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Remarks: All LAG Manual and CD Holders:

To electronically download the April 2009 LAG Manual changes in their entirety, or individual chapters, go to:
<http://www.wsdot.wa.gov/Publications/Manuals/M36-63.htm>

Summary of Changes:

Please Note: The following list is a brief overview of each revision. The actual revision should be reviewed in-depth to become completely knowledgeable of the revision. All revisions are underlined and include a sidebar to indicate the changes to the text.

Chapter 14 Developing Projects Using the Local Agency Guidelines

Section 14.21 – Added language to the section requiring agencies to provide certification of secured funding with all authorization requests. Section 14.22 d, item 1 – Added required advertisement date to all Local Agency Agreements if construction is the first phase authorized.

Chapter 22 Local Agency Agreement

Section 22.1 – Added a statement that requires the total cost of a project be shown on the Local Agency Agreement and that the project advertisement date be included on the supplemental or original Local Agency Agreement. Section 22.3 – Removed language about Bridge funds increases.

Appendix 22.42 Instruction for Preparing the Local Agency Agreement

Added statement requiring the proposed Advertisement date be shown on the project description.

Appendix 22.44 Instructions for Preparing the Local Agency Agreement Supplement

Added statement requiring the proposed Advertisement date also be shown under “Reason for Supplement.”

Chapter 24 Environmental Processes

Various changes to reflect changes to the program and procedures associated with the program.

Appendices 24.121, 24.122, and 24.124 through 24.128 are deleted.

Chapter 26 Disadvantaged Business Enterprises

Section 26.2, item 3 – Added language stating that no construction funding will be obligated prior to the project review for DBE goals. Section 26.2, item #10 – New language requires all change orders that affect the work of DBEs be submitted to the Local Programs Engineer for concurrence prior to execution.

Chapter 31 Using Consultants

Remove language giving mandatory 4% mark-up for subconsultant work.

Appendix 31.99 Standard Consultant Agreement

Remove mandatory 4% mark-up from Exhibit D-1 and G-1 and reprint Exhibit D-3 because Paragraph 5, monthly payments, was inadvertently deleted during a previous revision.

Chapter 34 Highway Bridge Program

Section 31.58 – Revised section on Cost Increases to require certified secured funding at the time of construction authorization/obligation and requires written approval for any increase before awarding projects that exceed the engineer’s estimate at the time of bid opening.

Chapter 42 City and County Design Standards

Section 42.1 – Removed statement that all deviations to ADA Standards require the approval of the Federal Highway Administration. Section 42.3 –.033 Reference to WSDOT *Design Manual* for NHS requirements.

Appendix 42.102 ADA Accessible Facilities on Road, Street, and Highway Projects

Delete the entire appendix and replace with a Blank Page in case it was missed with the October 2008 revision.

Appendix 44.73 Bid Proposal Package

Replaces the outdated Form 272-056 with the current version.

Appendix 44 FHWA Form 1273

Add the amended pages for FHWA Form 1273 (adds three pages to the end of form).

Appendix 53.51 Project Management Review Checklist

Reprint of page one of the checklist so all items under Table of Organization and CA Agreement Review are shown and adds “Design Matrix Checklist” to section under Preliminary Engineering. Revised the worksheet for Mobilization Payments to the Checklist.

Chapter 62 Enhancement, Scenic Byway, and Safe Routes to School

Chapter revisions to clarify how Local Agencies can get help with the NEPA process.

Instructions:

| Chapter | Remove | | Insert | |
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| Appendix 44.73 | 44-19 – 44-20 | 1 | 44-19 – 44-20 | 1 |
| Amendment pages to end of Form FHWA-1273 | | | 3 pages | 2 |
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| | 53-19 – 53-20 | 1 | 53-19 – 53-20 | 1 |
| Chapter 62 | 62-1 – 62-4 | 2 | 62-1 – 62-4 | 2 |

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Local Agency Guidelines

M 36-63.05

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14.1 General Discussion

The previous three parts of this manual explained how local agencies may qualify to receive Federal Highway Administration (FHWA) funding for their transportation projects. The remainder of the manual explains procedures for developing specific projects.

Once a local agency has qualified to receive FHWA funds, as described in Chapter 12, the next action is to apply for funds to develop specific projects in its transportation program. Depending on their size and complexity, different projects may require different development procedures. The remaining parts of the manual are arranged to reflect these differences.

The next part, “General Project Development,” Chapters 21-27, describe activities required during preliminary engineering on all projects.

The part entitled “Special Project Development Processes,” Chapters 31-34, describes activities that may be required on some projects.

The parts entitled “Design” and “Construction and Post Construction,” Chapters 41-46 and 51-53, offer the local agency a choice of procedures, depending on whether its projects are located in urban or rural areas and whether it or the state will administer its construction contracts.

The part entitled “Miscellaneous,” Chapters 61-62, describe the requirements for work on transportation enhancement, Scenic Byways, and Safe Routes to School projects.

The specific requirements for a project may change as project development progresses and as more information about a project becomes available. Further details of the specific requirements are shown in the Project Development Process Flow Chart and Checklist. The meanings of unfamiliar terms may be found in the Glossary. Once the local agency has identified the steps required on a particular project, only the parts in the manual that deal specifically with those steps need be referred to.

14.2 Project Development Process Overview

This section describes the project development process by setting forth project phases, documentation requirements, options for construction administration, and required reviews and approvals.

.21 Phases of Authorization. FHWA funds may be authorized for the following project phases:

- a. Preliminary engineering (Planning).
- b. Right of way acquisition.
- c. Construction.

Phase Requirements When Utilizing FHWA Funds

For all phases, and at the time of each phase authorization, all funds necessary to complete the scope of work being authorized for the phase must be secured. The local agency must provide certification of secured funding with all authorization requests.

Preliminary Engineering Phase: FHWA Funds in PE Phase Only. For FHWA funds to be used in the PE phase of the project, the environmental documentation including FHWA NEPA approval, must be completed. With no federal funds in the right of way or construction phases, the local agency must still follow federal environmental regulations and the Uniform Relocation Assistance and Real Property Acquisition Policies Act. A NEPA document must be approved by FHWA and all environmental commitments must be incorporated into the right of way and construction phases. Right of way must be acquired per the WSDOT right of way manual and acquisition may proceed during the PE Phase in accordance with the manual. Title 23 USC regulations, including Buy America and Davis-Bacon provisions, do not apply if no FHWA funds are used for construction. Any study projects are excluded from NEPA approval.

Right of Way Phase: FHWA Funds in Right of Way Phase. For FHWA funds to be used in the right of way phase of the project, the environmental documentation including FHWA NEPA approval, approved relocation plan (if applicable), Project Funding Estimate, approved right of way plan must be completed prior to FHWA R/W authorization. All property acquisitions and relocations must be completed prior to advertising the project. All environmental commitments must be incorporated into the R/W and construction phases. The right of way must be certified by WSDOT prior to advertising the project, even if no federal funds are used in construction.

Construction Phase: FHWA Funds in Construction Phase. All federal laws are triggered with federal funds in the construction phase; examples include NEPA, Title 23 USC, Uniform Relocation Assistance and Real Property Acquisition Policies Act, Buy America, and Davis-Bacon. After approval of the NEPA document, right of way certification, and the DBE/Training goals are established the construction phase can be authorized by FHWA. Once FHWA authorizes construction funding the local agency has authority to advertise the project.

| Documentation Requirements When Utilizing FHWA Funds | PE Phase: FHWA Funds in PE Phase Only ¹ | R/W Phase: FHWA Funds in the R/W Phase ² | CN Phase: FHWA Funds in the Construction Phase ³ |
|--|---|--|--|
| Required Documentation | | | |
| STIP | X | X | X |
| Approved NEPA | X ⁴ | X ⁴ | X ⁴ |
| Approved Relocation Plan (if applicable) | | X | |
| Project Funding Estimate | | X | |
| Approved R/W Plan | | X | |
| WSDOT Approved Right of Way Certification | | X | X |
| DBE/Training Goals | | | X |
| Design per <i>LAG Manual</i> | | | X |
| Environmental per <i>LAG Manual</i> | X | X | X |
| R/W Acquisition per <i>LAG Manual</i> | | X | X |
| Construction per <i>LAG Manual</i> | | | X |

¹Local Agency must provide documentation after completion of the PE phase that the project has been or will be constructed with non-FHWA funds.

²Local Agency must provide documentation after completion of the PE and R/W phases that the project has been or will be constructed with non-federal funds.

³Local Agency must provide documentation after completion of the CN phase as documented in the *LAG Manual*.

⁴Any environmental commitments must be incorporated into the R/W and /or CN phases.

.22 Documentation Required for Authorization of Funds.

- a. **Planning With STP Funds.** “Urban Transportation Planning” is an interdisciplinary process for developing and monitoring long- and short-range transportation plans and improvement programs. These plans and programs are formulated with due consideration of present and anticipated future social, economic, and environmental factors and the safety and mobility needs of the population of the urban area. It is a dynamic process, in that it is continuously monitored to accommodate changes of land use, economic conditions and other factors influencing travel patterns. Because of the vast amount of capital expenditures required in the implementation of transportation systems (both highway and transit related), these projects could radically influence land use development in an area or region. Due to the substantial influences that transportation improvements have on the character of the land, it is important that transportation improvements reflect the overall regional social and economic objectives pertaining to community development.

