have no effect on historic properties. If your project falls under one of the below categories, the local agency is not required to consult with SHPO or with the tribes on the APE and the impacts of the undertaking, as outlined in Section 24.81. Although consultation with the tribes will not be initiated, a monthly general notice will be sent to the tribes informing them of which projects met the programmatic exemptions.

- A. All work to be done on bridges of the National Highway System (NHS) and non-NHS state highways which are less than 40 years old, unless an inventory has shown the bridge to be exceptionally significant.
- B. All work within interchanges and within medians of divided highways unless the median has been undisturbed by construction.

- C. All work between a highway and an adjacent frontage road, unless the area between is undisturbed.
- D. Replacement or extension of culverts and other drainage structures with waterway openings of 100 square feet (9.3 square meters) or less and which *do not* extend beyond previous construction limits.
- E. Roadway surface replacement, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking where there will be no expansion of wearing surface, unless within a historic district.
- F. Installation of new lighting, signals, and other traffic control devices, and replacement or repair of lighting, signals, and traffic control devices where the existing units were installed less than 50 years ago, except if the project is immediately adjacent to, or located within, eligible bridges, historic properties, or historic districts.
- G. Installation, replacement, or repair of safety appurtenances such as guardrails, barriers, glare screens, and energy attenuators (except on National Register listed or previously determined eligible bridges, properties, or districts).
- H. Fencing, including salvage yards, provided no grading or other landscaping is involved.
- I. Landscaping on fillslopes and backslopes only. All landscaping beyond toe of fillslopes or beyond top of backslope must be reviewed.
- J. Repair or replacement in kind of curb and gutter, sidewalk and catch basins on the same location except the following: Replacement projects and construction of handicapped access ramps projects adjacent to National Register eligible or listed properties.
- K. Railway crossing signs and signal installation or modification and surface improvement.
- L. Emergency structural repairs to maintain the structural integrity of a bridge (except National Register listed or eligible bridges), roadway overlays, and painting. Bridge reconstruction which does not include roadway widening or modification of existing piers and abutments, but which may include bridge repairs, deck replacement or repair, railing repair and other maintenance work.
- M. Construction of turning lanes and pockets, auxiliary lanes (e.g., truck climbing, acceleration and deceleration lanes) and shoulder widening where only placement of fill material is involved, or within an area previously disturbed by vertical and horizontal construction activities.
- N. Placement of fill material on the side slopes of intersection crossroads and accesses for purposes of flattening these slopes to meet safety criteria, provided that no topsoil is removed beyond the area of previous horizontal and vertical disturbance.
- O. Hazardous waste removal and disposal from within an area previously disturbed by vertical and horizontal construction activities, which constitutes a public hazard and which requires immediate removal.
- P. Placement of riprap within an area previously disturbed by vertical and horizontal construction activities, to prevent erosion of waterways and bridge piers.
- Q. Routine roadway, roadside, and drainage system maintenance activities necessary to preserve existing infrastructure and maintain roadway safety, drainage conveyance, and stormwater treatment in previously disturbed areas.
- If the local agency determines that their project is included in one of the types of exempted activities listed above, the local agency must document this determination in Part 4, Question 3 of the Environmental Classification Summary.
- b. “No adverse effect” and “Adverse effect” reports. Typical items to include in the report are:
- Description of undertaking.
 - Description of APE, including photographs, maps, drawings, as necessary.
 - Description of steps taken to identify historic properties.
 - Description of the affected historic properties.
 - Description of the undertaking’s effects on historic properties.
 - Justification for why the criteria of adverse effect were found applicable or inapplicable; including any conditions or future actions to avoid, minimize, or mitigate adverse effects.
 - Copies or summaries of any views expressed by consulting parties or public comment.
- Projects which involve the excavation of previously undisturbed areas or require the acquisition of new right of way have the potential to uncover archaeological or historical resources. Under these conditions, an archaeological survey must be considered. For information on archaeological surveys, contact the Regional Local Programs Engineer.

- c. Historic Bridge Inventory. The Department uses a Historic Bridge Inventory to determine the eligibility of bridges for the National Register of Historic Places. All bridges considered not eligible for the National Register by this inventory will not require further evaluation unless requested by the WSDOT Cultural Resources Specialist. Some bridges within the Historic Bridge Inventory, known as Category II Bridges, have been identified as being noteworthy but not eligible for the National Register. Should the project involve one of these bridges the Department will consult with SHPO in case the bridge can be marketed. In the event a Category II Bridge cannot be sold, large format black and white archivally processed photographs of the bridge(s) will be taken before demolition or rehabilitation and be provided to the SHPO.

.83 Effect Determinations. If a federal aid project is in an area where historic properties are present, the NHPA requires that FHWA make a determination of effect of the project on those properties. FHWA must make this determination of effect in consultation with SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to the identified properties.

- a. No historic properties affected. This is the appropriate conclusion if the project has no impact on any historic properties or if there are no historic properties present.

If the local agency determines that the undertaking fits within one of the categories listed in Section 24.82 (a), the local agency must document this in the Environmental Classification Summary's Section 4, Part 3.

If the undertaking does not fall under one of the categories listed in Section 24.82 (a), but the local agency determines that either no historic properties are present or there are historic properties present but the undertaking will have no effect upon the properties, the local agency shall provide documentation of this finding, including the information outlined in Section 24.82 (a), to the Regional Local Programs office. The Regional Local Programs office will forward the documentation to the Highways and Local Programs Service Center. Upon receipt of documentation and review, the Highways and Local Programs Service Center will transmit the documentation to SHPO/THPO. The local agency shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

The documentation for the no historic properties affected determination, may be included with the documentation sent to SHPO/THPO for the identification of the APE.

If the SHPO/THPO does not object to the agency's findings within 30 working days of receipt of an adequately documented finding, the local agency has fulfilled their responsibilities under Section 106.

Once concurrence has been obtained from SHPO/THPO or the 30 day period has lapsed, the FHWA Transportation and Environmental Engineer can finalize the NEPA documentation and subsequently authorize the right of way or construction phase of a project.

- b. No adverse affects. This conclusion is appropriate when historic properties are present and an undertaking may affect historic properties, but the impacts of the project do not fulfill the criteria for an adverse effect (as outlined in Section 24.83 (c)).

The local agency, after consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria for an adverse effect, or the undertaking is modified or conditions are imposed by the SHPO/THPO to prevent an adverse effect on historic properties. If the local agency proposes a finding of no adverse effect, the local agency must notify the Regional Local Programs office and all other consulting parties by providing them with the documentation specified in Section 24.82 (b). The Regional Local Programs office will forward the documentation to the WSDOT Headquarters Highways and Local Programs. Upon receipt of documentation and review, the Highways and Local Programs Service Center transmits the documentation to SHPO/THPO for review. The SHPO/THPO shall have 30 days from receipt to review the finding.

The local agency may proceed forward with the undertaking if the SHPO/THPO agrees with the no adverse effect finding or if the 30 days lapse without a response. Failure of the SHPO/THPO to respond within 30 days of receipt of the finding shall be considered agreement of the SHPO/THPO with the finding. With SHPO/THPO concurrence, the local agency must maintain a record of the finding and provide information on the finding to the public on request. Implementation of the undertaking in accordance with the finding as documented, fulfills the local agency's responsibilities under Section 106 of the NHPA.

Disagreement with the finding. If the SHPO/THPO or any consulting party disagrees with the local agency's finding, within the 30 day review period, it shall specify the reasons for disagreeing with the finding. The local agency shall either consult with the party to resolve the disagreement or may request the ACHP, through FHWA, to review the finding.

If a finding is submitted to the ACHP, the local agency must provide all documentation as detailed in Section 24.82 (b). The ACHP shall review the finding and notify the local agency of its determination within 15 days of receiving the documented finding from the local agency. The ACHP shall specify the basis for its determination. The local agency must proceed in accordance with the ACHP's determination. If the ACHP does not respond within 15 days of receipt of the finding, the local agency may assume concurrence with their findings and proceed accordingly.

The local agency should seek the concurrence of any Indian tribe and Native Hawaiian organization that has made known to the local agency that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribes or Native Hawaiian organizations disagree with the finding, it may, within the 30 day review period, specify the reasons for disagreeing with the finding and request the ACHP review the finding.

Upon completion of the concurrence process or the lapse of the 30 day review period, the Highways and Local Programs Service Center sends the concurrence letter to FHWA, and the FHWA Transportation and Environmental Engineer can finalize the NEPA documentation and subsequently authorizes funding for the right of way or construction phase of the project.

- c. Adverse effects. This conclusion is appropriate when the project has an effect on the historic properties present. An adverse effect is appropriate when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

Adverse effects on historic properties include, but are not limited to:

- physical destruction of or damage to all or part of the property.
- alteration of a property, including restoration, rehabilitation, repair, maintenance, etc., that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR Part 68) and applicable guidelines.
- removal of the property from its historic location.
- change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance.
- introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features.

If an adverse effect is determined, the local agency must document its findings as outlined in Section 24.82 (b). The local agency, Highways and Local Programs and FHWA, must consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.

The local agency will transmit their findings to the Regional Local Programs Office. The Regional Local Programs Office will transmit the documentation to the Highways and Local Programs Service Center, which will transmit the documentation to FHWA. FHWA will notify the ACHP of the adverse affect finding by providing the documentation specified in Section 24.82 (b). The notice shall invite the ACHP to participate when the FHWA desires Council participation; the undertaking has an adverse effect upon a National Historic Landmark; or a programmatic agreement under Section 800.14 (b) of 36 CFR Part 800 will be prepared. The ACHP shall advise FHWA and all other consulting parties whether it will participate within 15 days of receipt of notice.

The local agency will provide the Regional Local Programs office and all consulting parties, the documentation detailing its finding, and will also make this information available for public comment. The Regional Local Programs office will send the documentation to the Highways and Local Programs Service Center. Upon receipt of documentation and review, the Highways and Local Programs Service Center will transmit the documentation to SHPO/THPO for review. The local agency, Highways and Local Programs, and FHWA must consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects. If the local agency, Highways and Local Programs, FHWA, and the SHPO/THPO agree on how the adverse effects will be resolved, all parties will execute a Memorandum of Agreement (MOA). The FHWA will submit a copy of the executed MOA to the ACHP, prior to approving the project, in order to fulfill the requirements of Section 106.

Upon execution of the MOA, the consultation process is completed. A Section 4(f) will then be required as outlined in Chapter 24.37 (d) and 24.39 (c). When the Section 4(f) Evaluation has been completed, reviewed, and signed, FHWA can approve the environmental documentation and authorize participation of federal funds.

If agreement between the local agency, Highways and Local Programs, FHWA, and SHPO/THPO, as well as other consulting parties, cannot be reached, FHWA cannot approve the environmental documentation and will not approve participation with federal aid funds. Federal aid funds cannot be used to build the project.

24.9 Project Reviews

.91 References.

- a. NEPA Section 1505.2 and 1505.3.
- b. 23 CFR 771.109(b).

.92 Definition. Project reviews are procedures for monitoring project development to ensure that environmental commitments are kept and adverse impacts mitigated. Reviews are conducted periodically by responsible local agency or monitoring agency officials throughout the various stages of project development and subsequent maintenance.

.93 Procedures.

- a. The local agency ensures that decisions recorded in environmental documents are accomplished in design and construction of projects and maintained or improved upon during the life of the project.
- b. The local agency continues to maintain the project environmental commitment file which follows the project through design, right-of-way acquisition, PS&E, construction, and maintenance.
- c. During construction, the local agency implements and monitors the adopted impact mitigation measures to ensure that they are satisfactorily maintained or improved upon.
- d. When unique or unusual mitigation is required, the local agency conducts periodic reviews during construction or maintenance to evaluate the effectiveness of mitigation measures that were incorporated into the construction contract.
- e. The local agency must request concurrence from the Regional Highways and Local Programs Engineer for any significant alterations to mitigation measures agreed to during the environmental process, even when changes are made during construction or maintenance.
- f. The local agency makes available progress reports and any results of the impact mitigation measures at the request of the public or agencies.

.94 Commitment File. As an initial part of project development, the local agency establishes a project commitment file. Establishment of this file generally coincides with preparation of the environmental document or could be at later stages as required. The file consists of proposed mitigating measures, commitments made to resource or other agencies with permitting authority, and other commitments made on the project. The file normally consists of design and environmental commitments. Other commitments may be added at the local agency's discretion, such as right-of-way, access, maintenance, permits, and agreements.

The local agency continues to maintain the commitment file as a project progresses through its development process. Whenever commitments are made, they are incorporated into project documents and transferred from one phase of the project to the next. Commitments are normally included or identified in the following documents or actions:

- a. Environmental documents.
- b. Design reports.
- c. Right-of-way plans.
- d. Access plans.
- e. Findings and order.
- f. Contract plans.
- g. Preconstruction conference.
- h. Change orders.
- i. End of project report.
- j. Maintenance.

To organize and track commitments made during the development and implementation of a project, a "Record of Commitment," DOT Form 220-021, or similar form may be used.