FHWA funded planning activities and studies are identified in Title 23, Part 420 USC, as activities not included in a work program but necessary in development of procedures and project identification.

For planning and Transportation Demand Management (TDM) funding, the following documents are required:

1. Project prospectus planning scope of work (Chapter 21).
 2. Local Agency Agreement (Chapter 22).
 3. Evidence of STIP inclusion.
 4. Documented cost estimate.
 5. Updated Quarterly Project Report, if required.
- b. Preliminary Engineering Funds. When applying for preliminary engineering funds only, the following documents are required:
1. Project Prospectus (Chapter 21).
 2. Local Agency Agreement (Chapter 22).
 3. Typical sections, vicinity map, and evidence of STIP inclusion.
 4. Documented cost estimate
 5. Updated Quarterly Project Report, if required.
- c. Right of Way Funds. When applying for right of way funds, after preliminary engineering funds have developed right of way plans, the following documents are required, if appropriate:
1. Supplement to original Local Agency Agreement (Chapter 22).
 2. FHWA approval of environmental documents (Chapter 24).
 3. Relocation plan, if relocation is required (Chapter 25).
 4. Right of way plan (Chapter 25).
 5. Right of way Project Funding Estimate or True-Cost estimate (Chapter 25).
 6. Evidence of STIP inclusion.
 7. Updated Quarterly Project Report, if required.
- d. Construction Funds. The following documents must be submitted to request construction funds:
1. Supplement to Local Agency Agreement. The agency's proposed advertisement date must be noted on the supplement, or the original LAA if construction is the first phase authorized.
 2. Right of way certification (if required).
 3. Final FHWA approval of environmental documents (Chapter 24).
 4. Evidence of STIP inclusion.
 5. Engineer's Estimate.
 6. Evidence of assignment of DBE/training goals.
 7. Updated Quarterly Project Report, if required.

22.1 General Discussion

A Local Agency Agreement is an agreement between a local agency and the Washington State Department of Transportation (WSDOT). An agreement is prepared for each federal aid project, and it covers all phases of work involved in the project (preliminary engineering, right of way acquisition, construction). Its purpose is to ensure that the federal funds in the agreed-upon amount are spent in accordance with all applicable state and federal laws and regulations. The agreement also specifies the procedure for payment and reimbursement on the project. Appendix 22.45 is used if funds are not available for the local match.

If the federal aid participation ratio entered in the agreement is not the full amount allowed by the Federal Highway Administration (FHWA), then the participation ratio entered becomes the limit of funding allowed.

No costs are eligible for federal aid reimbursement until authorized in writing by WSDOT. This authorization is separate from the agreement

The total cost of a project (including federal, state, agency, and private funds) must be shown on the Local Agency Agreement for each phase of work that includes federal or state funds. At the time of each phase authorization, all funds necessary to complete the scope of work for that phase must be secured. Certification of secured funding must be included with all authorization requests. This certification can be in the form of an e-mail or memorandum from the local agency.

When authorizing construction, the agency's proposed advertisement date must be noted on the supplemental Local Agency Agreement, or the original LAA if construction is the first phase authorized.

All funds shown on the Local Agency Agreement must be supported by a documented cost estimate that is based on an Agency's best estimate of costs. The cost estimate must demonstrate how the funds shown on the LAA were determined, and what information was used in the calculation. Preliminary Engineering estimates can be based on a percentage of historical construction costs, or based on historical labor and equipment needs used to complete similar design efforts. Right of way estimates will be the right of way project funding estimate or true cost estimate. Construction estimates will be the engineer's estimate, bid tabulations, or award data.

22.2 Preparation Procedure

An original Local Agency Agreement signed by the approving authority must be submitted by the local agency to the Regional Highways and Local Programs Engineer when the Project Prospectus (Chapter 21) is submitted.

This agreement form will be retained by WSDOT. It is the responsibility of the local agency to submit an additional agreement form or a copy if they need an executed agreement for their files. To allow sufficient time for WSDOT review and execution, these documents should be submitted well in advance of the time when federal reimbursement is desired.

Agreements containing errors will be returned to the local agency for correction. Any changes must be initialed by the approving authority (Chapter 13). To avoid this delay, the agency should check all figures prior to submittal, and if in doubt, request assistance from the Regional Highways and Local Programs Engineer.

An agreement form (WSDOT Form 140-039) is contained in Appendix 22.41, with instructions for completing it in Appendix 22.42. Local agency cost estimates for each phase of a project are entered on the form, as well as the project name, length, termini, description, and method of construction financing. These methods are described in Appendix 22.42.

Local agency resolutions or ordinances that may be needed are discussed in Appendix 22.42.

22.3 Supplemental Agreement

Funds requested beyond the amount set forth in a Local Agency Agreement will require execution of a Supplemental Agreement.

Changes to the project funding must be made in accordance with this manual (see Chapter 12) and must be accompanied by documented cost estimates for phases already authorized or seeking authorization.

A Supplemental Agreement form (WSDOT Form 140-041) is shown in Appendix 22.43, and instructions for completing it are given in Appendix 22.44. Like the original agreement form, the Supplemental Agreement form requires information about the project's name, length, termini, description, and funding.

22.4 Appendices

- 22.41 Local Agency Agreement
- 22.42 Instructions for Preparing Local Agency Agreement
- 22.43 Local Agency Agreement Supplement
- 22.44 Instructions for Preparing Local Agency Agreement Supplement
- 22.45 Sample Withholding Resolution for Construction Financing Method B

22.5 Forms

- DOT 140-039EF Local Agency Sample Agreement
- DOT 140-041EF Local Agency Sample Agreement Supplement

- .01 **Agency Name and Billing Address.** Enter the Agency of primary interest which will become a party to the agreement.
- .02 **Project Number.** Leave blank. This number will be assigned by WSDOT.
- .03 **Agreement Number.** Leave blank. This number will be assigned by WSDOT.
- .04 **Project Description.** Enter the project name, total length of the project, and a brief description of the termini.

Example: (Name) Regal Road; (Length) 0.52 miles (0.84 km); (Termini) Tuscan Road to approx. 250 feet (76.2 m) south of Michan Road.

Below “Description of Work,” enter a brief outline of the major items of work to be performed. Examples: (a) “Widening, channelization, curbs, gutters, illumination, and traffic signals.” (b) “Right-of-way will be acquired by Agency forces.” If the Local Agency Agreement is for the authorization of construction, the project’s proposed advertisement date must be included along with the description of work.

.05 **Type of Work and Funding.**

- a. **PE.** Lines a through d show Preliminary Engineering costs for the project by type of work.

*Federal aid participation ratio for PE — enter ratio for PE lines with amounts in column 3.

Line a — Enter the estimated amount of agency PE in columns 1 through 3.

Line b & c — Identify user, consultant, etc., and enter the estimated amounts in columns 1 through 3.

Line d — State Services. Every project must have funding for state services. Secure an estimate from the Region Local Programs Engineer and enter in columns 1 through 3.

Line e — Total of lines a + b + c + d.

- b. **Right of Way.** If Right of Way is acquired on the project, the appropriate costs are shown in lines f through h.

*Federal aid participation ratio for R/W — enter ratio for R/W lines with amounts in column 3.

Line f — Enter the estimated amount of agency work in columns 1 through 3.

Line g & h — Identify user, consultant, etc., and enter the estimated amounts in columns 1 through 3.

Line i — State Services. If state services are required in the acquisition, enter the estimated amounts in columns 1 through 3.

Line j — Total of lines f + g + h + i.

c. **Construction.**

*Federal aid participation ratio for CN — enter ratio for CN lines with amounts in column 3.

Line k — Enter the estimated cost of the contract.

Lines l & m & n — Enter other estimated costs such as utility and construction contracts or non-federally matched contract costs.

Line o — Enter estimated costs of all construction related agency work.

Line p — State force. Every project must have funds set up for state force work. Contact the Region Local Programs Engineer for an estimate and record in columns 1 through 3.

Line q — Total Construction Cost Estimate. Total of lines k + l + m + n + o + p.

Line r — Total Cost Estimate of the Project. Total of lines e + j + q.

*Please remember, if the federal aid participation rate entered is not the full amount allowed by FHWA, then the participation rate entered becomes the maximum amount allowed.

- .06 **Signatures.** An authorized official of the local agency signs the agreement, and writes in their title.
- .07 **Method of Construction Financing.** Choose the method of financing the construction portion of the project.
- a. Method “A” is used when the state administers the contract for the agency. At the time of contract award, the state will direct the agency to deposit with the state an advance in the amount of the agency’s share of the total construction costs (based on the actual contract award rather than the amount listed in the agreement). If this works a hardship on the agency, a smaller sum may be negotiated through the Region Local Programs Engineer.
 - b. Method “B” is also used when the state administers the contract for the agency. At the time of award, the state will notify the agency that withholding of its monthly fuel-tax allotments is to commence in accordance with the terms specified on the face of the agreement. The agency will specify the number of months over which allotments will be withheld. This period is not to exceed the length of the construction phase of the project. The monthly withholding amount is calculated by dividing the number of months into the total construction cost of the project entered in Column 2, line q of the ESTIMATE OF FUNDING box.

- .01 **Agency.** Enter the agency name as entered on the original agreement.
- .02 **Supplemental Number.** Enter the number of the supplement. Supplement numbers will be assigned in sequence beginning with Number 1 for the first supplement.
- .03 **Project Number.** Enter the federal aid project number assigned by WSDOT on the original agreement.
- .04 **Agreement Number.** Enter the agreement number assigned by WSDOT on the original agreement.
- .05 **Execution Date.** Enter date the original agreement was executed on.
- .06 **Project Description.** Enter the project name, length, and termini.
- .07 **Description of Work.** Clearly describe if there is a change in work. If the work has not changed, put a check mark in the “No Change” box.
- .08 **Reason for Supplement.** Enter the reason for this supplement, i.e., increase PE funding to cover design changes presented in the revised prospectus; request funding of construction phase; decrease construction funding to the contract bid amount, etc. If the supplement is authorizing a construction phase, the project’s proposed advertisement date must be included with the Reason for Supplement.
- .09 **Type of Work and Funding.** Complete this section in the manner described in Appendix 22.42, Paragraph .05.
 - a. Column 1. Enter the amounts from column 1 of the original local agency agreement. If the agreement has already been supplemented, enter the amounts from column 3 of the last supplemental agreement.
 - b. Column 2. Enter additional amounts requested.
 - c. Column 3. Add the amounts in columns 1 and 2.
 - d. Columns 4 and 5. Enter the appropriate amounts based on the participation ratio recorded on the original agreement.
- .10 **Signatures.** An authorized official of the local agency signs the Supplemental Agreement, and writes in their title. Submit one originally signed supplement form to the Regional Highways and Local Programs Engineer. It is the responsibility of the local agency to submit an additional, originally signed agreement form if they need an executed agreement for their file.

ORDINANCE/RESOLUTION NO. _____

WHEREAS, under and by the virtue of the terms of that certain Agreement and entered into by and between the Local Agency of _____, hereinafter designated as the "LOCAL AGENCY" and the State of Washington, acting through its Department of Transportation and the Secretary thereof, under the date of _____, 20 _____, the State will act as agent for the LOCAL AGENCY in the participation of said LOCAL AGENCY with the Federal Highway Administration under the provisions of the Federal-aid Highway Title 23 United States Code for the construction of Federal-aid Project No. _____, copy of which Agreement is hereunto attached, now referred to and by such reference incorporated herein and made a part hereof, now, therefore,

BE IT HEREBY RESOLVED that said Agreement be and the same is hereby ratified and approved; and

BE IT FURTHER RESOLVED that authorization is hereby granted for the reservation of amount of _____ Dollars (\$ _____) from monthly fuel tax allotments, being an amount not in excess of the money reasonably anticipated to accrue to the LOCAL AGENCY in the Motor Vehicle Fund during the current or future biennium(s) as the balance of the estimated participating share and costs of the LOCAL AGENCY in the above mentioned project, for the use of the Secretary of Transportation to defray the costs incurred in the performance of the aforesaid requested work; and upon completion of the aforesaid work, payment having been made therefor, and a statement having been furnished to the LOCAL AGENCY, authorization is made to release to the LOCAL AGENCY any unexpected balance of the amount reserved by this Ordinance/Resolution.

BE IT FURTHER RESOLVED that the (Director of Public Works, Local Agency Engineer, other Agency official) is hereby authorized to establish the months in which the withholding shall take place and the exact amount to be withheld each month up to _____ percent over the amount indicated for construction in this Agreement as determined by open competitive bidding, at contract award.

Dated this _____ day of _____, 20 _____.

(SEAL)

Attest:

_____ Clerk

24.1 General Discussion

Since this manual provides an outline of the federal procedures that a local agency must follow for a Federal Highway Administration (FHWA) funded project, only compliance with the National Environmental Policy Act (NEPA) will be described in detail. FHWA's approval of NEPA, in particular their signature on the Environmental Classification Summary (ECS), does not signify an approval of the State Environmental Policy Act (SEPA), nor any applicable local, state, and federal permits. Local agencies are responsible for ensuring compliance with SEPA and obtaining all applicable local, state, and federal permits. While the local agency may utilize the analysis completed in the NEPA process to assist in the completion of SEPA and applicable permits, NEPA approval must not be misconstrued as a guaranteed approval of any other local, state, or federal requirement. The local agency must work with other agencies, as appropriate, to provide the required analysis to complete their responsibilities under SEPA and other local, state, and federal permit and process requirements.

Projects involving federal funds, permits, or land are governed by a number of environmental requirements, including but not limited to:

- NEPA of 1969, 42 USC 4321 et. seq.;
- Council on Environmental Quality Regulations for Implementing NEPA, 40 CFR, Part 1500, et. seq.;
- Federal Highway Administration and Federal Transit Administration Implementing Regulations, 23 CFR, Parts 771, 772 and 774;
- Environmental Impact and Related Procedures, 49 CFR, Part 622;
- Section 7 of the Endangered Species Act (ESA), 50 CFR, Part 402;
- Section 106 of the National Historic Preservation Act, 36 CFR, Part 800;
- Presidential Executive Order 12898 – Environmental Justice; and
- Section 4(f) of the U.S. Department of Transportation Act of 1966.

Use this manual, the Washington State Department of Transportation's (WSDOT) *Environmental Procedures Manual* (EPM) (M 31-11), and *Reader-Friendly Tool Kit* to conduct all applicable environmental evaluations. The Tool Kit can be found at: <http://www.wsdot.wa.gov/Environment/ReaderFriendly.htm> and the EPM can be found at: <http://www.wsdot.wa.gov/Publications/Manuals/M31-11.htm>. The EPM provides detailed information on the triggers, process, and documentation requirements related to specific environmental considerations.

While this chapter provides detailed information on the coordination processes and some of the documentation requirements associated with specific environmental considerations, the EPM and LAG manuals should be used in conjunction to ensure adequate compliance with NEPA and other federal requirements.

Environmental analysis begins with determining the appropriate project NEPA classification, which is normally one of the initial steps in project development. A project will be classified as one of three defined classes, depending upon the significance of its impacts.

Federal regulations require the use of an interdisciplinary approach to assess a project's social, economic, and environmental impacts. "Interdisciplinary" means integrated consideration of the project's aspects through such disciplines as biology, economics, geology, sociology, planning, and archaeology, in addition to traditional civil engineering expertise. Interdisciplinary requirements for each class of project are discussed in Sections 24.3, .4, and .5. The Region Local Programs Engineer (LPE) can advise local agencies on how to set up an interdisciplinary approach.

24.2 Project Classification

All projects will be classified as a "Class I", "II", or "III" project, as defined in the following sections. The classification should occur as early as possible in the project's development, since the scope of the subsequent environmental analysis and documentation process is dependent upon the project's classification.

If a local agency requires assistance in determining the appropriate environmental classification of a project, they are encouraged to contact the Region LPE to arrange for a field review of the proposed project. The FHWA must be involved in determining if a Class I or III classification is appropriate to undertake. This determination must occur prior to initiating the NEPA process.

The following subsections define the three classifications of NEPA documentation and lists the types of work typically associated with each classification.

.21 Class I – Environmental Impact Statement (EIS). Class I projects include actions that are likely to result in significant impacts to the environment by virtue of their impacts to land use, planned growth, development patterns, traffic volumes, travel patterns, transportation services or natural resources, or due to the likelihood that the project will create a significant public controversy.

Projects that typically require an EIS, include, but are not limited to:

- new construction of a controlled access freeway;
- a highway project of four or more lanes on a new location;

- new construction or extension of fixed-rail transit facilities (for example, rapid rail, light rail, commuter rail, automated-guideway transit); and
- new construction or extension of a separate roadway for buses or high-occupancy vehicles not located within an existing highway facility.

It is important to note that these types of projects typically require an EIS. However, this does not mean that these types of projects will always require an EIS. Each project must be evaluated for its potential impacts on the environment—the level of significance associated with each impact will determine the appropriate level of documentation.

The NEPA process begins with the local agency completing a preliminary “Environmental Classification Summary” (ECS) form utilizing the most current project information. The ECS is submitted by the local agency with a Project Prospectus and Local Agency Agreement to the Region LPE for submittal to Highways & Local Programs (H&LP). H&LP will submit the preliminary ECS to FHWA and set up a meeting with the appropriate parties to confirm NEPA classification. The preliminary ECS should identify potential environmental issues associated with each alternative. This information will be used by FHWA to determine the appropriate level of NEPA classification. This step must be completed early on in the process.

.22 Class II – Categorical Exclusion (CE). Class II projects are actions that generally do not result in significant impacts.

CEs are actions which meet the definition contained in 23 CFR 771.117 and 40 CFR 1508.4 and, based on previous experience with similar actions, do not involve significant environmental impacts. They are actions which:

- do not induce significant impacts to planned growth or land use for the area;
- do not require the relocation of significant numbers of people;
- do not have a significant impact on any natural, cultural, recreational, historic, or other resource;
- do not involve significant air, noise, or water quality impacts;
- do not have significant impacts on travel patterns;
- do not otherwise, either individually or cumulatively, have any significant environmental impacts.

Any action which normally is classified as a CE, but may involve unusual circumstances will require the FHWA and FTA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is appropriate. Such unusual circumstances may include:

- considerable impacts to the environment;
- substantial controversy on environmental grounds;

- impacts to properties protected by Section 4(f) of the Department of Transportation Act or Section 106 of the National Historic Preservation Act; or
- inconsistencies with any federal, state, or local law, requirement, or administrative determination relating to the environmental aspects of the action.