When a commitment is made, record it on the Record of Commitment form. The form contains the detail necessary to document the commitment, including references to correspondence, agreement numbers, etc.

A commitment may be revised when all parties involved agree to the revision.

Records (forms) on completed commitments should be retained for at least a year after the completion date. Commitments requiring ongoing maintenance need to be retained in the files as long as the commitment is active.

24.10 Appendixes

- 24.101 Instructions for Completing the Environmental Classification Summary
- 24.102 Biological Assessment Coordination Process
- 24.103 ESA Species Listings Requests — Agency Contacts
- 24.104 ESA Species Listings Request Letter Template
- 24.105 "No Effects" BA Letter Template
- 24.106 "May Affects" BA Template
- 24.107 7(d) Request Letter Template
- 24.108 Definitions
- 24.109 27 Tribes and Treaty Ceded Areas of Washington State
- 24.110 Local Agency Environmental Classification Summary

26.1 General Discussion

Under Public Law 105-178 (TEA-21), a 10 percent National goal was established for the participation of Disadvantaged Business Enterprises (DBEs) in transportation contracting, in an effort to ensure equal opportunity in transportation contracting and address the effects of past and current discrimination. Requirements of the DBE Program, as prescribed in 49 CFR Part 26, apply to all recipients (and subrecipients) of highway, transit, and airport funds.

A local agency, when participating in programs funded in whole or in part with funds made available by the Washington State Department of Transportation (WSDOT), must either adopt WSDOT's DBE Plan, or develop an equivalent plan. The local agency equivalent plan must have the approval of WSDOT's Office of Equal Opportunity and the Federal Highway Administration (FHWA).

While WSDOT's Office of Equal Opportunity (OEO) has the overall responsibility for administration and implementation of WSDOT's DBE Program, local agencies (as subrecipients) also have an important role to ensure that their Federally-assisted contracts are administered in accordance with the State's approved DBE Program Plan, which is available on WSDOT's website.

WSDOT's OEO, in coordination with the Operations Engineer for Highways and Local Programs, will conduct compliance reviews of the local agency's administration of the DBE Plan. A local agency that is found to be in noncompliance may be subject to formal enforcement action (suspense or loss of Federal funds and/or CA status). A finding of noncompliance will result for failure to comply with the requirements of WSDOT's DBE Plan.

Each Federally-assisted contract/subcontract must include the following assurance:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

26.2 Procedures

- a. **Local Agency DBE Liaison Officer.** The local agency is responsible for ensuring program compliance and monitoring its contractor's DBE activities. To accomplish this, a DBE liaison officer must be appointed by the local agency. This liaison officer must be an administrator responsible to the chief executive of the agency. This administrator should have the authority to delegate the responsibility

to the people who perform the contractor compliance function. The liaison officer's duties are to ensure compliance with the DBE Plan by the local agency and by their contractors.

- b. **DBE Firm(s) Certification.** The Washington State Office of Minority and Women's Business Enterprise (OMWBE) is the sole authority in the State of Washington to perform certification of all minority business enterprises, women business enterprises, and socially and disadvantaged business enterprises for programs administered by any State, local, or Federal agency. This statutory authorization extends to and binds all USDOT DBE Program recipients in the State of Washington. Only DBE firms that are currently certified by OMWBE may be used by prospective bidders on Federally funded projects. A directory of certified DBE firms is maintained and published by OMWBE. A copy of the directory is available via WSDOT's web page or directly from OMWBE. Their address is:

Office of Minority and Women Business Enterprise
406 South Water
Olympia, WA 98504
Telephone: (360) 753-9693

- c. **Establishment of Project DBE Goals.** The Highways and Local Programs Project Development Engineer will review each project to determine if it involves work elements that are conducive to DBE participation. To initiate this review, the local agency must submit an engineer's estimate with their suggested DBE goal to the Regional Local Programs Engineer when the contract work is determined. The estimate must show the item quantities and costs of the project.

If a local agency has any other projects tied to a federally funded project which utilizes one set of bid documents, the total project is considered a federal aid project for DBE goal setting purposes.

The goals for federal aid projects will be set under one of the following categories based on the projected participation level during the year to achieve the overall goal:

- Mandatory Goal
- Zero Goal

The Highways and Local Programs Project Development Engineer will then establish a mandatory DBE goal for the project. The methodology employed by WSDOT and its Highways and Local Programs Service Center in determining state and local agency project contract goals is as follows:

- A. Elements
 1. Geographical location of the project;

2. Type(s) of work included in the project, i.e., structure, roadway, new construction;
3. Availability of DBEs to perform the type(s) of work;
4. Potential subcontractable items of the work; and
5. Total dollar value of the contract.

The attainment accomplished through this analysis will be reviewed annually to determine the appropriateness of the method of setting goals.

B. Goal Setting Process

1. Review the department's overall DBE goal and the means to meet the goal (Refer to WSDOT's DBE Plan: XVIII, Overall DBE Goals and XXIII, Means to Meet the Overall DBE Goal);
2. If the contract includes federal funds, a DBE goal is considered;
3. If the contract amount is under \$100,000.00 then no goal is set. (However, if the work is such that the prime contractor has a distinctly separate class of work available, and meets the requirement for the prime to do 30% of the work, a goal may be considered);
4. The bid items are sorted by pre-qualification work classes and the total estimated dollar amounts to help identify opportunities for subcontracting;
5. Prime contractor work is assumed to be one class (the largest) unless two classes are needed to total a minimum of 30% of the total contract;
6. Mobilization nor specialty work is considered for subcontracting;
7. The remaining work is totaled, both as a percentage and a dollar amount. It is then divided by two (2). (50 percent of the total identified subcontractable items would be available for DBE firms, while the other 50 percent would be available for non-DBE firms); and
8. Ensure that DBE firms are ready, willing, and able to perform the work at the geographic location and time of the project.

If a local agency feels the project goal set by the Highways and Local Programs Project Development Engineer is inappropriate, they may submit a request to have it changed. This request must be accompanied by justification based on the above criteria for establishing the contract goal.

- d. **DBE Provisions in the Plans, Specifications, and Estimate (PS&E).** After the goal has been determined, the applicable WSDOT General Special Provision (GSP), for the type of goal set as outlined above shall be included in

the PS&E. These GSPs are available on the WSDOT website or from the Regional Local Programs Engineer. Only the WSDOT GSPs are approved for use on an FHWA funded project.

To complete the DBE requirements in the PS&E, when a mandatory goal is established, Form 272-056A, "Disadvantaged Business Enterprise Utilization Certification," will be included. This form shall be in the proposal given to each bidder. This form is available from the Regional Local Programs Engineer. When a zero goal is established the DBE utilization form is not required.

- e. **Bid Opening.** Each bid proposal must be reviewed to determine if the bid is responsive. For a contract with goals, each proposal shall contain the form "Disadvantaged Business Enterprise Utilization Certification" completed by the contractor.

Failure to complete this form will be considered as evidence that the proposal is unresponsive and, therefore, is not eligible for award.

- f. **Is the DBE Firm Certified by OMWBE?** The DBE firm named by the contractor in the bid proposal shall be certified as a DBE firm by OMWBE to be eligible for work on an FHWA funded project. (See b, above.) To verify whether a firm is certified as a DBE and eligible to perform work on an FHWA funded project, you must contact OMWBE at (360)753-9693 or at their website and document to the project file. To meet the goals for the project, DBE firms not certified at the time fixed for the bid opening will not be accepted by the local agency for participation, as a Condition of Award (COA) Contractor, in the project.

g. **Selection of the Successful Bidder**

A. Selection of Successful Bidder (When a mandatory goal is established.)

1. The successful bidder shall be selected on the basis of having submitted the lowest responsive bid and, in order to be responsive, making good faith efforts to meet the DBE goal. The bidder can meet this requirement in either two ways:
 - a. The bidder can meet the established DBE goal, documenting commitments for participation by DBE firms sufficient for this purpose; or
 - b. If the bidder does not meet the established DBE goal, the bidder can document its adequate good faith efforts.

This means that the bidder must show that it took all necessary and reasonable steps to achieve the DBE goal, and by their scope, intensity, and appropriateness to the objective, the bidder could reasonably be expected to obtain sufficient DBE participation, even if the bidder were not fully

successful in meeting the established DBE goal. Efforts done as a matter of form or for the sake of appearance, are not considered “good faith efforts” to meet the DBE contract requirements.

2. Should the low and otherwise responsive bidder fail to attain the goal and provide adequate good faith effort documentation in the bid submittal, its bid may be rejected and the next low responsive bid accepted.
3. Should more than one bidder fail to meet the goal, WSDOT and its subrecipients will determine the adequacy of the low and otherwise responsive bidder’s submission in light of DBE participation attained by all bidders. This will be accomplished by comparing the low bidder’s submission to the average DBE participation by all bidders. When computing average DBE participation, only the amount of the DBE goal attainment which does not exceed the established goal shall be used. Should the low bidder’s DBE participation be lower than the average, the bid shall be considered nonresponsive and shall be rejected. If the lowest bid is rejected, the next lowest bid(s) shall be examined under the foregoing criteria until the contract is awarded or all bids are rejected. The following is an example of goal averaging.

	Example 1		Example 2	
	Total Bid	DBE Bid	Total Bid	DBE Bid
Low Bid	\$ 99,000	13%	\$ 99,000	15%
Second	100,000	16%	100,000	13%
Third	100,500	15%	100,500	16%
Fourth	101,000	16%	101,000	16%
Total of DBE Bids		60%		60%
Average DBE Bid Goals		15%		15%

Each bidder shall submit a written assurance with their bid that they will meet the goal. The successful responsive bidder must provide the following information at the time of bid submittal:

1. The names of the DBE subcontractors proposed for contracts, including the OMWBE certification number.
2. The dollar value of each DBE subcontract proposed.

The successful bidder will obtain verification of OMWBE certification from the DBE business firm. The certification will identify the firm as being eligible for DBE status. The successful bidder will have the responsibility of verification with OMWBE that the DBE firm’s certification is current.

B. After Execution

WSDOT will request that the apparent low bidder submit a description of the specific items of the work each DBE subcontractor will perform. This descrip-

tion, dollar amount, and name of the DBE firm is identified in the award letter and made Condition of the Award (COA) of the contract.

In the event a bidder is unable to meet the assigned DBE contract goal, the bidder shall provide additional information regarding its good faith efforts to do so per the requirements of the contract. Good Faith Effort (GFE) documentation may be required after award and during the execution of the contract. GFE documentation may also be required during substitutions when a firm is unable or unwilling to perform. The bidder must document the steps taken to obtain participation which demonstrate *good faith efforts*, as outlined:

1. Evidence the bidders attended any presolicitation or prebid meetings that were scheduled by WSDOT to inform DBEs of contracting and subcontracting or material supply opportunities available on the project;
2. Evidence the bidder identified and selected specific economically feasible units of the project to be performed by DBEs in order to increase the likelihood of participation by DBEs;
3. Evidence the bidder advertised in general circulation, trade association minority and trade oriented, women-focus publications, concerning the subcontracting or supply opportunities;
4. Evidence the bidder provided written notice to a reasonable number of specific DBEs, identified from the OMWBE Directory of Certified Firms for the selected subcontracting of material supply work, in sufficient time to allow the enterprises to participate effectively;
5. Evidence the bidder followed up initial solicitations of interest by contacting the DBEs to determine with certainty whether they were interested. This may include the information outlined:
 - a. The names, addresses, and telephone numbers of DBEs who were contacted, the dates of initial contact, and whether initial solicitations of interest were followed up by contacting the DBEs to determine with certainty whether the DBEs were interested;
 - b. A description of the information provided to the DBEs regarding the plans, specifications, and estimated quantities for portions of the work to be performed;
 - c. Documentation of each DBE contacted but rejected and the reason(s) for that rejection;
6. Evidence that the bidder provided interested DBEs with adequate information about the plans, specifications, and requirements for the selected subcontracting or material supply work;

7. Evidence the bidder negotiated in good faith with the DBE firms, and did not without justifiable reason reject as unsatisfactory bids prepared by any DBE;
8. Evidence the bidder advised and made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by WSDOT or the contractor;
9. Evidence the bidders efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of WSDOT;
10. Evidence that the bidder used the services of minority community organizations, minority contractor groups, local, state, and federal minority business assistance offices and other organizations identified by WSDOT and advocates for disadvantaged, minority, and women businesses that provide assistance in the recruitment and placement of disadvantaged, minority, and women business enterprises; and
11. Evidence the bidder used the services of WSDOT's DBE Supportive Services consultant.

C. Administrative Reconsideration

If WSDOT or its subrecipients determine that the apparent successful bidder/offer or has failed to make a good faith effort to meet the goal, WSDOT and its subrecipients will, before awarding the contract, provide the bidder/offer or an opportunity for administrative reconsideration.