Appropriate environmental studies may include, but are not limited to, the preparation of a biological assessment, cultural resources survey, Section 4(f) evaluation, noise study, air quality study, and wetlands report. The results of these reports (provided the analysis illustrates a lack of significant impacts) support a documented CE (DCE) determination.

.23 Class III – Environmental Assessment. For actions in which the significance of the impacts of the project on the environment is not clearly established, an EA is prepared to determine the extent of environmental impacts and to determine whether the preparation of an EIS is appropriate. An EIS is not required when the findings of an EA support the issuance of a Finding of No Significant Impacts (FONSI) by FHWA.

The local agency completes a preliminary Local Agency ECS form, utilizing known project information, as developed in the planning stage and/or Growth Management Act requirements. The ECS is submitted by the local agency with a Project Prospectus and Local Agency Agreement to the Region LPE for submittal to H&LP. H&LP will submit the preliminary ECS to FHWA and set up a meeting with the appropriate parties to confirm NEPA classification.

24.3 Procedures for Class I (EIS) Projects

A local agency project that anticipates significant environmental, social, or economic impacts, and involves federal funding, federal lands, or federal permits, must comply with NEPA process and procedures for public and agency involvement.

The steps in the NEPA process and procedures include:

- hold partner confirmation meeting;
- establish interdisciplinary team (IDT);
- send Project Initiation Letter to FHWA;
- SAGES Coordination;
- publish Notice of Intent (NOI);
- conduct EIS scoping;
- develop and apply screening criteria to alternatives developed so far;
- select alternatives to study in draft EIS (DEIS);
- begin discipline studies;

- prepare DEIS;
- circulate DEIS and file with U.S. Environmental Protection Agency (EPA);
- hold EIS/design public hearing if required or desired;
- select preferred alternative and prepare Final EIS (FEIS);
- issue FEIS and file with USEPA and Ecology;
- prepare and issue Record of Decision (ROD); and
- wait for seven days prior to approving design file or eight-point access study.

.31 SAFETEA-LU Overview. Section 6002 of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) established a new coordination and public input process for developing NEPA EISs for highway, public transportation capital, and multimodal projects. SAFETEA-LU 6002 does not override or change NEPA, it simply supplements it.

The new environmental review process creates a new category of “participating agencies” and establishes specific coordination points within the EIS environmental review process. It also requires the development of a coordination plan with an optional schedule. The three coordination points added to the traditional NEPA steps are:

- 30-day public and agency review and comment at purpose and need;
- 30-day public and agency review and comment at range of alternatives; and
- 30-day participating agency (not public) review of proposed methods of analysis/level of detail for the analysis of alternatives.

SAFETEA-LU also requires the project team to submit a letter to FHWA prior to the start of NEPA (before submitting the NOI) requesting the environmental review process be initiated.

WSDOT has developed useful tools such as template letters and sample coordination plans to help ensure compliance with SAFETEA-LU Section 6002. These tools are available on WSDOT’s Environmental Web site.

.32 Interdisciplinary Team (IDT). NEPA requires an interdisciplinary approach in the preparation of EISs (23 CFR 105(c)). An IDT is an advisory group composed of people with varied training or skills in the natural and social sciences, engineering, and environmental design. IDT members may come from different governmental agencies. The interdisciplinary approach is used in the planning and design of transportation facilities involving an EIS. The team is established in the early stages of the environmental process when the local agency begins EIS scoping and public involvement and when a Notice of Intent is submitted to FHWA.

.33 Agency Coordination Under SAFETEA-LU Section 6002. Early agency coordination on NEPA EIS projects is essential. As stated earlier, SAFETEA-LU 6002 established a new category of participating agencies. A participating agency is defined as a governmental agency that may have an interest in the project. They are officially invited to participate and have certain roles and responsibilities during the EIS document evaluation. Specifically, these agencies will participate in the NEPA process starting at the earliest possible time, especially with regard to the development of the purpose and need statement, range of alternatives, impact assessment methodologies, and the level of detail for the analysis of alternatives.

WSDOT guidance as well as template invitation letters can be found on the WSDOT Environmental Services Web site. FHWA guidance for implementing the agency coordination requirements of Section 6002 of SAFETEA-LU can be found at: <http://www.environment.fhwa.dot.gov/strmlng/es2safetealu.asp>.

.34 Statewide Advisory Group for Environmental Stewardship (SAGES). To meet the interdisciplinary approach required by SAFETEA-LU 6002, FHWA and WSDOT formed the Statewide Advisory Group for Environmental Stewardship (SAGES). Members of the SAGES consist of representatives from WSDOT, FHWA, National Marine Fisheries Service, Department of Ecology, WA Department of Fish & Wildlife, US Fish & Wildlife Service, EPA, Corps of Engineers, and Department of Archeology and Historic Preservation. The lead agency on a project will request a meeting with SAGES at the beginning of each new project that requires an EIS.

The SAGES group serves as a standing committee to assist lead agencies in making efficient environmental decisions at the NEPA EIS level of environmental classification. The SAGES will meet as needed to discuss recurring issues, concerns, and potential process improvements. The SAGES will also be used as a project-kickoff forum to ensure that the new EIS process is clear to all parties.

The group will provide informal and advisory comments on draft project purpose and need. They can also offer insight on developing the information needed for permitting concurrently with the development of the NEPA EIS.

As part of the new EIS process and SAFETEA-LU's mandate for early coordination, project teams will meet with and present their projects to SAGES as early as practicable before the issuance of the Notice of Intent (NOI). Project teams will need to prepare an "Environmental Pre-Scoping Package" that will be distributed to SAGES via e-mail 14 days prior to their scheduled meeting.

The Environmental Pre-Scoping Package consists of:

- SAFETEA-LU 6002 Coordination Plan for Public and Agency Involvement;

- SAGES Project Data Sheet; and
- SAGES Advisory Comment Form.

Project teams are required to meet with SAGES one time. Project teams can also request assistance from SAGES *in lieu* of establishing their own technical advisory groups.

For convenience and consistency, the Project Data Sheet, Advisory Comment Form, and the Coordination Plan are available online at WSDOT's Environmental Web site.

.35 Procedures for a NEPA EIS

- a. Project Initiation Letter to FHWA.** For all federal actions requiring a NEPA EIS, SAFETEA-LU now requires the project sponsor (in this case the local agency) to submit a project initiation letter to the Region LPE who will coordinate with H&LP to forward it on to FHWA. This must occur prior to publishing the NOI in the *Federal Register*. The contents and guidelines as well as a template for preparation of the letter are found on WSDOT's Environmental Web site.
- b. SAGES Coordination.** Another step prior to the issuance of the NOI is for the local agency to present the EIS project to the Statewide Advisory Group for Environmental Stewardship (SAGES).
- c. Notice of Intent (NOI).** If an EIS will be required for a project involving federal funds or federal permits, the local agency submits a draft NOI to the Region LPE who will coordinate with H&LP to forward it on to FHWA or the federal lead agency for publication in the *Federal Register*. The NOI advises federal agencies that an EIS will be prepared. The contents and guidelines for preparation of the notice are found in FHWA Technical Advisory T 6640.8A.
- d. EIS Scoping.** According to the Council on Environmental Quality (CEQ) Implementing Regulations, the EIS scoping process is an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. Briefly, the process is used to:
 - develop the purpose and need statement;
 - identify the range of alternatives, environmental elements and impacts, and mitigation measures to be analyzed in the EIS; and
 - identify potential environmental concerns or controversy early in the project development.

New to the NEPA EIS documentation process is the SAFETEA-LU 6002 requirement to allow for public and agency review and comment on the project's draft purpose and need statement and the range of alternatives.

The review and comment period for both the purpose and need and range of alternatives is 30 days and may be conducted concurrently or consecutively based on the project team's preference. The 30-day period may be extended by the lead agencies for good cause.

After considering the input provided by these groups, the lead agencies will decide the project's purpose and need and range of alternatives to be studied in the draft EIS.

NEPA rules require EIS scoping during preparation of the draft EIS (40 CFR 1501.7, 23 CFR 771.123, WAC 197-11-408). NEPA does not require scoping for a supplemental EIS; however, the co-lead agencies can decide to hold an open house early in the supplemental EIS process that serves the same purpose.

- e. Draft Environmental Impact Statement (DEIS).** The DEIS identifies the alternative actions and presents an analysis of their relative impacts on the environment. It may identify a recommended course of action if one alternative is clearly preferred. The DEIS summarizes the early coordination and EIS scoping process, identifies key issues, and presents pertinent information obtained through these efforts. All NEPA EIS documents will be written in a format consistent with WSDOT's *Reader-Friendly Tool Kit*.

The local agency prepares a preliminary DEIS using discipline reports and/or data supplied by the IDT and other sources, and begins a commitment file. The Region LPE coordinates with H&LP to obtain reviews by various experts, appropriate federal, state and local agencies and tribes. Review comments are returned to the local agency for revision of the preliminary DEIS. FHWA legal counsel will review and comment on the DEIS.

After making changes in response to comments on the preliminary DEIS, the local agency submits the DEIS to the Region LPE, who coordinates with H&LP to gain approval of the DEIS and to obtain signature of appropriate officials on the title page. The signed title page and approval to print the DEIS are returned to the local agency and the document is printed and made available for public review as described below.