1. As part of this reconsideration, the bidder/offer or will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so;
2. WSDOT's decision on reconsideration shall be made by an official who did not take part in the original determination that the bidder/offer or failed to meet the goal or make adequate good faith efforts to do so;
3. The bidder/offer or shall have the opportunity to meet in person with said official to discuss the issue of whether it met the goal or made good faith efforts to do so;
4. WSDOT shall send the bidder/offer or a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so; and
5. The results of the reconsideration process is not administratively appealable to the USDOT.

- h. **Condition of Award Letter.** The condition of award letter carries the same contractual obligation as the contract specifications and is only required when a mandatory goal is established for the project. A condition of award letter appears as Appendix 46.42. The second, third, fourth, and fifth paragraphs must be included in the letter. The DBE work shall be shown in the fifth paragraph. If a portion of an item is sublet to a DBE and the remainder is done by the contractor or another subcontractor, the DBE's work must be shown in detail in the fourth paragraph of the letter. Also, any DBE suppliers and manufacturers shall be shown.

Send a copy of this letter and a copy of the "Disadvantaged Business Enterprise Utilization Certificate" to the Regional Local Programs Engineer as a part of the award documentation submittal explained in Chapter 46.

Attach a copy of the letter to the contract papers that you send to your contractor for signature. The Regional Local Programs Engineer shall be provided information on subletting by DBE contractors.

- i. **Between Award and Execution.** The contractor shall supply a contractors bidders list as described in the GSP's for all categories (zero and mandatory goals.) **The list shall include all firms that bid on prime contracts or bid or quote subcontracts (successful and unsuccessful) on USDOT-assisted projects, including both DBEs and non-DBEs.** The list shall also include the firms name and address. The local agency shall immediately notify the Region Local Programs Engineer by E-Mail with the name and address of the successful contractor for forwarding to the OEO's contract compliance officer.
- j. **Monitoring of the DBE During Construction.** The local agency must place special emphasis on the DBE requirements at the preconstruction conference. Changes to a condition of award letter shall be submitted in the form of a change order to the Regional Local Programs Engineer.

Project diary documentation of the DBE's activities on the project must be performed in the same manner as is done on the prime contractor and any other subcontractor's activities.

In addition to the project diary, the form "DBE On-Site Review" shall be completed by the CA Agency for every DBE condition of award (see Appendix 46.42):

- at the start of work, and/or
- at the peak period of work, and/or
- whenever changes in the performance of the work warrants its completion.

The review should be completed per on-site observations, documentation review, and interviews of contractor's personnel. This completed form becomes a part of the local agency's project records. Additional forms are available from your Regional Local Programs Engineer.

The WSDOT GSP, Disadvantaged Business Enterprise Participation, and Chapter 1 of the WSDOT Construction Manual shall be followed to ensure compliance with the DBE Plan.

In order to satisfy the contract goal, a DBE firm shall perform a commercially useful function. A commercially useful function is defined as: responsibility for executing a distinct element of contract work and carrying out those responsibilities by actually performing, managing, and supervising the work involved. The documentation in the project diary and on the DBE On-Site Review form is the information that the local agency will use to determine whether a DBE is performing a commercially useful function. If there is evidence that a DBE firm is not performing a commercially useful function, immediately contact your Regional Local Programs Engineer.

- k. **Prompt Payment.** Refer to Amendment Section 1-08, Prosecution and Progress (March 6, 2000) and RC W 60.28 for "Prompt Payment" requirements.
- l. **During Construction and Upon Completion.** For all federal aid projects the contractor shall submit Quarterly Report of Amounts Credited as DBE Participation, WSDOT Form 422-102 EF (Appendix 26.41), to the local agency. On this form, the contractor shows the actual amount paid to the DBE firm for the contract work. The local agency shall forward a copy to the Region Local Programs Engineer. This completed form is required quarterly and a final at the completion of the project must be submitted to the Headquarters Highways and Local Programs Project Development Engineer as specified on the form.
- m. **Records and Reports.** The local agency will maintain such records and provide such reports as necessary to ensure full compliance with the Plan.

Upon request from the OMWBE, WSDOT, or the USDOT, the local agency shall submit the records deemed necessary for inspection, auditing, and review purposes.

26.3 Consultant Agreement Goals

The Highways and Local Programs Project Development Engineer will review each consultant agreement with an estimated cost over \$250,000 to determine if a DBE goal is applicable for the agreement. The goal setting process follows the same guidelines at the construction contract (see 26.2(c)) only it utilized the tasks outlined in the agreement in place of the bid items.

1. The Local Agency will as part of the advertisement, indicate the established DBE goal in their advertisement for proposals.
2. Responsiveness to the DBE goal shall not be determined prior to award. However, failure to meet goal attainment may be utilized as an evaluation criteria on past work performance.
3. The Consultant shall include in their response to a Request for Qualifications an Information Packet that identifies the potential subcontractors, both DBE certified and non-DBE firms.
4. The Consultant will submit a scope of work and cost estimate that will identify each subconsultant. The consultant will meet the project DBE goal, identifying each subconsulted element of work.
5. The monitoring of DBE participation will be tracked using the Quarterly Amounts paid DBE participants as discussed in 26.2(l).

Appendixes

- 26.41 Quarterly Report of Amounts Credited as DBE Participation
- 26.42 Disadvantaged Business Enterprise Utilization Certification

27.1 General Discussion

To effectively assure Equal Employment Opportunity (EEO), it is the policy of the Federal Highway Administration (FHWA) to require that all federal aid highway construction contracts include specific requirements to implement the Title VI Program, related civil rights laws and regulations. These specific requirements apply to contractors and all their subcontractors (not including material suppliers) holding subcontracts of \$10,000 or more. To be eligible for federal aid funds, the local agency must comply with the civil rights requirements.

The following statement shall be accepted by local agencies and contractors as their operating policy:

It is the policy of this Company to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, or disability. Such action shall include: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

Local agencies and their contractors must each designate an EEO officer to ensure compliance with the EEO Title VI, Section 504, and training policy.

The Washington State Department of Transportation (WSDOT) will monitor both the local agency and its contractors for compliance as part of the normal project management reviews and through contract compliance reviews of selected contracts.

The local agency, by signature to the Local Agency Agreement, agrees to the following:

- a. To assist and cooperate actively with the state in obtaining contractor and subcontractor compliance with the equal opportunity clause and rules, regulations, and relevant orders of the FHWA and/or Secretary of Labor.
- b. To furnish the state such information as it may require for the supervision of such compliance and otherwise assist the state in the discharge of its primary responsibility for securing compliance.
- c. To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, as amended, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally-assisted construction contracts pursuant to the Executive Order and other pertinent rules, laws, and regulations.
- d. To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the state, FHWA, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the agency agrees that if it fails or refuses to comply with these undertakings, the state may take any or all of the following actions:

- Cancel, terminate, or suspend the Local Agency Agreement in whole or in part;
- Refrain from extending any further assistance to the agency regarding the failure or refusal to comply until satisfactory assurance of future compliance has been received from the agency; and
- Refer the case to the Department of Justice for appropriate legal proceedings.

The local agency must consult the WSDOT/APWA *Standard Specifications, Amendments, General Special Provisions*, and the WSDOT *Construction Manual* to administer the EEO and training programs.

27.2 Training

To meet federal requirements, each contract must comply with applicable GSPs and Form FHWA-1273.

Training goals are established by the Highways and Local Programs Operations Engineer on selected federal aid construction contracts. The goals are set based on the formula developed by WSDOT, and the goal setting process takes into account the following factors:

1. The dollar amount of the project (normally Highways and Local Programs will not set goals on projects of less than \$500,000).
2. Type of work. Project must lend itself to training.
3. Availability of minorities and women for training.
4. Geographic location of the project.
5. Duration of the work (normally Highways and Local Programs will not set training goals on projects of less than 60 working days).

The formula is a combination of opportunity and population ratings based on location. These are multiplied by the dollar amount of the project and provide a base figure for training hours. This is a base figure which is adjusted depending on the length of the project and the type of work. The Highways and Local Programs Operations Engineer determines the training hours, but the number of trainees is left to the discretion

of the local agency. The local agency must submit an engineer's estimate for the duration of the contract including estimated number of working days to the Region Local Programs Engineer as a basis for the Highways and Local Programs Project Development Engineer to set goals. (The training goals and DBE goals are established at the same time.)

If the local agency has a WSDOT approved EEO/On-the-Job Training (OJT) Plan which sets training goals, the agency may use those goals to establish specific project goals.

27.3 Contract Administration

.31 General. The local agency has the responsibility to:

- a. Conduct preconstruction conferences during which EEO and training Special Provisions for federal aid contracts are discussed with the contractor. (Emphasis should be made regarding the applicability of goal-by-craft versus average-of-all-crafts.)
- b. Ensure that the contractor posts and maintains notices and posters setting forth the contractor's EEO policy. A supply of OFCCP Poster No. 1420, Equal Employment Opportunity is the Law, shall be made available to the contractor.
- c. Monitor on-site compliance with the EEO and training Special Provisions of federal aid contracts.
- d. Ensure that their contractors locate, qualify, and increase the skills of minority groups, women employees, and applicants for employment as specified in the training provisions.
- e. Prepare and/or ensure the preparation of the required EEO and training reports.

.32 EEO Reports.

- a. PR 1391: This report is submitted by the contractor and subcontractors showing all the employees in the work force including an ethnic breakdown on their federal aid highway construction projects under construction during the month of July. The report is a summation of employees on their last payroll period preceding the end of July. The local agency retains this form in its project files.
- b. PR 1392: Summation of the July PR 1391 reports received from all contractors and subcontractors that were working on federally-assisted projects during the month of July. This report is prepared by the local agency and sent to the Region Local Programs Engineer by August 30. The Region Local Programs Engineer will summarize agencies PR1392 into one PR1392. This summarized report is due at WSDOT Headquarters Highways and Local Programs by September 10 annually.
- c. DOT Form 820-010 Monthly Employment Utilization Report: This report includes the total work hours for each employee classification in each trade in the

covered area for the monthly report period. All Contractors/Subcontractors having contracts of \$100,000 or more that are federally funded shall submit WSDOT Form 820-010 to the Local Agency by the **fifth of the month** during the term of the contract. The Contractors/Subcontractors shall maintain this information in their files for all federally and locally funded projects under \$100,000. The hours reported represent the contractor's and subcontractor's federal and nonfederal funded projects in the SMSA or EA per the GSP. The completed form will represent a work force greater than what is on your project if the contractor or subcontractor has another project in the same SMSA or EA.

To monitor the forms submitted during the term of the contract, the local agency will summarize a contractor's progress by completing the "Monthly Employment Utilization Report Worksheet" or a similar form. The results of the summary will show whether the contractor is meeting the employment percentages that appear in the GSP.

.33 Training Reports.

- a. Form 272-060: Federal Aid Highway Construction Annual Project Training Report, is maintained by the local agency's Project Engineer as trainees are approved. Question 10 is to be completed from the project payroll/trainee records. Form 272-060 is due in the Region Local Programs office by June 10.
- b. Form 272-061: Federal Aid Highway Construction Cumulative Training Report, extracts the information taken from Form 272-060. The Region Local Programs Engineer prepares this report which is due in the Headquarters by June 20.

27.4 Monitoring During Construction

.41 EEO. During the project construction, the local agency must monitor the contractor's performance to ensure compliance with its Title VI and Section 504 EEO policy. To accomplish this, the local agency must designate an EEO officer. The EEO officer's duties are to conduct reviews with the contractor, maintain records, reports, and required Title VI statistical data concerning the contractor's performance, and ensure that the local agency itself is in compliance with its EEO policy.

.42 Training. When training hours are assigned to the project, the local agency must verify that the trainee is on the project and is receiving beneficial training in accordance with the approved training program. When the trainees are on the project, the local agency shall periodically conduct interviews with them to determine if they are receiving the training as specified in the approved training program. The "Trainee Questionnaire" form or similar forms should be used to document the employee interviews and the contractor's compliance with the training requirement.

Chapter 42

Design Standards

42.1 General

This chapter defines the design standards that comply with the requirements of Title 23, USC Section 109(p) for Federal Highway Administration (FHWA) funded non-NHS public road projects on local streets and roads. The standards have been adopted by local agencies in accordance with RCWs 35.78 and 43.32 and apply to all arterial streets and roads. These standards cannot provide for all situations, but are intended to define the minimum elements for assistance to competent design professionals, without limiting innovation or creative engineering.

For FHWA funded projects, these standards apply to all non-NHS streets and highways on federal functionally classified streets and roads except for rural minor collector and local access roads. These standards have also been accepted by the Transportation Improvement Board (TIB) and the County Road Administration Board (CRAB) as the standards applicable to their funding programs.

To be eligible for federal funding, pavement depth shall be designed to provide an extended service life of 8 years and provide a minimum surfacing depth of 0.10 feet (30 mm) for structural deficiencies and 0.06 feet (18 mm) for correcting rutting skid resistance or other nonstructural problems.

The included text and tables illustrate the minimum standards that apply to most of the design elements for FHWA funded projects. For other items of design, refer to the WSDOT *Design Manual* (M 22-01) and the 2001 AASHTO publication “A Policy on Geometric Design of Highways and Streets” (Green Book). Design standards are provided in English and metric units to allow the designer a choice.

42.2 City and County Design Standards

Appendix 42.31 is incorporated into this manual for use in construction of local roads and streets. The statutory city and county design standards committee has adopted these publications for use on all public roads, classified as collector arterial or higher throughout Washington State. As updates are made by this committee, they will be included as an update to this manual.

42.3 Appendixes

42.31 City and County Design Standards

City and County Design Standards

for the Construction of Urban and Rural
Arterials and Collectors

Adopted in 2002, per
RCW 35.78.030 and RCW 43.32.020

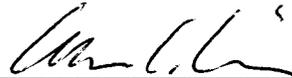
Contents

	Page
Introduction	1
<hr/>	
Committee Membership	3
<hr/>	
Design Standards for New Construction and Reconstruction	5
Definitions	5
Roadway Geometrics	6
Bridge Criteria	7
Other Criteria	7
Roadway Elements	8
Geometric Cross-Section for Two-Way Roads and Streets (English Units)	9
<hr/>	
Design Standards for 3-R Projects	10
Definitions	10
General Discussion	11
<hr/>	
Design Standards for 2-R Projects	13
General	13
Design Parameters	13
<hr/>	
References for New Construction and Reconstruction, 3-R, and 2-R Standards	15
Addresses to Acquire Reference Materials	16

Committee Membership

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These design standards were developed with the approval and authorization of:



Alan O. King, PE
Committee Chair
Headquarters Highways and Local Programs

Design Standards for New Construction and Reconstruction

Definitions

Clear Zone. The clear zone is the roadside border area starting at the edge of the traveled lane that is available for safe use by errant vehicles. The available clear zone is the distance, measured in feet (meters), normal to the highway beginning at the edge of the traveled lane to the closest part of any fixed object or nontraversable obstacles. Establishment of a minimum width clear zone is recommended. Rigid objects and certain other obstacles within the zone should be removed, relocated to an inaccessible position outside the minimum clear zone, remodeled to make traversable, breakaway, or shielded. Traffic control signs and luminaires with breakaway supports are not considered obstacles. All new construction and reconstruction projects should consider a minimum clear zone distance.

Functional Classification. The roadway classifications referred to in this manual are the Federal Functional Classifications shown on the official functional class maps prepared by the Headquarters Planning and Programming Office of WSDOT. |

New Construction. New construction is the building of a new roadway or structure on substantially new alignment, or the upgrading of an existing roadway or structure by the addition of one or more continuous traffic lanes.

Reconstruction. A reconstruction project involves major construction activity in excess of 3-R activity (see the Design Standards for 3-R Projects section). Reconstruction includes significant changes in cross section and/or shifts in vertical or horizontal alignment. If 50 percent or more of the project length involves significant vertical or horizontal alignment changes, the project will be considered reconstruction. Reconstruction may require acquisition of additional right-of-way, and may include all items or work usually associated with new construction. Reconstruction adds additional capacity for the through traffic lanes.

Traveled Lane. That portion of the roadway used for vehicle movement exclusive of the portion of the roadway width used or available for parking vehicles.

Average Daily Traffic (ADT). The general unit of measure for traffic defined as the total volume during a given time period (in whole days), greater than one day and less than one year, divided by the number of days in that time period.

Design Hourly Volume (DHV). The DHV is generally the 30th highest hourly volume (30 DHV) of the future year chosen for design. On the average rural road or arterial, DHV is about 15 percent of ADT. For urban areas, DHV is usually between 8 to 12 percent of the ADT.

3-R. Resurfacing, restoration, and rehabilitation of existing roadways with minimal changes to alignment or grade with no increase to capacity for the through traffic lanes.

2-R. Resurfacing and restoration of existing roadways by supplementing the existing road prism.

Low Volume Roads and Streets. For this document, a collector arterial or lower classified road or street with an ADT of less than 400.

Roadway Geometrics

The following references provide design standards for the designer. The designer should read the text associated with the references and should also consider other related tables and text. Additional design references are in the References for New Construction and Reconstruction, 3-R, and 2-R Standards section.

Design Elements	References
	2001 AASHTO Green Book, "A Policy on Geometric Design of Highways and Streets."
Stopping Sight Distance	Stopping Sight Distance (wet pavement) Exhibit 3-1, page 112, and text on pages 425 (rural) and page 435 (urban). <u>AASHTO Design Guide Exception -- The desirable height of object for computing a stopping sight distance is 0.5 ft; the minimum is 2.0 ft.</u>
Passing Sight Distance	Single vehicle passing a single vehicle (Exhibit 3-7, page 124). Minimum passing sight distance single vehicle (Exhibit 3-7, page 124).
Roadway Approach/ Departure Sight Distance	Exhibit 9-50 through 9-70, pages 654-682, "Intersection sight distance."
Horizontal Curvature (Radius)	Exhibit 3-14, page 145, "Minimum Radius for Design of Rural Highways, Urban Freeways, and High-Speed Urban Streets Using Limiting Values of e and f."
Vertical Sag Curves	Exhibit 3-78, page 278 "Design Controls for Sag Vertical Curves - Open Road Conditions." Exhibit 3-79, pages 280, "Design Controls for Sag Vertical Curves."
Vertical Crest Curves	Exhibit 3-75, page 273, "Design Controls for Crest Vertical Curves – Open Road Conditions." Exhibit 3-76, page 274, "Design Controls for Stopping Sight Distance and for Crest Vertical Curves." Vertical Curves Based on Passing Sight Distance."
Vertical Grade	Exhibit 6-4, page 427, "Maximum Grades for Rural Collectors." Exhibit 6-8, pages 436, "Maximum Grades for Urban Collectors."

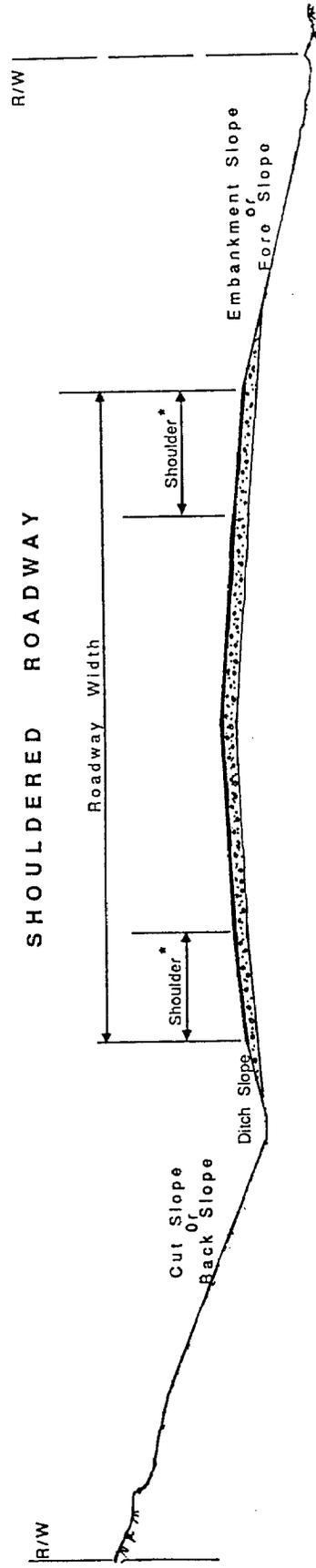
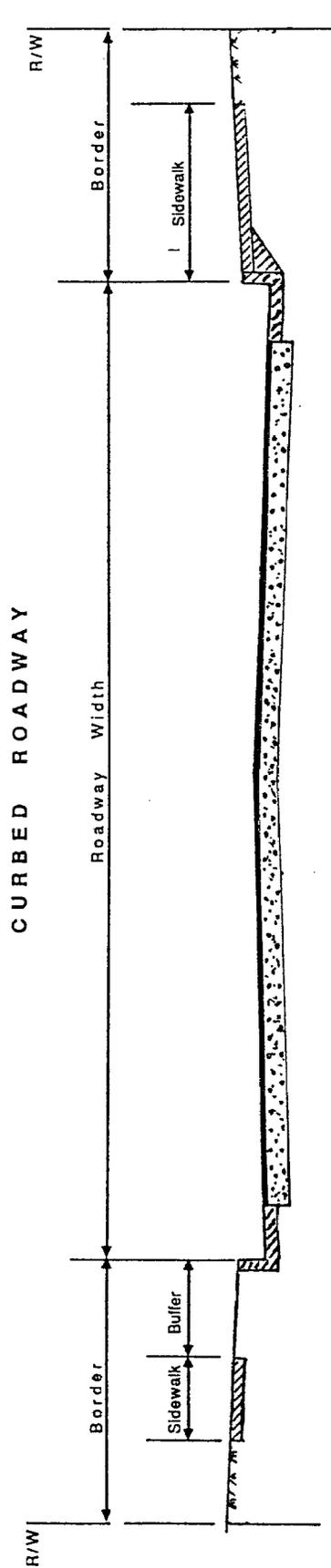
Bridge Criteria

Design Elements	References
Bridge Width	The minimum bridge width for two-way structures is the greater of: (1) the design roadway width, or (2) the existing roadway width.
Loading	HS 25-44 (for federally funded projects), others may use HS 20-44.
Vehicular Railing	AASHTO Crash Tested Rail, or Approved Crash Tested Rail.
Pedestrian Railing	AASHTO.
Approach Railing	AASHTO Crash Tested Rail, or Approved Crash Tested Rail.
Vertical Clearance	16.5 feet minimum.

Other Criteria

Design Elements	References
Bicycle	Chapter 1020 of the WSDOT <i>Design Manual</i> (RCW 35.75.060 and 36.82.145).
Signing	MUTCD, as modified by the Washington State Transportation Commission per RCW 47.36.030.
Americans with Disabilities	Code of Federal Regulations 28 CFR Part 36, Interim Final Rules Disabilities Act-1990 U.S. Department of Justice ADA The Architectural and Transportation Barriers Compliance Board WSDOT/APWA Standard Plan F-3 <u>Current</u> Uniform Building Code, Washington State Amendments.
Sidewalks	Sidewalk Details, A Guide for Washington Local Agencies, Tribes and Nations, March 2001.
Low Volume Roads	<u>2001 AASHTO Geometric Design of Very Low Volume Local Roads (ADT ≤ 400)</u>

**DEFINITION
OF
ROADWAY ELEMENTS**



* Does not include widening for guard rail or other special purposes.

Geometric Cross-Section for Two-Way Roads and Streets (English Units)

Design Standards	Arterial											
	Principal ^(h)			Minor ^(h)				Collector ^(h)				
	Curbed ^(d)	Shouldered		Curbed ^(d)	Shouldered			Curbed ^(d)	Shouldered			
	DHV All	DHV Below 200	DHV 200 and Over	DHV All	DHV Below 100	DHV 100 to 200	DHV 201 and Over	DHV 400 and Over	ADT 400 to 750	ADT 751 to 1000	DHV 100 to 200	DHV 201 and Over
Right-of-Way	Not less than required for all design elements.											
Roadway Width ^{(a)(b)(g)(i)}	24 ft	36 ft	40 ft	24 ft	32 ft	36 ft	40 ft	24 ft	26 ft	28 ft	34 ft	40 ft
Lane Width:												
(A) Exterior ^{(b)(i)}	12 ft	12 ft	12 ft	12 ft	12 ft	12 ft	12 ft	12 ft	10 ft	10 ft	11 ft	12 ft
(B) Interior Thru ^(b)	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	10 ft	10 ft	11 ft	11 ft
(C) 2-Way Left Turn ^(b)	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	10 ft	10 ft	11 ft	11 ft
(D) Exclusive Turn ^(b)	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	10 ft	10 ft	11 ft	11 ft
(E) Parking	10 ft ^(c)			10ft ^(c)					(e)			
Shoulder Width ^{(f)(g)(i)}		6 ft	8 ft		4 ft	6 ft	8 ft		3 ft	4 ft	6 ft	8 ft
Clear Zone/Side Slopes	AASHTO (j)											
Ditch Slope (in slope)	Slopes steeper than 4:1 should only be used when achieving a 4:1 slope is impractical.											

(a) For curbed, distance from face of curb to face of curb. For shouldered, distance from outside edge to outside edge of shoulder.

(b) May be reduced to minimum allowed by AASHTO.

(c) 8 feet may be acceptable when the lane is not likely to become a traffic lane in the foreseeable future.

(d) Curbed section is appropriate for urban setting.

(e) Industrial areas 8 feet to 10 feet. Residential areas 7 feet to 10 feet.

(f) When guardrail is necessary, provide 2 feet of widening or longer posts to ensure lateral support.

(g) For roads with traffic volumes of less than 400 ADT, the low volume road and street standards may be used.

(h) Federal functional classification defined by WSDOT (Planning and Programming Service Center).

(i) For guidance for one-way streets, see AASHTO, and the 1991 uniform fire code.

(j) When using AASHTO guidance for clear zone determinations, the designer should take into account all AASHTO materials relating to clear zone and project circumstances.