- f. Notice of Availability/Public Hearing Notice.** The local agency submits the DEIS to the Region LPE who will work with H&LP to submit it to EPA for processing and placement of a Notice of Availability in the *Federal Register*. A comment period of not less than 45 days begins upon publication of the notice in the *Federal Register*.

The local agency is required to use the public notice procedures detailed in WAC 468-12-510(c) to inform the public that the DEIS is available and that a public hearing may be requested. If a hearing is required to fulfill any legal requirements, include information on the availability of the DEIS

in the notice. All projects with a DEIS should expect to have a public hearing unless FHWA agrees a hearing is not required (23 CFR 771.111(h)(2)(iii)).

The hearing date is a minimum of 15 days after circulation of the DEIS. The end of the comment period should be about two weeks or 15 days following the date of the public hearing (23 CFR 771.123(h)).

Public notice requirements include:

- publishing the notice in a newspaper of general circulation in the county, city, or general geographic area where the proposal is located;
- notifying agencies with jurisdiction, affected tribes, and groups known to be interested in the proposal or who have commented in writing about the proposal;
- contacting news media and placing notices in appropriate regional, neighborhood, or ethnic periodicals; and
- giving public notice at least 15 days in advance of a public hearing. The environmental document continues to be available for 15 days after the hearing date (45-day comment period minus 30-day public notice leaves remaining 15 days of the comment period).

The DEIS Notice of Availability contains the following:

- location of project;
- brief description;
- information on wetlands, floodplains, Section 4(f) lands, or endangered species, if applicable;
- purpose of EIS;
- responsible agency;
- federal lead agency;
- where documents are available;
- where to send comments;
- date by which comments are requested; and
- date, time, and location of public hearing or invitation to request a public hearing.

g. Public Hearing. Public hearings are required for all EIS projects and for other NEPA projects when:

- There are identified environmental issues (for example, heavy traffic volumes on local streets, visual quality), which should be discussed in a public forum. If a request for a hearing can be anticipated, planning

for a hearing can save time, rather than waiting until the end of the comment period to start the procedures for the public hearing.

- Local agencies have a substantial interest in holding a hearing to further public comment and involvement.
- An agency with jurisdiction over the proposal (permitting agency) requests a hearing.
- As a minimum, a notice of opportunity for a hearing is published in a local newspaper with general circulation within the area affected by the project. The WSDOT Hearing Coordinator can provide examples and advice. Where hearings are not required by statute, informational meetings may serve as a useful forum for public involvement in the environmental process.

h. Circulation of DEIS. Circulation of Draft and Final EISs is required under state and federal regulations (40 CFR 1502.19, WAC 197-11-455 and 460, and WAC 468-12-455 and 460). During the circulation of the DEIS, copies are sent to libraries and resource agencies free of charge. After initial circulation, a fee may be charged which is not more than the cost of printing. NEPA DEISs must be distributed by the local agency no later than the time the document is filed with EPA for publication in the *Federal Register*. Contact the Environmental Engineer in H&LP for assistance in preparing a DEIS distribution list.

Required distribution is as follows:

- federal or agencies with jurisdiction or environmental expertise on the project;
- tribes (affected by project, both “usual and accustomed areas” and fishery resources);
- cities and counties in which adverse environmental impacts identified in the EIS may occur, if the proposal were implemented;
- local agencies of political subdivisions whose public services would be changed as a result of implementation of the proposal (for example, public works, parks, planning, local SEPA office, schools, water or sewer districts);
- the applicable local, area-wide, or regional agency, if any, that has been designated under federal law to conduct intergovernmental review and coordinate federal activities with state or local planning (for example, Clean Air Agency, ports, Indian Fisheries Commission, transit authorities);
- libraries;
- media (legal and local newspapers); and

- public officials, private interest groups, and individuals having or expressing an interest in the proposed project or DEIS.

The latter category normally includes:

- each private interest group, but not each member;
- public officials, private interest groups, or individuals who provided significant input during meetings and/or hearings;
- individuals who have shown interest by attending several meetings, even though they did not provide specific input; and
- any individual who has shown interest by visiting an FHWA, WSDOT, or local agency office for information on the proposed project or by requesting a copy of the DEIS from the lead agency.

When visual impacts are a significant issue, the DEIS should be circulated to officially designated local arts councils and other organizations interested in design, art, and architecture.

If a DEIS adequately identifies and quantifies the environmental impacts of all reasonable alternatives, evaluate the next step by reviewing the FHWA Technical Advisory T 6640.8A, which gives three options for preparing a Final EIS: traditional approach, condensed Final EIS, and abbreviated Final EIS.

i. Final Environmental Impact Statement (FEIS)

1. Preliminary FEIS. After the public comment period, public and agency comments are evaluated to determine whether:
 - additional studies are required to respond to those comments; and
 - impacts of the preferred alternative fall within an envelope of impacts for alternatives described in the DEIS (especially if a modified or hybrid alternative is selected as preferred).

The FEIS contains the local agency's final recommendation and preferred alternative, lists or summarizes (by group) the comments received on the DEIS, summarizes citizen involvement, and describes procedures required to ensure that mitigation measures are implemented. The FEIS also documents compliance with environmental laws and Executive Orders.

The recommendation is to produce reader-friendly documents with conclusions in one document. The FEIS incorporates the DEIS (essentially in its entirety) with changes made as appropriate throughout the document. Changes may reflect: the selection of an alternative; modifications to the project; updated information on the affected environment; changes in the assessment of impacts; selection of mitigation measures; and wetland and floodplain findings. These are the results of coordination, comments received on the DEIS, and

responses to these comments. Since so much information is carried over from the draft to the final EIS, important changes are sometimes difficult for the reader to identify. These can be highlighted in an introductory section or attached summary.

2. Review and Publication of FEIS. The local agency reviews the preliminary FEIS and submits the document to their legal staff for review (on controversial projects). After completion of these internal reviews, the local agency submits the preliminary FEIS to the Region LPE for distribution to H&LP and the appropriate lead federal agency. The FHWA Division Office will review the preliminary FEIS before forwarding it on for the required FHWA Legal Sufficiency Review (23 CFR 771.125(b)). The Division review will take up to 30 days. The legal-sufficiency review is performed after the Division review and can take an additional 45 days. The document is reviewed for compliance with applicable FHWA and CEQ NEPA laws and regulations. The objective is to evaluate the legal aspects of potential claims if the project were to be litigated. After reviewing the preliminary FEIS and incorporating comments, the local agency prepares a draft Record of Decision (ROD) and submits it to the Region LPE along with the FEIS. H&LP reviews the FEIS, and the responsible official signs the title page. The federal agency approval to print is demonstrated by their signature on the title page, possibly with a short list of minor changes to make prior to printing. The completed FEIS is then submitted to EPA by H&LP for publication of the FEIS Notice of Availability in the *Federal Register*.
3. Distribution. After approval of the FEIS, but before it is published in the *Federal Register*, the local agency distributes copies of the FEIS as follows (40 CFR 1502.19(d)):
 - federal agencies (do not list co-lead agencies);
 - tribes (affected by project, both “usual and accustomed areas” and fishery resources);
 - state agencies (do not list co-lead agencies);
 - regional agencies (for example, Clean Air Authority, transit, Indian Fisheries Commissions);
 - county (public works, SEPA official);
 - local agencies (public works, parks, schools, water/sewer district);
 - libraries;
 - media (legal and local newspapers); and
 - organizations and individuals who have expressed interest;

Under NEPA rules, FEISs must be distributed no later than the time the document is filed with EPA for publication of the FEIS Notice of Availability in the *Federal Register*.

4. Notice of Availability, FEIS. The local agency notifies the public in a manner similar to the DEIS, except there is no official comment period. Comments received during the 30 days following the issue of the FEIS will be noted and responded to in the Record of Decision and made available to the public upon request. If the agency receives petitions from a specific group or organization, a notice or EIS may be sent to the group and not to each petitioner. The local agency makes additional copies available in its offices for review (WAC 197-11-460). FEIS notification procedures are detailed in WAC 468-12-510(d).

j. Record of Decision (ROD). The draft ROD prepared by the local agency, accompanies the FEIS through the review and approval process. The ROD explains the reasons for the project decision, summarizes any mitigation measures that will be incorporated in the project, and documents any required Section 4(f) approval (CEQ 40 CFR 1505.2). Guidance on preparing and distributing the ROD is provided in FHWA's Technical Advisory T 6640.8A (available online at <http://www.fhwa.dot.gov/legregs/directives/techadvs/t664008a.htm>).

The following format is used in preparing a ROD:

- **Decision.** Identify the selected alternative. Refer to the FEIS to avoid repetition.
- **Alternatives Considered.** Briefly describe each alternative (with reference to the FEIS, as above), explain and discuss the balancing of values underlying the decision. Values for economic, environmental, safety, traffic service, community planning, and other decision factors may vary in relative importance. Identify each significant value and the reasons why some values were considered more important than others. The ROD should reflect the manner in which these values were considered in arriving at the decision. Identify the environmentally preferred alternative or alternatives. In addition, if Section 4(f) property is used, summarize the Section 4(f) evaluation.
- **Measures to Minimize Harm.** Describe all measures to minimize environmental harm that have been adopted for the proposed action. State whether all practicable measures to minimize environmental harm have been incorporated into the decision, and if not, why.
- **Monitoring or Enforcement Program.** Describe any monitoring or enforcement program that has been adopted for the specific mitigation measures, as outlined in the FEIS.