Note: Where adequate traffic data is not available to determine DHV, a conversion may be made as follows:

$DHV = (.08 \text{ to } .12) \times ADT$ to change ADT to DHV

<p>New Sidewalks (when provided)</p>	<ul style="list-style-type: none"> • Minimum Width — 60 inches continuous clear width or 36 inches clear width with 60 inch by 60 inch clear passing spaces at 200-foot minimum intervals. • Surface — Firm, stable, and slip resistant. • Crossslopes — 1:50 (2%) maximum. • Running Slope — Minimum feasible slope consistent with slopes established by the adjacent roadway. • Buffer — Separation from vehicular ways by curbs or other barriers. <p>Note: For temporary work or alterations to existing sidewalks or pedestrian facilities, refer to ADA rules. For pedestrian paths off public rights-of-ways, the designer should refer to uniform building codes and WAC 51-30 for the appropriate standards.</p>
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Design Standards for 3-R Projects

Definitions

Resurfacing. The addition of a layer or layers of paving material to provide additional structural integrity or improved serviceability and rideability.

Restoration. Work performed on pavement or bridge decks to render them suitable for an additional stage of construction. This may include supplementing the existing roadway by increasing surfacing and paving courses to provide structural capability, widening up to 10 feet (3 m), including lane and shoulder width, and should include the installation of localized safety improvements. Restoration will generally be performed within the existing right-of-way.

Rehabilitation. Similar to “Restoration” except the work may include, but is not limited to, the following:

- Reworking, strengthening, or removing and replacing the base and/or subgrade.
- Recycling or reworking existing materials to improve their structural integrity.
- Adding underdrains.
- Replacing or restoring malfunctioning joints.
- Substantial pavement under-sealing when essential for stabilization.
- Pavement grinding to restore smoothness, providing adequate structural thickness remains.
- Removing and replacing deteriorated materials.
- Crack and joint sealing but only when the required shape factor is established by routing or sawing.
- Improving or widening shoulders.

Rehabilitation may require acquisitions of additional right-of-way.

Safety Improvements. Some safety improvements are normally included in 3R projects. During project development, a generalized roadside evaluation should be prepared to identify those high priority roadside elements to be considered for mitigation. Safety improvements include:

- Upgrading existing substandard roadway design elements — roadway design elements are the physical characteristics of the roadway such as alignment, grades, widths, sight distance, clearances, bridges, and the pavement structure including surface texture.
- Improving existing operational features — operational features include traffic control devices, left and right turn lanes, lighting, bicycle, and pedestrian accommodations that provide for the safe and efficient movement of vehicles, bicycles, and pedestrians.
- Reducing the potential hazard of existing roadside features — roadside features include sideslopes, ditches, drainage facilities, barrier systems, sign supports, luminaires, trees, utility poles, and other features adjacent to the roadway.

- Upgrading bridge safety features to include protection at all bridge ends by use of — bridge rails, approach rails, connections, and terminals are considered bridge safety features.
- Upgrading substandard superelevation.

General Discussion

Funding restrictions and other considerations do not always allow improvement of all existing roads and streets to the standards desirable for new construction. Therefore, when pavement condition deteriorates to the level of minimal standards, a cost-effective pavement improvement is needed.

A project becomes 3-R when the proposed improvement consists of resurfacing, restoration, or rehabilitation to preserve and extend the service life of the roadway, or enhances the safety of the traveling, bicycling, and/or walking public.

3-R projects primarily involve work on an existing roadway surface and/or subsurface. Their purpose includes extending the service life, providing additional pavement strength, restoring or improving the original cross-section, increasing skid resistance, decreasing noise, improving the ride of the roadway, and enhancing safety.

Many factors influence the scope of 3-R projects, including:

- Roadside conditions.
- Funding constraints.
- Environmental concerns.
- Changing traffic and land use patterns.
- Deterioration rate of surfacing.
- Accidents or accident rates.

Normally, all 3-R improvements are made within the existing right-of-way, although acquiring right-of-way and/or easements should be considered when and where practical.

Each 3-R project should be considered in context with the entire route between logical termini and within the constraints imposed by limited funding and other considerations.

As a minimum, normally include the following for a 3-R project:

- Guardrail end treatments upgraded to current standards.
- Appropriate transition and connection of approach rail to bridge rail.
- Beveled end sections for both parallel and cross-drain structures located in the clear zone.
- Relocating, protecting, or providing breakaway features for sign supports and luminaires.
- Protection for exposed bridge piers and all abutments.
- Modification of raised drop inlets which present a hazard in the clear zone.

It is desirable to provide a roadside clear of fixed objects and nontraversable obstacles. The priority for action relative to roadside obstacles is: (1) eliminate, (2) modify, and (3) protect.

On all projects which include structures with deficient safety features, consideration must be given to correcting the deficient features. When complete upgrading is not practical, a partial or selective upgrading and/or other improvements should be considered to mitigate the effects of the substandard elements.

Design Standards for 2-R Projects

General

Funding restrictions do not always allow improvement of existing roadways to the standards desired. Therefore, when pavement condition reaches a minimal condition, cost effective pavement improvements are needed.

Resurfacing and restoration (2-R) projects involve work to restore the existing roadway surface and appurtenances for safe and efficient highway operation. This type of project provides for resurfacing of the existing roadway to provide structural adequacy, to restore the roadway surface condition, and to consider making minor safety improvements.

Major improvements are not the intent of this type of project. In addition to 2-R allowing for maintenance overlays for preservation of the roadway, a 2-R project is defined as:

Resurfacing. The addition or replacement of a layer of paving material to provide additional structural integrity or improve serviceability and rideability.

Restoration. Work performed on either pavement sections or bridge decks to render them suitable for an additional stage of construction. This may include supplementing the existing roadway by increasing surfacing and paving courses to provide structural capability and minor shoulder widening to provide roadway section continuity. Restoration will generally be performed within the existing right-of-way.

Design Parameters

1. **Traveled Way and Roadway Width.** Resurfacing of the roadway will normally be to the existing width. This should consider paving of previously unpaved shoulders. If short lengths of narrower lanes or shoulders exist within the project limits, widening should be considered to provide roadway section continuity within the project limits.

2. **Pavement**

a. The existing pavement may be structurally adequate, but may require an overlay to correct other types of deficiencies. An 0.7 inch (18 mm) minimum depth of paving material should be used to correct deficiencies such as rutting, skid resistance, etc.

If a general structural deficiency exists, the design service life minimum of eight years shall be used to determine the solution. A minimum depth of 1.2 inches (30 mm) is required for any structural deficiency in the surface.

b. To the extent feasible, achieve standard superelevation by adjusting surfacing depth.

3. **Safety Improvement.** Some safety improvements are normally considered in 2-R projects. During project development, a generalized roadside evaluation should be prepared to identify those high priority roadside elements to be considered for mitigation.

All high accident locations should be evaluated for treatment.

All signing and pavement markings shall be updated in compliance with the MUTCD.

The items below, in conjunction with the accident history and funding availability, should be considered in developing the project:

- Evaluate Bridge approach guardrail — The transition and attachment to all the bridge ends should be brought up to current standards. The leading or trailing guardrail ends should be upgraded if there is no existing approach guardrail, new approach guardrail should be installed on all bridge ends to the current standards. Evaluate bridge barrier systems. Consideration should be given to upgrades.
- Rail/Deck/Post Elements
- Approach Transitions
- Wood Elements (should be particularly considered for upgrades.)
- Remove unneeded guardrail.
- Upgrade all guardrail ends. The preferred upgrade would be to the current standards.
- Relocate, protect, or provide breakaway features for sign supports and luminaires inside the clear zone.
- Adjust utilities for location with clear zone standards.
- Add or update traffic barriers/guardrail.
- Beveling or extend culverts.
- Slope flattening/ditch.
- Add channelization and/or illumination.
- Improve sight distance.

References for New Construction and Reconstruction, 3-R, and 2-R Standards

The designer may use the standards and rationales incorporated into the following manuals (see the following page for addresses to acquire reference materials).

AASHTO

- A Policy on Geometric Design of Highways and Streets, 2001 Edition.
- Guide for Design of Pavement Structures
- Highway Drainage Guidelines
- Guide for Roadway Lighting
- Roadside Design Guide

Transportation Research Board (TRB)

- Highway Capacity Manual

Washington State Department of Transportation (WSDOT)

- Standard Specifications for Road, Bridge, and Municipal Construction
- Supplement to MUTCD (WAC 468-95)
- Bridge Design Manual
- Highway Hydraulics Manual
- Standard Plans for Road, Bridge, and Municipal Construction
- Design Manual (except for 2R/3R)
- Pavement Design Manual
- A Guide for Local Agency Sidewalk Details, WSDOT Headquarters Highways and Local Programs, Washington State Technology Transfer Center

Institute of Transportation Engineers (ITE)

- Traffic Engineering Handbook

FHWA

- Manual of Uniform Traffic Control Devices (MUTCD)

ADA

- Federal/Register, June 20, 1994, Interim Final Rules, 36 CFR-Part 1191 Architectural and Transportation Barriers Compliance Board
- 1994 Uniform Building Code, Washington State Amendments

Roundabouts

- NCHRP Synthesis 264 — Modern Roundabout Practice in the United States, Transportation Research Board
- FHWA — Roundabouts, An Informational Guide
- WSDOT *Design Manual*, Chapter 915

Traffic Calming

- A Guidebook for Residential Traffic Management, Final Report, December 1994, WSDOT Highways and Local Programs Service Center, Washington State Technology Transfer Center

Addresses to Acquire Reference Materials

<i>AASHTO</i>	American Association of State Highways and Transportation Officials 444 North Capitol Street NW, Suite 249 Washington, DC 20001 (202) 624-5800 (202) 624-5806 (fax)
<i>TRB</i>	Transportation Research Board National Research Council 2101 Constitution Avenue NW Washington, DC 20418
<i>WSDOT</i>	Engineering Publications Department of Transportation Transportation Building, Room SD3 Olympia, WA 98504-7400 (206) 705-7430 (206) 705-6808 (fax)
<i>ITE</i>	Institute of Transportation Engineers 525 School Street SW, Suite 410 Washington, DC 20024 (202) 554-8050 (202) 863-5486 (fax)
<i>MUTCD</i>	Superintendent of Documents U.S. Government Printing Office Washington, DC 20402
<i>ADA</i>	Office of the General Counsel Architectural and Transportation Barriers Compliance Board 1331 F Street NW, Suite 1000 Washington, DC 20004-1111 (202) 272-5434 (Voice), 272-5449 (TDD) (202) 272-5447 (fax)

43.1 General Discussion

On all Federal Highway Administration (FHWA) funded transportation projects, local agencies must document location and design approval prior to preparation of plans, specifications, and estimates (PS&E).

As explained in Chapter 13, *Becoming Certified*, when an agency operates under Certification Acceptance (Chapter 13), the approving authority for design is the local agency. The Assistant Secretary for Highways and Local Programs may delegate responsibilities for project administration to the Region Local Programs Engineer on a case-by-case basis.

A project design shall not be approved until the project's environmental considerations have been approved by FHWA, and its public hearing requirements have been met.

For all but the largest and most complex projects, the Project Prospectus serves as the Location and Design Report and approval. Where the prospectus adequately covers the items required for design approval, the local agency may approve the design using the prospectus in lieu of a Design Report.

For projects on managed access state highways within the incorporated limits of cities and towns, *City and County Design Standards* apply to areas outside the curb or outside the paved shoulder where no curb exists. WSDOT design requirements apply to the curbs and the entire area between the curbs (including raised medians), or between the outside edges of paved shoulder where no curb exists.

For high cost and major projects, a value engineering study should be performed and the results or summary included in the Design Report.

When there is a subsequent change to the project design or scope, an amended location-design approval is required.

43.2 Requirements for Design Approval

The items listed below, required for design approval, are normally included in the Project Prospectus. If the project is very large or complex (see Section 43.44), the local agency should prepare a separate Design Report that discusses project objectives, design criteria, and alternatives in greater depth than is possible in a prospectus. Examples of Design Reports and assistance in preparing them may be obtained from the Region Local Programs Engineer. This guidance is provided especially for those CA agencies that only have occasional FHWA funded projects.

.21 Traffic Data. Design-year ADT, the average daily traffic forecast during the design year should be included. The design year may be any point within 8 to 20 years from the projected start of construction.

.22 Right-of-Way. Refer to Chapter 25, Right-of-Way Procedures.

.23 Horizontal-Vertical Alignment. A plan showing the proposed horizontal alignment, existing streets, and proposed intersections shall be included. Show only sufficient detail to generally portray the scope of the project. If there is little change in the profile, do not include a profile. If there is significant change, furnish a profile showing existing and recommended vertical alignments.

.24 Roadway Section. Provide typical roadway sections for each general type of roadway in the project. This is not required on signal projects if the lane description has been shown.

.25 Pavement Design Criteria. Rationale for selection of the pavement type and depth of surfacing.

.26 Cost Estimate. The costs submitted shall be included for the Project Prospectus and the Local Agency Agreement shall be used.

.27 Environmental Considerations. Documentation, including approval by FHWA.

.28 Hearing Data. Reviewing the above documentation, the local agency will determine whether the design is in conformance with all requirements. If the design is in conformance, if the necessary environmental actions (Chapter 24) have been completed and approved by FHWA, and if public hearing requirements have been met, the local agency will grant and publish design approval (see Appendixes 43.71 and 43.72).

.29 Permits. Refer to Chapter 24, Federal Environmental Process, and Appendix 44.78 for a sample list of permits that may be required.

43.3 Bridge Design Approval

.31 Policy.

- a. The bridge site data should be prepared in conjunction with the Design Report. Extensive structural studies and the preparation of the bridge preliminary plans during the Design Report phase is not recommended. Expected changes to the roadway geometrics, project staging, construction costs, and other conceptual data will affect the structure and, therefore, impact the structural design effort.
- b. For bridge projects that do not fall under categories described in c. or d. below, the local agency is the approving authority for location design.

- c. For bridge projects that fall under the category of “major or unusual,” the Assistant Secretary for Highways and Local Programs approval is required at the preliminary “Type, Size, and Location” (TS&L) stage. (The FHWA regulatory requirements for large or unusual bridges contained in the *Federal Aid Policy Guide* (FAPG) also apply to large or unusual structures, tunnels, or hydraulic facilities. The definitions and requirements for major or unusual bridges will be addressed below; for other cases, refer to the FAPG.)
- d. For bridge projects on state routes and for any local agency bridge project that will be advertised and awarded by the Washington State Department of Transportation (WSDOT), design approval by the Assistant Secretary for Highways and Local Programs is required.

.32 Definitions. A “major bridge” is a bridge estimated to cost more than \$5 million. This criterion applies to individual units of separated dual bridges. An “unusual bridge” is a bridge involving difficult or unusual foundation problems, new or complex designs with unusual structures or operational features, or a bridge for which the design standards or criteria might be questionable.

.33 Submittal of Data. Refer to Section 34.42.

The Assistant Secretary for Highways and Local Programs approval of TS&L is required for major or unusual bridges before the local agency may approve the design and before the local agency may begin preparing the final PS&E.

.34 Bridges on State Right of Way. Bridge projects designed and constructed by a local agency within state right-of-way are to have a WSDOT representative assigned by the Region Administrator to serve as the Project Coordinator and WSDOT contact for all aspects of the project. This person is to assist in reviews by the Bridge Office and others and to ensure that adequate coordination between the local agency, region, and service center offices take place at each appropriate stage.

All pertinent review data submitted to the local agency by the Bridge Office concerning constructability, safety, aesthetics, or use of the bridge by the motoring public will be forwarded to the local agency through the Project Coordinator with a copy to the Highways and Local Programs Operations Engineer.

Local agencies, WSDOT, the Bridge Office, and other appropriate WSDOT representatives are to hold an early coordination meeting. Members present are to agree upon a list of key expectations and milestones that include but are not limited to: pre-scoping prior to consultant selection, design report review, prospectus stage, agreed upon periodic stage reviews of bridge plans, aesthetics, and selection of structure type. The WSDOT Project Coordinator is to ensure that all members reach agreement on the milestones and then collectively adjust or adhere to them.

43.4 Value Engineering

.41 Definition. Value Engineering (VE) is the systematic application of recognized techniques, by multidisciplinary team(s). These techniques are:

- identify a product’s function or service;
- establish a function’s monetary value or worth;
- provide alternate ways, using creative techniques, to reliably accomplish necessary functions in the most effective and efficient manner.

Reducing the scope of a project, compromising the performance of an element, or simply substituting cheaper materials is not VE. VE is not just “good engineering.” It simply answers the question, “What else will accomplish the purpose of the product, service, or process we are studying?” All costs are taken into account over the entire life of the project.

.42 Authority for VE. Paragraph 4b of DOT Order 1395.1 Use of Value Engineering (VE) by the U.S. Department of Transportation, dated April 13, 1987, provides: “All DOT grant awards for major transportation projects should strongly encourage the use of VE in the planning, design, and/or construction phases. This may include the use of VE incentive clauses in construction contracts.”

.43 Why VE is Needed. The costs of highway needs far exceed the funds available for improvements. As the cost of highway construction increases, more emphasis is being placed on the maintenance and rehabilitation of existing facilities to maximize these available funds.

VE is a tool that can counteract these growing problems by providing (1) cost reduction, (2) product or process improvement, and (3) alternative means and materials for highway construction and maintenance.

.44 VE Application (General). VE may be applied at any point in highway development, operation, and maintenance. For maximum effectiveness, however, VE should be undertaken as early as possible (during the first 30 percent of design) when decisions on life-cycle costs are being made and valid project development recommendations can be implemented. When a complex, costly project is selected as a candidate for potential cost reductions, investigations should start as soon as a preliminary estimate is in hand.

VE should be employed when the ratio of potential savings to the cost of the VE study is significant. VE can also be used in evaluating standard details that are used repetitively on many projects. The cost of VE studies in preconstruction activities may be allocated to the preliminary engineering cost of the related project.

Local agencies are also encouraged to include a VE incentive clause in their construction specifications; such clauses encourage contractors to propose changes to the contract that fulfill a project’s function requirements at less cost.

44.1 General Discussion

After a project's location and design have been approved, work begins on the final version of its plans, specifications, and cost estimates (PS&E). These documents are used to award and administer a construction contract. The PS&E must be approved as defined in Chapter 13, *Becoming Certified to Administer FHWA Projects*, before the project can be advertised for construction.

PS&E approval is done by the local agency as identified in the Washington State Department of Transportation (WSDOT)/Local Agency Certification Acceptance (CA) Agreement. The approving authority identified on the CA Agreement must approve the plans and specifications, and a professional engineer licensed in the state of Washington must seal and date the plans and specifications.

The local agency should use the Project Development Checklist (Chapter 14, *Developing Projects Using Local Agency Guidelines*) to check for completeness of the contract plans prior to approving them.

The local agency should have a commitment file, when applicable, containing a summary of commitments made during project development. The file should be reviewed to ensure that the commitments are incorporated in the PS&E. These commitments typically involve right-of-way or environmental considerations (see Appendix 44.78 for list of possible required permits).

A copy of the bid documents should be furnished to Region Local Programs Engineers prior to advertisement for a check of completeness.

Any local agency project with work on state routes shall obtain PS&E approval from WSDOT.

On state ad-and-award projects, WSDOT will review and approve the PS&E prior to printing contract plans. An estimate of the cost of this service can be obtained from the Region Local Programs Engineer. Refer to forms for a checklist.

44.2 PS&E Requirements

.21 Wage Rates. For information on state law requirements, contact the Municipal Research and Services Center for a listing of current laws. State and federal wage rates must be included for all Federal Highway Administration (FHWA) projects advertised by a local agency. The wage rates used will reflect the latest rates approved by the Washington State Department of Labor and Industries (L&I) and the U.S. Department of Labor. Refer to CFR 29 part 30 and RCW 39.12 and RCW 49.28.

The Federal Davis-Bacon Act predetermined minimum wage must be paid to all covered workers on federal aid projects exceeding \$2,000 that are located on a federally classified highway. The Davis-Bacon requirements do not apply to force account work performed by agency forces.

If a project is located on a federally classified minor collector or below and is funded through either the bridge (BR), safety (HES) or enhancement category, the project is not subject to the federal wage rate requirement only the State law.

The applicability of Davis-Bacon to a transportation enhancement project is dependent on the relationship or linkage of the project to a federal aid highway. If the project is "linked" to a federal aid highway based on proximity or impact (i.e., without the federal aid highway the project would not exist), then Davis-Bacon requirements apply. Examples of such projects include the removal of outdoor advertising, a wetland to filter highway drainage, etc.

If the project is not "linked" to a particular federal aid highway and is eligible based solely on function (i.e., a transportation facility, such as an independent bike path, the restoration of a railroad station, etc.), then the Davis-Bacon requirements do not apply. However, the Davis-Bacon requirements apply to all projects greater than \$2,000 that are physically located within the existing right-of-way of a federal aid highway, regardless of the transportation enhancement characteristics.

Another Davis-Bacon issue is the acceptability of using volunteer labor on transportation enhancement projects. The Department of Labor states in its *Field Operations Handbook* (Section 15): "There are no exceptions to Davis-Bacon coverage for volunteer labor unless an exception is specifically provided for in the particular Davis-Bacon Related Act under which the project funds are derived." The Davis-Bacon Related Act for the Federal Aid Highway Program (23 U.S.C. Section 113) is silent on this subject. Therefore, on transportation enhancement projects subject to Davis-Bacon coverage, a contractor or subcontractor may not use volunteer labor. On the other hand, a state highway or local government agency may use volunteer laborers under their direct control as a force account effort.

Local agencies that have phone access to the WSDOT mainframe computer in Olympia may access the Wage Rate data file. If a local agency is not "on line," wage rates can be requested through the Region Local Programs Engineer.

The effective date for state and federal rates is determined as follows:

- a. **State Wage Rates.** L&I will use the date that bids are due as the effective date for determining prevailing wages provided that the contract is awarded within 60 days after bids are due (RCW 39.12). If the contract is not awarded within 60 days after bids are due, L&I will determine the prevailing wage on the date the contract is awarded.
- b. **Federal Wage Rates.** This data is received from the USDOL in a document entitled “General Wage Determinations Issued Under the Davis-Bacon and Related Acts.” Modifications are issued weekly by the USDOL. The effective date for federal wage rates is the date of notice in the Federal Register or the date on which written notice is received by WSDOT, whichever occurs first. All modifications on projects to which the determination applies are effective if published before contract award. The following are exceptions:
 - The effective date for determining state prevailing wage rates shall be the date of bid opening. For contracts awarded more than six months after the bid opening date, the effective date for determining the wage rates shall be the award date.
 - The effective date for determining federal prevailing wage rates shall be ten days prior to bid opening (or less if the engineer determines an addenda can be issued prior to bid opening). For contracts awarded more than 90 days after the bid opening date, the effective date for determining the wage rates shall be the award date.

Prior to bid opening, the local agency may contact the Support Systems Engineer in the Plans Branch of WSDOT at (360) 705-7455, to see if wage rates have changed or pending.

To minimize the possibility of out-of-date state and federal wage rates at the time of bid opening, the wage rates should be requested from the Region Local Programs Engineer seven days before the advertising date.

.22 Other Requirements.

- a. **Form FHWA-1273.** Each set of contract documents shall include Form FHWA-1273, “Required Contract Provisions, FHWA Construction Contracts,” and such amendments that modify the FHWA-1273. Copies of the FHWA-1273 Form and amendments are available from the Region Local Programs Engineer.
- b. **Affirmative Action.** See Chapter 27, Equal Employment Opportunity and Training.

- c. **DBE.** In accordance with FHWA and WSDOT efforts to increase DBE (Disadvantaged Business Enterprises) participation in FHWA projects, WSDOT has developed a management-by-objective goal-setting process for DBE participation. For additional information, see Chapter 26, Disadvantaged Business Enterprises.
- d. **“Buy-America” Requirements.** Steel that is permanently incorporated into the project shall consist of American-made materials, as outlined in the *Standard Specifications*, Division 1-99, Section 1-06.5, and any required GSP.

The local agency must include a provision containing the “Buy-America” requirements in each contract. General Special Provisions similar to those now used by WSDOT can be used by the local agency. These general special provisions are included in the *WSDOT Amendments and General Special Provisions* publication.

- e. **Traffic Control Plans.** Traffic Control Plans (TCP) shall be consistent with Part VI of the MUTCD and shall be referenced in the contract documents.
- f. **Justification for nonparticipating work items,** if included in the contract (tied bids), must be approved by the local agency. Combining of bid items shall not increase the cost of the federally funded project.
- g. **Justification for the use of agency-supplied materials** must be documented by the local agency. The materials must have been produced by agency forces or acquired through competitive bidding. Material purchased from a sole source may be used only with justification by the CA Agency.
- h. **No warranty requirement shall be approved** which may place an undue obligation on the contractor for items or conditions over which the contractor has no control. Warranties/ guarantees shall not be included in federal aid projects or the bonds except as follows:

On NHS construction contracts a warranty can be included in the contract in accordance with the following: Warranty provisions shall be for a specific product or feature. Items of maintenance not eligible for federal participation shall not be covered. All warranty requirements and subsequent revisions shall be submitted to the WSDOT Region Local Programs Engineer and forwarded to FHWA for advance approval.

On non- NHS construction contracts a warranty can be included in the contract in accordance with the following: Project warranty/maintenance provisions may be included in a project if a non-participating bid item and special provision is included in the contract. All other warranty requirements other than product or feature, and subsequent revisions, shall be submitted to Region Local Programs Engineer for advance approval.