- **Commitment List.** Include an item-by-item list of commitments and mitigation measures from the commitment file. The list serves as a ready reference for the design, construction, and maintenance of the project.

Section 6002 of SAFETEA-LU established a 180-day statute of limitations on claims against USDOT and other Federal agencies for certain environmental and other approval actions. The statute of limitations established by SAFETEA-LU applies to a permit, license, or approval action by a Federal agency if:

- the action relates to a transportation project (as defined above); and
- a statute-of-limitations notification is published in the *Federal Register* announcing that a Federal agency has taken an action on a transportation project that is final under the Federal law pursuant to which the action was taken.

If no statute-of-limitations notice is published, the period for filing claims is not shortened from what is provided by other parts of Federal law. If other Federal laws do not specify a statute of limitations, then a six-year claims period applies.

- k. Proceed With Design.** After all environmental documents in the environmental and design stages have been approved and finalized (including environmental documents, eight-point access report for limited access highways, Access Hearings, and R/W plan revisions if applicable) the project may advance to right-of-way acquisition and preparation of the PS&E.

24.4 Procedures for Class II (CE) Projects

The activities described in this section are summarized on the flow chart for Class II projects. Class II projects may be defined as either documented Categorical Exclusions (DCEs) or programmatic CEs.

It is important to utilize the Environmental Classification (ECS) Guidebook in completing the documentation to support a CE classification. The ECS Guidebook and the EPM will assist in determining which discipline reports are required and, more importantly, the appropriate level of content and detail.

.41 Documented Categorical Exclusions. DCEs typically require documentation in the form of discipline reports to support the CE determination and FHWA approval. The local agency completes the current version of the Local Programs ECS form and prepares discipline reports, as appropriate. These may include, but are not limited to, an Air Quality Analysis, Wetlands Report, Cultural Resources Survey, Biological Assessment, Hazardous Materials Assessment, and Section 4(f) Evaluation. The ECS Guidebook and WSDOT's EPM will assist local agencies in

determining when a discipline report is required. Local agencies are advised to contact the Region LPE if they are uncertain whether or not a discipline report is appropriate for a particular project. The Region LPE can also provide advice regarding the level of detail that will be required in discipline reports.

The local agency transmits the completed ECS and discipline reports to the Region LPE who will coordinate with H&LP to have the documents reviewed by appropriate technical staff. Upon the completion of the review of the ECS and discipline reports, H&LP will coordinate with the Region LPE and the local agency to ensure that any comments are addressed appropriately. As final discipline reports are completed, H&LP will coordinate with state and federal resource agencies to secure required reviews and approvals (for example, Section 106, ESA Section 7). Once approvals are obtained, H&LP will forward the ECS package to FHWA for review and approval. H&LP will forward a copy of the approved ECS to the Region LPE for transmittal to the local agency.

Public involvement is not required for a DCE, but it is always recommended for consideration, depending on the proposed project, location, surrounding populations, and public sentiment towards the project.

.42 Programmatic Categorical Exclusions. Projects that meet the requirements of the 1999 Memorandum of Understanding between WSDOT and FHWA on Programmatic Categorical Exclusions do not require FHWA approval. (See Appendix B in the ECS Guidebook for additional information.) Programmatic CEs generally do not result in impacts to any environmental considerations. Documentation needs for the programmatic CE are similar to those for DCEs.

The local agency completes an ECS form and prepares discipline reports, as appropriate. These may include, but are not limited to, a Cultural Resources Survey, and ESA No-Effect Letter, and Hazardous Materials Assessment.

The local agency transmits the completed NEPA documents to the Region LPE, who will forward them to H&LP. H&LP will coordinate with department expertise, as appropriate, to review the discipline reports. H&LP will coordinate with the Region LPE and the local agency to address any comments, as appropriate.

Upon completion of the department's review, H&LP will approve the ECS for FHWA and will forward a copy of the approved ECS to the Region LPE for transmittal to the local agency.

24.5 Procedures for Class III (EA) Projects

.51 Cooperating Agencies. After FHWA authorization of preliminary engineering funds and confirmation of the NEPA classification, the local agency prepares a list of agencies, which may have a vested interest in the proposed project. Vested interest may be defined, as either a funding partner;

ownership of required property; regulatory authority to issue a needed permit; or possession of special expertise within an affected environment.

The local agency will send the proposed list and a draft letter (including proposed project activities and potential issues) to the Region Local Programs office, which will transmit the documentation to H&LP. H&LP will coordinate with FHWA to send the letters to appropriate agencies. These letters need to be sent out as early as possible, typically prior to formal scoping.

The level of involvement of an interested cooperating agency will vary. FHWA, WSDOT, the local agency, and the cooperating agency will meet to define and agree on roles and expectations at the beginning of the project.

Inviting agencies to serve as participating agencies, as described in Section 24.33 is optional for an environmental assessment.

.52 Scoping. Formal scoping is not required for a Class III project. However, the local agency must coordinate with affected federal, state, and local agencies, Tribes, interest groups, and the public to determine the scope of the project alternatives to be considered, and the issues to be addressed. If the local agency decides to conduct a formal scoping process, the local agency will work closely with the Region LPE and H&LP to develop the scope of the EA. Once agreement is reached, the recommended scope is presented to FHWA to gain their formal concurrence.

The formation of a formal IDT is also not necessary. The local agency must coordinate with the appropriate expertise, however, in order to prepare discipline reports and analysis.

.53 Data Collection, Inventory, and Evaluation. The local agency develops an inventory of social, economic, environmental, and engineering data and concerns. The information is used to define the environment; to predict and analyze the project's impacts; to help define the preferred alternative; to prepare environmental documents; and to inform other agencies, interest groups, or individuals. Sources of data include, but are not limited to field studies, consultation, and coordination with other agencies and the public. WSDOT's Environmental Procedures Manual and FHWA's Technical Advisory T6640.8A are general guides to the types of information, depth of studies, and procedures to be used in collection, inventory, and evaluation of required environmental data.

.54 Public Involvement. The local agency conducts public meetings, mail notices, and uses other methods appropriate to the magnitude of the project to provide and obtain information. Public involvement methods are discussed in Section 24.5.

.55 Reports and Recommendations.

a. Discipline Reports. Generally discipline reports are prepared as outlined in 24.7 and the ECS Guidebook.

Analyses are conducted to the extent where the specific environmental impacts can be determined. If the analyses of the discipline reports indicate that impacts are significant, the local agency must contact the Region LPE to set up a meeting with FHWA and H&LP. If FHWA agrees with the findings, preparation of an EIS is required.

- b. Environmental Assessment.** The local agency prepares a preliminary Environmental Assessment (EA) in accordance with the EA outline in WSDOT's *Environmental Procedures Manual* and *Reader-Friendly Tool Kit*. If the project involves the use of Section 4(f) properties, a separate 4(f) Evaluation is required and is included as a separate section in the EA. (See Part 4 of the *ECS Guidebook* for additional information.)

The preliminary EA and draft Section 4(f) Evaluation are submitted to the Region LPE. The Region LPE will forward copies of the document to H&LP for coordination of the review and comment with WSDOT's Environmental Services Office (ESO). Any comments or edits will be transmitted to the local agency for revision and re-submittal. Upon completion of WSDOT's review and approval, the preliminary EA is transmitted to FHWA for review and comment. Each review of the document by WSDOT and FHWA will typically require thirty (30) days to complete.

Upon approval from both WSDOT and FHWA, the local agency prepares the revised EA and submits the document to the Region LPE for transmittal to H&LP. H&LP will coordinate with WSDOT's Environmental Services Office and FHWA to schedule a briefing for signature of the document's title sheet. WSDOT's Director of the Environmental Services Office will sign the title page for WSDOT and the FHWA Division Administrator or appropriate Area Engineer will sign the title page for FHWA. Once signed, the title page will be returned to the local agency for reproduction and inclusion within the EA. Prior to signature, compliance with other federal environmental regulations such as, but not limited to, Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, and Section 4(f) of the U.S. Department of Transportation Act, must be achieved.

Upon completion, the local agency will print sufficient copies to send out to the pre-determined distribution list. The local agency will transmit copies of the EA to the Region LPE, who will forward the copies on to H&LP.

A notice announcing the availability of the EA is published by the local agency in a newspaper of general circulation. The local agency also coordinates the circulation of the EA to affected individuals, interested parties, and local, state, and federal agencies with jurisdiction.

If Section 4(f) property is involved, the document is also circulated to the Department of Interior, as appropriate. See Part 4 of the ECS Guidebook for additional information.

.56 Hearings and Notices. A public hearing is suggested but not required for a Class III project. However, a public hearing is strongly recommended if:

1. there is substantial controversy with the project;
2. FHWA, WSDOT, or the local agency desire a hearing; or
3. an agency with jurisdiction requests a hearing.

If a public hearing is held, the hearing must not be scheduled any sooner than fifteen (15) calendar days following the availability of the EA. Notice of the public hearing must be published in the local newspaper. The public hearing notice follows the format and time schedule outlined in Section 24.35.

If a hearing is not held, the local agency will publish a notice in the local newspaper (similar to the public hearing notice) notifying the public that the EA is available for review and comment. The notice also provides the location of documents and how to obtain additional copies.