**ATTACHMENT A - EMPLOYMENT PREFERENCE FOR
APPALACHIAN CONTRACTS**

(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1 c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1 c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

1 **AMENDMENT**
2 **REQUIRED CONTRACT PROVISIONS**
3 **FEDERAL-AID CONSTRUCTION CONTRACTS**
4 (Exclusive of Appalachian Contracts)

5 Under Section II, Paragraph 8b is revised as follows:

6 The reference to 49 CFR 23 is revised to read 49 CFR 26.

7 Under Section II , Paragraph 8b is supplemented with the following:

8 The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex
9 in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in
10 the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements
11 is a material breach of this contract which may result in the termination of this contract or such other remedy as
12 the recipient deems appropriate.

13 Under Section II, in accordance with standard specification 1-08.1(A) and applicable RCWs a new paragraph 8d is
14 added as follows:

15 The contractor or subcontractor agrees to pay each subcontractor under this prime contract for satisfactory
16 performance of its contract and/or agreement no later than ten (10) days from the receipt of each payment the prime
17 contractor receives from WSDOT or its subrecipients. The prime contractor agrees further to return retainage
18 payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any
19 delay or postponement of payment from the above referenced time frame may occur only for good cause following
20 written approval of the WSDOT. This clause covers both DBE and non-DBE contractors.

21
22 Under Section IV, Paragraph 2b(4) is deleted.

23
24 Under Section IV, Paragraph 4, "and helpers" is deleted from the title.

25
26 Under Section IV, Paragraph 4a(1), add:

27
28 The provisions in this section allowing apprentices to work at less than the predetermined rate when they are
29 registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment
30 and Training Administration, or with the Bureau of Apprenticeship and Training, does not preclude a
31 requirement for the Contractor to pay apprentices the full applicable predetermined rate in the event a State
32 Apprenticeship Agency, recognized by the Bureau, has not approved, or withdraws approval, of an
33 apprenticeship program.

34
35 Under Section IV, Paragraph 4c is deleted.

36
37 Under Section IV, Paragraph 6 is revised by deleting "helpers" and "helper".

38
39 Under Section IV, Paragraph 7 is revised by deleting "helpers".

40
41 Under Section V, Paragraph 2a is revised by deleting "helpers".

42
43 Under Section V, Paragraph 2d(2) is revised by deleting "helper".

44
45 Amendment to Form FHWA 1273
46 Revised December 2, 2002

This chapter is used by local agencies operating under Certification Acceptance (Chapter 13) and choosing to advertise and award construction contracts themselves. Chapter 52, Local Administered Projects, will also apply to these agencies.

Local agencies wanting to have the Washington State Department of Transportation (WSDOT) to administer their construction contracts should refer to Chapter 51, WSDOT Administered Projects.

46.1 General Discussion

Local agencies may let contracts for their projects provided that the following conditions are met:

- .11 The local agency uses the advertising and award procedures outlined in this section to advertise for bids, select the lowest responsible bidder, and award the contract.
- .12 A Local Agency Agreement between the state and local agency is in effect setting forth the conditions under which the project will be constructed.
- .13 The local agency is participating in the cost of the project or has other special interests in it.
- .14 The local agency is certified for project administration in accordance with Chapter 13, Becoming Certified to Administer FHWA Projects.

No project can be advertised until the local agency has completed the following:

- Approved the PS & E
- The environmental document is approved.
- The project's right of way has been certified.
- Project Disadvantaged Business Enterprise (DBE) goals have been established.
- Construction funds have authorized by the Director of Highways and Local Programs.
- A contract number has been obtained from the Region Local Programs Engineer.

46.2 Procedures

The Region Local Programs Engineer will monitor local agency compliance with the following procedures for bid advertising and processing of projects.

- .21 **Funding.** A Local Agency Agreement and construction funds must be authorized by the Director of Highways and Local Programs before a contract is advertised.
- .22 **Bidding Procedures.** The local agency is prohibited from establishing any procedures or requirements for qualification or licensing of contractors, which prevents the submission of bids or prohibits consideration of bids submitted by any responsible contractor, whether resident or nonresident of the state, except as outlined below.

The prequalification of prospective bidders is the responsibility of the local agency. WSDOT will not prequalify prospective bidders for local agency projects. A local agency may at its option use the WSDOT prequalification procedure specified in the WSDOT/ APWA *Standard Specifications*. When an agency does not prequalify prospective bidders, they should afford 10 days after notification for the low bidder to provide evidence of capability to perform the work. The evaluation of capability should include consideration of experience, personnel, equipment, financial resources, and performance record; the information should be sufficient to enable the bidder to obtain the required qualification rating prior to the contract award.

Qualification must, as a minimum, consist of bonding capability as required by state law and compliance with licensing requirements of state law. The local agency may include additional requirements.

When an agency is considering tied bids, the tied projects must be open to bid by disadvantaged business enterprises (DBEs). Specialized contracts such as fencing, landscaping, concrete work, etc., should be considered to permit maximum opportunity for disadvantaged business enterprises.

When the DBE participation goal is included in the contract provisions, meeting the goal is part of the bidding requirements, as explained in Chapter 26, Disadvantaged Business Enterprises, and Chapter 44, Plans, Specifications, and Estimates.

For all FHWA projects, bidding opportunities, on a nondiscriminatory basis, shall be afforded to all qualified bidders regardless of state boundaries, race, sex, color, or national origin.

No bidder shall be disqualified or prevented from competitive bidding by restricting the purchase of a surety bond or insurance policy from any surety or insurer outside the state and authorized to do business with the state.

- .23 **Preparation of the Project Proposal.** See WSDOT/ APWA *Standard Specification* 1.02.6.
- .24 **Advertising of the Project.** FHWA projects previously approved should be advertised for a three-week period prior to opening of bids. The three-week advertising period begins when the first of two advertisements is published. If an agency wants an advertising period of less than three weeks, documentation by the CA local agency for the shorter period must be in the project file. Examples of shorter advertising periods are as follows:
 - Emergency correction of roadways or bridges.
 - To meet the conditions of a fisheries permit.

- To meet the conditions of a Bureau of Reclamation Permit (Irrigation Canal).

The project will be advertised in the official legal publication for the agency and, if necessary, other newspapers to provide the widest possible, coverage commensurate with the size of the project. Affidavits of publication must be the project file.

The local agency will comply with the standard USDOT Title VI Assurances by inclusion of the following language in the solicitations for bids:

“The (Local Agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.”

Should an addendum be necessary during the advertising period to correct or add something to the bid or plan data, such addenda shall be approved by the CA local agency prior to transmittal to the individual contractors holding the plans, specifications, and bid document data. Each bidder shall present with their bid written notice of their receipt of each addendum received.

- .25 Bid Opening.** All bids received in accordance with the terms of the advertisement shall be publicly opened and announced, either item by item or by total amount.

If any bid received is not read, the name of the bidder and the reason for not reading the bid shall be publicly announced at the bid opening.

Adequate justification for rejecting any bids must be documented by the local agency.

- .26 Evaluation Bids for Award.** The local agency shall verify that all required bid documents have been properly submitted and executed by all bidders. All bids are then reviewed for accuracy, unbalancing of bid items, etc., and tabulations checked and confirmed. Any corrections to the bid tabulations are made, if necessary, in accordance with the WSDOT/APWA Standard Specifications, Section 1-02 and 1-03.

In order for a bid to be considered responsive, a bid deposit of at least 5 percent of the total bid proposal must accompany each bid. In accordance with Section 1-02.7 of the Standard Specifications, the Proposal Bond shall not be conditioned in any way to modify the minimum 5 percent required.

When there is a specified DBE goal for the project, the successful bidder will be selected on the basis of having submitted: (1) the lowest responsive bid which has met the DBE goal; or (2) when the DBE participation is less than the specified goal, responsiveness will be determined on the basis of good faith efforts to attain the goal.

When the Special Provisions contain an incentive clause encouraging the contractor to propose changes to accomplish the project’s functional requirements at less cost, and the successful bidder has used this option, the proposed changes would be carefully studied and a justification prepared supporting or not supporting the changes.

The local agency shall prepare a tabulation of bids showing the item details for at least the three lowest acceptable bids.

The local agency shall document the reason(s) for rejecting the low bid and may reject all bids for any reason(s).

Reasons for justifying an unusual award:

- Where the competition is good; or
- Where the project is essential to the public interest (safety, emergency repair, etc.); or
- Where the engineer’s estimate is clearly in error to a significant amount; or
- Where advertising again would likely result in higher bids.

If the local agency determines that the lowest bidder is not qualified, it shall document those findings prior to awarding the bid to the next-lowest responsible bidder.

The Local Agency Agreement must be supplemented if any overrun or underrun occurs beyond the authorized amount. See Section 22.3.

One originally signed Supplemental Agreement form must be submitted to the Regional Highways and Local Programs Engineer. This supplemental agreement form will be retained by WSDOT. It is the responsibility of the local agency to submit an additional supplemental agreement form or copy if they need an executed supplemental agreement for their files.

.27 Award of Contract. After bids have been tabulated and evaluated in accordance with the procedures described above, the construction contract may be awarded to the lowest responsive bidder. However, prior to award, agencies should verify contractor status with the Excluded Parties Listing System (EPLS) at <http://epls.arnet.gov> to determine if a contractor has been excluded from bidding on a federal-aid contract. The results of that search should be documented to the project file. EPLS is the electronic version of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs (Lists), which identifies those parties that have been suspended, debarred, or otherwise excluded from bidding on federal procurement and nonprocurement contracts. Construction contracts awarded to firms listed on the Excluded Parties Listing will not be eligible for federal-aid reimbursement.

After award by the local agency, the contractor must be advised of the award in writing. For an example of an award letter for a contract that has an identified DBE goal, see Appendix 46.42. The second, third, fourth, and fifth paragraphs must be included in the local agency letter. An award letter for contracts without a DBE goal can be similar but would not include the second, third, fourth, and fifth paragraphs.

.28 Execution of Contract. Local agencies shall not execute a contract with any contractor who is not registered or licensed in accordance with state laws.

The local agency prepares the necessary documents and forwards them for execution by the successful bidder and the proper officials of the local agency.

A sample of a standard contract agreement is in Appendix 44.63. The Regional Highways and Local Programs Engineers can furnish these standard forms upon request.

46.3 Submittal of Award Data

Before construction begins, the local agency **must** submit the following information to the Region Local Programs Engineer:

- Tabulation of bids
- Engineer's estimate
- Award letter to the contractor
- Names and addresses of all firms that submit a quote to the successful low bidder
- DBE utilization certification, Form 272-056A (if applicable)
- The estimated completion date or the number of working days for the contract
- Failure to submit the above listed information, before construction begins, will result in a delay of reimbursement for the billed cost, until the information is received.

46.4 Appendixes

- 46.41 Sample Request for Concurrence to Award
- 46.41a Sample Advertisement
- 46.42 Sample Condition of Award Letter (DBE Contract Goals)
- 46.43 Sample Condition of Award Letter (DBE Prime Contractor)
- 46.44 Sample Contract Bond

Project Title _____ FHWA Project No. _____

Attached are the following required documents plus any additional information that may be applicable:

_____ Bid proposal from the lowest responsible bidder.

_____ Bid bond.

_____ Noncollusion Plan Certification.

_____ DBE Certification (if required).

_____ Tabulation of Bids.

_____ FHWA cost breakdown showing total project cost, FHWA participation and Local Agency participation.

_____ Additional documents.

Date

Local Agency Engineer

Date

Approving Authority

INVITATION TO BID
LOCAL AGENCY'S LETTERHEAD
DEPARTMENT OF ENGINEERING
WASHINGTON

Sealed bids will be received by the (Local Agency), at the reception desk located in Room _____ of the _____, Washington until _____ a.m. on _____ and will then and there be opened and publicly read for the construction of the improvement(s).

All bid proposals shall be accompanied by a bid proposal deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent (5%) of the amount of such bid proposal. Should the successful bidder fail to enter into such contract and furnish satisfactory performance bond within the time stated in the specifications, the bid proposal deposit shall be forfeited to the (Local Agency).

The right is reserved to reject any and all bids and to waive informalities in the bidding.

Maps, plans, and specifications may be obtained from this office upon payment of the amount of \$_____.

Informational copies of maps, plans and specifications are on file for inspection in the Office of the Local Agency Engineer, (Local Agency), Washington.

The following is applicable to federal aid projects.

The (Local Agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

The improvement for which bids will be received is described below:

Bid Opening of

*This bolded paragraph cannot be reworded for FHWA funded projects.

This chapter is used for non-NHS routes by local agencies operating under Certification Acceptance and choosing to administer construction contracts themselves. In the sequence of project development, this follows Chapter 46, Local Advertising and Award Procedures. For NHS routes, refer to Chapter 63, NHS Projects.

Local agencies whose construction contracts are administered by the Washington State Department of Transportation (WSDOT) should refer to Chapter 51, WSDOT Administered Projects.