The public review and comment period for an EA is thirty (30) days regardless of whether a hearing is held. If a Section 4(f) evaluation is included, a forty-five (45) day public review and comment period is required.

.57 Finding of No Significant Impacts (FONSI). If the conclusions of the EA and public comment support significant impacts, the local agency will initiate preparation of an EIS (following FHWA's support of that direction).

If the findings of the EA and feedback from public comment do not indicate the existence of significant impacts, the local agency will prepare responses to the comments received; edit the EA as appropriate or draft an errata to the document; and prepare a draft FONSI for the project.

The local agency submits this package to the Region LPE for transmittal to H&LP. H&LP will review the package and, if deemed acceptable, forward it on to FHWA for review and approval. Provided FHWA agrees with the findings, FHWA will sign the FONSI and return a copy to H&LP, for transmittal to the Region LPE and local agency.

24.6 Project Re-evaluation

Whenever single or cumulative conditions have occurred that might cause new or more severe environmental impacts, the local agency shall re-evaluate an environmental document.

A written re-evaluation is required when any one of the following conditions exist:

1. An acceptable FEIS has not been submitted to FHWA within three years from the date of the DEIS circulation.

2. Federal approvals of major steps to advance the project (such as FHWA approval to acquire right of way or approval of PS&E) have not occurred within three years of NEPA approval (that is, FHWA's approval of the ECS, issuance of a FONSI, or ROD).
3. There is a law change that is relevant to the information provided in the original document (i.e. a new species is listed as threatened or endangered under ESA). This is required even if the NEPA approval is less than three years old.
4. There is a change to the project scope. This is required even if the NEPA approval is less than three years old. (Some kinds of scope changes, such as those that are outside previous study areas, are likely to result in a determination that a supplemental NEPA document is needed.)
5. New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the NEPA document. (This is likely to result in a determination that a supplemental NEPA document is needed.)

The local agency re-evaluates the project by completing a new ECS, regardless of the project's NEPA classification. The re-evaluation needs to indicate whether any new information is known that alters the previous analysis and findings. If so, the local agency needs to conduct appropriate environmental studies to support the updated conclusions.

The re-evaluation is submitted in written form to the Region LPE. The Region LPE will transmit a copy of the re-evaluation to H&LP for review and coordination with FHWA. FHWA will determine, based on the findings of the re-evaluation, if additional documentation is appropriate (for example, a supplemental EIS, updated EA or ECS, depending on the original NEPA classification).

24.7 Environmental Disciplines and "Right Sizing" Reports

The nineteen environmental disciplines that must be considered to fulfill NEPA consist of the following:

- Air Quality;
- Critical and Sensitive Areas;
- Aquifer Recharge Areas & Wellhead Protection Areas;
- Geologically Hazardous Areas;
- Wildlife, Rare Plants, and Habitats (not addressed by ESA);
- Wetlands;
- Cultural Resources;

- Floodplains and Floodways;
- Hazardous and Problem Waste;
- Noise;
- Section 4(f) and 6(f);
- Resource Lands;
- Rivers, Streams or Tidal Waters;
- Tribal Lands;
- Visual Quality;
- Stormwater;
- Commitments;
- Social Effects & Environmental Justice;
- Endangered Species Act.

Please refer to the ECS Guidebook and WSDOT’s EPM for detailed discussions of the requirements for each of these disciplines.

For many simple projects the answers to the questions on the ECS alone will constitute sufficient documentation. For more complex projects, however, the ECS will need to be supplemented with “discipline reports” that contain more robust analyses and discussions of some environmental disciplines.

One of the biggest challenges faced by local agencies is to correctly scale the documentation provided in a discipline report so that it corresponds with the level of project impacts. Care must be taken to avoid the preparation of unnecessary or over-documented discipline reports since this is inefficient and wastes project resources. One of the best ways to assure that disciplines reports are “right-sized” is to conduct early coordination with the Region LPE who can help identify the disciplines that are (and are not) likely to need robust analyses.

To provide frameworks for the various discipline reports, WSDOT has developed a series of templates and outlines, which are available on the WSDOT Environmental Web site, in the WSDOT Environmental Procedures Manual (EPM), and in the ECS Guidebook. However, it is important to keep in mind that these templates are only a starting point. In most instances they do not fully explain the proper scaling of analysis and discussion for a range of potential projects. Right-sizing requires consideration of both the project’s potential impacts and the applicable regulatory requirements.

For example, a Cultural Resources Discipline Report for an overlay project that requires a construction detour through in a downtown historic district would be significantly less complex and require significantly less effort to prepare than would a street-widening project in the same location. In the

first example the potential effects needing to be analyzed under Section 106 and 4(f) would likely be minimal. The second project example, however, would likely require surveys for buried cultural resources, an analysis of potential construction impacts on historic buildings, and possibly a discussion of mitigation measures.

Discipline reports to address the Endangered Species Act provide another useful example. A project that will have no effect on listed species typically requires the preparation of only a three- to six-page “no effect letter” that explains the rationale for the effect determination. However, a project that has the potential to affect federally listed Threatened or Endangered species requires the preparation of a Biological Assessment. In this example, the documentation requirement for the project with “no effects” on listed species is significantly less than that required of the project that “may affect” listed species.

24.8 Appendix

24.123 Local Agency Environmental Classification Summary

24.9 Tribal Contacts

<http://www.wsdot.wa.gov/tribal>

24.10 Local Programs ECS Guidebook

<http://www.wsdot.wa.gov/NR/rdonlyres/87901EB4-008A-43A0-9DB7-2179E0BC939F/0/ECSGuidebooksecure.pdf>

26.1 General Discussion

Under Public Law 105-178 (TEA-21), a 10 percent aspirational goal was established for the participation of Disadvantaged Business Enterprises (DBEs) in transportation contracting, in an effort to value equal opportunity in the award and administration of U.S. DOT-assisted 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 federal funds made available by the Washington State Department of Transportation (WSDOT), must either adopt WSDOT's DBE Participation 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 Participation Plan, which is available on WSDOT's website.

WSDOT's OEO, in coordination with 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

- 1. 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.

2. **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 economically 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. In order to count DBE participation, 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. The directory is available via OMWBE's Web site at www.omwbe.wa.gov/biznetwas or by calling (360) 753-9693.
3. **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 Region Local Programs Engineer when the contract work is determined. The estimate must show the item quantities and costs of the project. No construction funding will be obligated prior to the project review for DBE goals.

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 DBE goal for the project. The methodology employed by WSDOT determining state and local agency project contract goals is as follows:

- A. Elements
 - a. Geographical location of the project;
 - b. Type(s) of work included in the project, i.e., structure, roadway, new construction;

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

- b. 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 will be determined to be non-responsive and the next low responsive bid accepted.
- c. If the apparent low bidder submits Good Faith Effort documentation with the bid, the Local Agency will submit the Good Faith Effort to Highways and Local Programs for approval action prior to awarding the project.

B. After Execution

The Local Agency will request that the apparent low bidder submit a description of the specific items of the work each DBE subcontractor named in the DBE Utilization Certification will perform. This description, dollar amount, and name of the DBE firm is identified in the award letter and made Condition of the Award (COA) of the contract.

C. Administrative Reconsideration

If Highways and Local Programs determines that the apparent successful bidder/offer did not meet the DBE goal or has failed to make a good faith effort to meet the goal, the Local Agency will, before awarding the contract, notify the bidder/offerer that it has five working days (from the date of notification) to request reconsideration or forfeit the right to reconsideration.

- a. 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;
- b. The bidder/offerer shall have the opportunity to meet in person with said official to discuss the issue as to why it did not meet the goal or make good faith efforts to do so. The bidder’s position must be based on its bid submittal. The bidder may provide further explanation/clarification of the information and materials in the submittal, but no new material or information will be considered by the official in reaching a decision on reconsideration;
- c. WSDOT shall send the bidder/offerer a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or whether it made adequate good faith efforts to do so; and

d. The results of the reconsideration process is not administratively appealable to the USDOT.

8. **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 a 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 Certification" to the Region 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 Region Local Programs Engineer shall be provided information on subletting by DBE contractors.

9. **Between Award and Execution.** The contractor shall supply a contractor's bidders list as described in the GSP's for all categories (zero and mandatory goals). The list shall include all firms (names and addresses) that bid on prime contracts or bid or quote subcontracts (successful and unsuccessful) on USDOT-assisted projects, including both DBEs and non-DBEs. The local agency shall immediately notify the Region Local Programs Engineer by email with the name and address of the successful contractor for forwarding to the OEO's contract compliance officer.
10. **Monitoring of DBEs 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 handled in accordance with the GSP (Changes in the Quantity of Work). All change orders affecting the work of DBEs shall be submitted to the Region Local Programs Engineer for concurrence prior to executing the change order.
- 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 contractor performing work on the project. See Appendix 26.33.
- at the start of work, and/or
 - at the peak period of work, and/or

1. The salary rates by position from the consultant's Payroll Register,
2. Multiplying these by the Agency's estimates of staff hours by position for work elements, and
3. Applying the consultant's overhead rate and profit/fixed fee (see below) to develop the total project staff cost estimate.

The Agency uses this independent estimate, along with estimates of non-salary costs, to negotiate the agreement with the consultant.