The following chart illustrates the contract administration and oversight responsibilities for the Federal Highway Administration (FHWA) (F), WSDOT (S), and local CA agencies(L):

Action	Local	
	CA non-NHS	non-CA Agency non-NHS
a. Construction Fund Auth.	F	F
b. Changes/Extra Work/ Nonparticipation	L	S/L
c. Claims	L	S/L
d. Project Inspections	L	S/L
e. Final Inspection	S	S
f. Final Acceptance	S	S

52.1 General Discussion

WSDOT is responsible for the proper expenditure of FHWA funds on local agency projects. Highways and Local Programs will consult and work with local agencies as needed and will perform systematic project management reviews to ensure that proper procedures are followed.

Except for transportation enhancement projects, construction will be administered and materials will be inspected in accordance with the WSDOT *Construction Manual* and this chapter of the LAG. For exceptions, see Section 52.32. In case of conflicting guidelines, this chapter governs the *Construction Manual*. FHWA projects are subject to EEO and DBE compliance reviews by WSDOT. Refer to Chapter 62, Enhancement Projects, and Chapter 63, NHS Projects, for criteria governing construction of NHS and enhancement projects.

Appendix 52.95 illustrates the major timeline for construction contracts and provides more details for specification references.

52.2 Preconstruction Conference

After a contract is awarded, the Local Agency should arrange a conference with the contractor. The Local Agency Engineer shall notify the Regional Highways and Local Programs Engineer of the time and place of the conference.

On large, complex projects, a preconstruction conference should be held before each construction phase. It may be desirable to hold separate conferences for some specialized construction items such as paving, roadside planting, or electrical work. The preconstruction conference may include a partnering session if appropriate. For a sample conference agenda, refer to Appendix 52.91.

The meeting should be documented and copies of the minutes transmitted to the Regional Highways and Local Programs Engineer and each agency, organization, and firm that has involvement or interest in the project (see Appendix 52.92).

52.3 Quality Control

The quality of materials and workmanship on a project must conform to the contract specifications so that the public funds expended will have purchased a safe, economical, and fully functional transportation facility.

.31 General. The source for each type of material must be approved by the local agency.

The Qualified Products List (QPL) is compiled by WSDOT Materials Laboratory Documentation Section and published by WSDOT Engineering Publications. The QPL is available in hard copy or can be accessed on the internet at: <http://www.wsdot.wa.gov/fossc/mats/QPL/QPL.cfm> . Upon request, the Region Local Programs Engineer will provide a hard copy of the QPL.

Local agencies requesting a Record of Materials (ROM) from WSDOT's Materials Laboratory should submit their request at the time of award to avoid delaying the contractor. The average processing time is approximately four weeks.

Reimbursement of FHWA funds may be denied for work done contrary to or in disregard of the contract documents.

Local agencies making improvements to National Highway System (NHS) routes with **federal funding** must comply with WSDOT's qualified tester program. If a local agency is not certified to perform the tests, they can contact their Local Programs Engineer to make arrangements for WSDOT or a qualified testing laboratory to perform the testing on the project.

.32 Exceptions to qualified tester program. Local agencies making improvements to the traveled lanes of the National Highway System (NHS) with federal funding must comply with WSDOT's qualified tester program. Projects that cross or connect to an NHS route may be exempted by the Regional Local Programs Engineer from these requirements when quantities within the NHS travel lanes are minor. For projects with other than minor quantities, a local agency must comply with the program. If a local

agency is not certified to perform the tests, they can contact a qualified testing laboratory or their Regional Local Programs Engineer to make arrangements for WSDOT to perform the testing on the project.

.33 Exceptions to the WSDOT *Construction Manual*. The following exceptions to the WSDOT *Construction Manual* may be used by the local agency. If these methods are not utilized, the WSDOT *Construction Manual* shall prevail.

The following procedures are approved exceptions to the *Construction Manual* requirements:

- The local agency may develop their own Record of Materials, and approve manufacturers not listed on the approved WSDOT manufacturers list.
- Asphalt plant inspectors and scalepersons are not required at established commercial sources. This exception does not allow the agency to eliminate acceptance sampling of the materials.
- Local agencies must use acceptance and assurance sampling and testing procedures. Acceptance and assurance testing shall be independent of each other, not utilizing the same testing equipment or performed by the same personnel. (See September 2002 Engineering Publications CD LAG Manual/2000 Materials or <http://www.wsdot.wa.gov/TA/Operations/LAG/2000Materials.pdf>)
- The following items may be accepted with an approved catalogue cut and documented by visual inspection or a manufacturer's material certification (provided manufacturer's certification is based on actual testing):
 - Electrical items
 - Paving or geotextile fabrics
 - Fencing of any kind
 - Landscaping or irrigation items
 - Glare screens
 - Traffic buttons or paints
 - Guardrail items
 - Drainage items
- Minor quantity aggregate items from an established commercial source, treated or untreated, with a current testing frequency less than 500 tons, (450 tonnes) may be increased to 500 tons (450 tonnes) and can be accepted without testing
- Local agencies may test their own signal cabinets.
- Local agencies may lower the density testing requirements to 90 percent of the rice density for nonstructural overlay pavement designs with a thickness of 1.25 to 2 inches (30 to 50 mm). This should be limited to areas or projects with documented foundation problems and on overlay of existing pavements.

- Local agencies are not required to follow the qualified testing program outlined in the WSDOT *Construction Manual* if the agencies projects are:
 - Projects not on the NHS
 - Projects on the NHS that **do not** contain federal funding.

52.4 Progress Payments

Progress payments must be based on measurements of work performed so that the contractor can be fairly compensated and so that public funds will not be expended on work that has not been done.

.41 General. Progress estimates should be prepared on a preselected date each month.

The Local Agency shall document the quantities paid each month.

Progress estimates should be prepared promptly and may be forwarded to the contractor for review and signature.

.42 Statement of Intent to Pay Prevailing Wages. The contractor and subcontractors of every tier shall submit form LI 700-29 to L&I for approval of the wage rates they intend to pay. Each statement must be accompanied by the filing fee established by L&I (required by RCW 39.12.030 and 040).

The approved pink copy of form LI 700-29 shall be on file with the local agency before any payment is made to the contractor. Subcontractors of every tier shall have an approved copy of this form on file with the local agency before any payment can be made for their work.

52.5 Changes and Extra Work

Prior to beginning work, an agency should have a written policy for the approval of change orders to ensure that approval, either verbal or written, is given and documented.

It is important to distinguish between actual changes to the contract work and normal overruns and underruns that may occur. Whenever a change in the contract is required, the agency shall prepare a change order. The change order shall include an explanation in sufficient detail so that everyone involved will understand the need for the change. The explanation shall include a detailed justification of the cost associated with the change. All change orders must be numbered in sequence.

To be eligible for FHWA participation, all change orders must be approved by the CA Authority. No change order work shall be done prior to approval. In the case of emergency situations, verbal approval may suffice. Verbal approval must be followed by submission of the corresponding change order within ten calendar days.

When changes in the work will alter the termini, character, and scope of an approved project, approval of the Assistant Secretary for Highways and Local Programs is required prior to the commencement of the physical work. Refer to Chapter 21, The Project Prospectus, for further information.

.51 Administrative Settlement Costs. Administrative settlement costs are costs related to the defense and settlement of contract claims including, but not limited to, salaries of contracting officers or their authorized representatives, attorneys or members of arbitration boards, appeal boards, etc., which are allowable to the findings and determination of contract claims, but not including administrative or overhead costs.

FHWA funds may participate in administrative settlement costs which are:

- Incurred after notice of claim.
- Properly supported.
- Directly allocable to a specific FHWA project.
- For employment of special counsel for review and defense of contract claims when recommended by the agency's legal counsel and approved in advance by WSDOT.

When a claim is submitted, the Regional Highways and Local Programs Engineer should be contacted for advice on how to proceed.

52.6 Termination of Contract

Section 1-08.10 of the Standard Specifications, Termination of Contract, contains procedures and criteria for termination of a contract.

52.7 Compliance With Federal Contract Provisions

FHWA requires that all subcontracts at any tier be in writing, per 23 CFR, Section 635.116(b). This includes contracts between the prime contractor and their subcontractors, and contracts between subcontractors and their agents.

Each of these subcontracts also must physically contain the following documents, none of these documents can be included by reference only.

- The general special provision (GSP) entitled "Required Federal Aid Provisions,"
- Form FHWA 1273 "Required Contract Provisions Federal Aid Construction Contracts," and
- The minimum wage rates for the contract as required by RCW 39.12 and Title 29 of the Code of Federal Regulations.

It is the responsibility of the local agency to ensure full compliance with the provisions above.

Implementation of the DBE and EEO programs are also federal contract requirements. Refer to Chapter 26, Disadvantaged Business Enterprises, and Chapter 27, Equal Employment Opportunity and Training.

52.8 Physical Completion of Construction

The local agency will carry out the following requirements to terminate the construction contract and ready the project for acceptance by WSDOT and FHWA:

- .81 Notice of Physical Completion.** Within 10 calendar days after physical completion of the work by the contractor, the Local Agency Project Engineer shall notify the contractor by letter that the construction is physically complete, and the project is subject to inspection, audit, and acceptance by the state. The agency shall diligently pursue closure of the contract.
- .82 Final Inspection.** The Local Agency Project Engineer shall send a request for WSDOT inspection and acceptance to the Regional Highways and Local Programs Engineer within 15 days of physical completion of work by the contractor. A copy of the physical completion letter that was sent to the contractor should accompany the request.
- .83 Final Reports.** A construction project is considered complete when the items listed below have been completed. All certifications and reports shall be retained for at least three years after final acceptance of the project.
 - a. Final Estimate (Approving Authority File). When the contractor has a claim pending against the local agency and wants to receive a final estimate, a claim must be submitted by letter detailing specific items and amounts. (When a claim is submitted, immediately contact the Regional Highways and Local Programs Engineer so FHWA can be informed of the claim's details at an early stage. See Section 1-09.12(2) of the WSDOT/APWA *Standard Specifications*.)
 - b. Comparison of Preliminary and Final Quantities (Approving Authority File). A listing of items showing the preliminary and final quantities.
 - c. Certified Final Bill for Utility Agreement, if applicable, to Regional Highways and Local Programs Engineer.
 - d. Final Records (Approving Authority File). The Local Agency Project Engineer must document the work performed on the contract. Documentation consists of field books, inspector's record of field tests, Project Engineer's and inspector's diaries, all invoices, weigh bills, truck measurements, quantity tickets, receiving reports, field office ledgers, mass diagrams, cross-sections, computer listings, and work profiles. Photographs or video tapes before, during, and after construction could be useful, especially if care is taken to show any unusual conditions, equipment, or procedures.

Final records shall be retained by the local agency for at least three years following acceptance of the project by WSDOT Highways and Local Programs. The local agency will receive from the Assistant Secretary for Highways and Local Programs the administrative review letter showing the starting and ending date of the three-year retention period (OMB Circular A-128).

- e. Record of Material Samples and Tests.
- f. Materials Certification (Appendix 52.94). The intent of the materials certification is to assure that the quality of all materials incorporated into the project is in conformance with the plans and specifications and thus ensure a service life equivalent to the design life.

This materials certification shall be completed in accordance with Section 9-1.5 of the *Construction Manual* or Chapter 52.3 of the *LAG* manual and is submitted along with the completion letter to the Regional Highways and Local Programs Engineer.

- g. Affidavit of Wages Paid. Upon completion of a contract, the prime contractor and every subcontractor or agent shall submit Form LI-700-7, "Affidavit of Wages Paid," to L&I for certification of the wage rates paid on the project. Each affidavit must be accompanied by the filing fee established by L&I.

Local agencies are required to retain a percentage of money earned by the contractor according to the provisions of RCW 60.28.011. An L&I-certified copy of Form LI-700-7 from the prime contractor and every subcontractor or agent must be on file with the local agency before the retained sum will be released.

- h. Release for the Protection of Property Owner and General Contractor. Upon completion of the contract, Form LI-263-83, furnished by L&I, shall be properly executed by the prime contractor and submitted to L&I. When L&I, based on its records, has verified that the industrial insurance and medical-aid premiums have been paid by the prime contractor and every subcontractor, a statement to that effect will be issued by the L&I contract release clerk. A copy of this statement must be on file with the local agency before the retained percentage can be released.
- i. WSDOT Form 422-102, "Quarterly Reports of Amounts Credited as DBE Participation," shall be submitted by the contractor to the local agency on all projects that contain DBE goals. This form should also be submitted when a qualified DBE contractor or subcontractor is employed on a project, regardless of whether that DBE is a condition of award or not. This form is submitted on a quarterly basis in January, April, July, and October. (See Chapter 26, Disadvantaged Business Enterprises.)

.84 Project Acceptance. The approving authority's approval of the final estimate will be considered as the local agency's acceptance of the project.

52.9 Appendixes

- 52.91 Sample Preconstruction Conference Agenda
- 52.92 Sample Preconstruction Conference Minutes
- 52.93 Sample Letter Requesting WSDOT Project Inspection and Acceptance
- 52.94 Sample Materials Certification
- 52.95 Timeline for Construction Contracts
- 52.96 Weekly Statement of Working Days
- 52.97 Change Order

Forms

See Chapter 11 of the WSDOT *Construction Manual*.

FHWA Form WH-347