1. Ensure the consultant has divided the project into work units and related time units in such a manner that the estimate can be readily reviewed for work hours, rates of pay, overhead, profit, and itemized direct non-salary costs.
2. Request records to confirm the consultant's rates (i.e., their Payroll Register, giving payroll rates by name and position of staff working on the project).
3. Request the consulting firm's audited overhead rate from the WSDOT Audit Office. An audited rate conducted by another governmental agency will satisfy this requirement if the audit criteria used by the other agencies conforms with 48 CFR 31. An audited rate conducted by a private accounting firm must be reviewed and accepted by the WSDOT Audit Office before being accepted for use in an agreement. If the firm does not have an audited rate, the Audit Office will conduct an abbreviated audit to determine the rate. The Local Agency Agreement should anticipate a charge averaging \$1,000 for these costs. A lower overhead cost rate may be used if submitted by the consultant firm; however, the consultant's offer of a lower rate shall not be a condition for selecting a consultant.
4. Calculate the consultant's profit/fixed fee amount. WSDOT's procedure for calculating this is described in WSDOT's *Consultant Services Procedures Manual, Appendix 7*. The fee is determined through evaluation of the following:
 - a. Degree of Risk,
 - b. Relative Difficulty of Work,
 - c. Size of Job,
 - d. Period of Performance,
 - e. Assistance of Agency, and
 - f. Sub-consulting.

- g. An acceptable profit for a federally funded project may not exceed 15 percent of the total of direct labor plus overhead costs or the fixed fee/profit percentage may not exceed 35 percent of direct labor costs only. Maximum allowable profit percentage rates (30-35 percent) are reserved for the most difficult, complex, and risky projects. Mark-ups are not allowed on direct “on salary” costs.
- h. A Management Reserve Fund (MRF) may be established to be used for:
 - 1. Overruns of direct salary and overhead costs that might occur under the existing scope of work, or
 - 2. The consultant to perform additional work that is outside the agreement or supplement’s scope of work (but within the scope of the advertised project).

The maximum MRF set up at the beginning of the agreement is \$100,000 or 10 percent of the agreement, whichever is less. If the original MRF is less than \$100,000, the MRF may be increased by preparing a supplement to a total accumulative amount that cannot exceed \$100,000, (or exceed the cumulative 10 percent). An MRF cannot be included in a Lump Sum agreement. The Agency cannot authorize, and the consultant cannot utilize, the MRF until a task order agreement is set up. (See Appendix 31.99, Exhibit A-2.) To set up a task order agreement, the Agency and consultant must negotiate the scope, schedule, and budget for the increase in direct salary and overhead costs, or the increase in additional work to use all or a portion of the MRF.

- 5. Record and retain an explanation of differences in work hours or costs between the Agency’s independent estimate and the negotiated consultant fee.

.32 Agreement Types/Payment Options. The following are the types of agreements that contain acceptable methods of payment for FHWA funded projects. Refer to the Standard Agreement Exhibits for further guidance and required forms (see 31.4):

- 1. **Lump Sum.** This type of agreement is only appropriate where the scope of work (quantity and type) can be clearly defined in advance. It is not recommended for construction engineering agreements. The agreement should state the exact service to be provided within a specific time frame, and when the lump sum payment is to be made. Payments may also be paid in installments as the work proceeds.

Scope of work changes and Management Reserve Funds are not allowed with this type of payment.

Lump sum payment is generally used for investigations, studies, and basic services on design projects. Examples include designs, plans specifications and estimates (PS&E), and preparation of operating, maintenance, or training manuals. A qualified representative for the Agency must prepare, date, and sign an estimate detailing the hours required for each type of work, as well as the hourly rate.

2. **Cost Per Unit of Work.** This type of agreement is used when the unit cost of the work can be determined in advance with reasonable accuracy, but the extent of the work is indefinite. Examples include soils investigation where costs are based on per foot of drilling, installation of observation wells, soil testing, structural foundation analysis and reports, expert witness testimony, and construction engineering services. Construction engineering services include, but are not limited to, construction management, construction administration, materials testing, materials documentation, contractor payments, general administration, construction oversight, and inspection and surveying.
3. **Actual Costs Plus a Fixed Fee.** This type of agreement is used when the extent, scope, complexity, character, or duration of the work cannot be reasonably determined in advance. Examples include preparation of environmental documents, project design documents, PS&E for large or complex projects including major bridges, and may include construction inspection. The consultant is reimbursed for all eligible direct and indirect costs within defined limits, plus a predetermined amount as a fixed fee. The costs for methods 1-3 above are determined by:
 - a. Salaries of employees with time directly chargeable to the project and salaries of principals for the time they are productively engaged in work necessary to fulfill the terms of the agreement. Actual rates of pay for employees and principals actively involved in the project will be included in each agreement.
 - b. Direct non-salary costs incurred in fulfilling the terms of the agreement. Travel costs, (excluding air, train, and rental car costs), shall be in accordance with the Agency's travel rules and procedures. Air, train and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs."
 - c. The consultant's overhead or indirect costs properly allocable to the project. A break out of overhead items will be included in each agreement.
 - d. The consultant's overhead schedule must be prepared in compliance with Code of Federal Regulations (CFR) Part 31.

- e. Management reserve funds are an Agency option and are to address overruns of direct salary and overhead costs that might occur under the existing scope of work or a need for additional work beyond the existing agreement scope of work, but within the advertised project scope of work.
- f. Profit/fix fee is derived by considering the degree of risk, relative difficulty of work, size of job, period of performance, assistance by the Agency, and sub-consulting assumed by the consultant at the time of the negotiations (see 31.31).

Shown as exhibits to the agreement are the consultant's estimate of work, cost rates, overhead rate, and the fixed fee.

4. **Specific Rates of Pay Agreement.** This type of agreement is based upon specific rates of pay for each class of employee and is appropriate for relatively minor items of work of indeterminable extent. This method requires constant and direct control of the time and class of employees used by the consultant. Examples include certain types of soils investigations, planting inspections, bridge inspections, expert witness testimony, training presentations, construction inspections, supplementing Agency staff on small design projects or studies, and "on-call services." The rate of pay may be established through one of two processes:
 - a. **Negotiated hourly rate** payment option establishes the rates of pay through use of the consultant firm's Payroll Register, the audited overhead rate obtained from WSDOT's Audit Office, plus the calculation of the consultant's profit/fix fee. (See 31.31 for guidance in developing the independent estimates of these costs for use in negotiations with the consultant firm.) The following items also apply to negotiated hourly rate agreements.
 1. Direct non-salary costs incurred in fulfilling the terms of the agreement. Travel costs, (excluding air, train, and rental car costs), shall be in accordance with the Agency's travel rules and procedures. Air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs."
 2. The consultant's overhead or indirect costs properly allocable to the project. A break out of overhead items will be included in each agreement.
 3. The consultant's overhead schedule must be prepared in compliance with 48 Code of Federal Regulations (CFR) Part 31.

Exhibit C

Electronic Exchange of Engineering and Other Data

Exhibit C Electronic Exchange of Engineering and Other Data

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

- I. Surveying, Roadway Design & Plans Preparation Section
 - A. Survey Data
 - B. Roadway Design Files
 - C. Computer Aided Drafting Files
 - D. Specify the Agency's Right to Review Product with the Consultant
 - E. Specify the Electronic Deliverables to Be Provided to the Agency
 - F. Specify What Agency Furnished Services and Information Is to Be Provided
- II. Any Other Electronic Files to Be Provided
- III. Methods to Electronically Exchange Data
 - A. Agency Software Suite
 - B. Electronic Messaging System
 - C. File Transfers Format

Exhibit D-1

Payment (Lump Sum)

Exhibit D-1 Payment (Lump Sum)

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work." The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31. The estimate in support of the lump sum amount is attached hereto as Exhibit "D" and by this reference made part of this AGREEMENT.

- A. Lump Sum Agreement: Payment for all consulting services for this PROJECT shall be on the basis of a lump sum amount as shown in the heading of this AGREEMENT.
 - 1. Maximum Total Amount Payable: The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- B. Monthly Progress Payments: The CONSULTANT may submit billings to the AGENCY for reimbursement of costs on a monthly basis. To provide a means of verifying the billed salary costs for the CONSULTANT'S employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rate, and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

- D. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY, STATE and the United States, for a period of three (3) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

Exhibit D-2

Payment (Cost Plus a Fixed Fee)

Exhibit D-2 Payment (Cost Plus a Fixed Fee)

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work." The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

A. Actual Costs: Payment for all consulting services for this PROJECT shall be on the basis of the CONSULTANT'S actual cost plus a fixed fee. The actual cost shall include direct salary cost, overhead, direct non-salary costs, and fixed fee.

1. Direct Salary Costs: The Direct Salary Cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the AGENCY.

2. Overhead Costs: Overhead Costs are those costs other than direct costs, which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the rate shown in the heading of this AGREEMENT under "Overhead Progress Payment Rate." Total overhead payment shall be based on the method shown in the heading of the AGREEMENT. The two options are explained as follows:

- a. Fixed Rate: If this method is indicated in the heading of the AGREEMENT the AGENCY agrees to reimburse the CONSULTANT for overhead at the percentage rate shown. This rate shall not change during the life of the AGREEMENT.
- b. Actual Cost: If this method is indicated in the heading of the AGREEMENT the AGENCY agrees to reimburse the CONSULTANT the actual overhead costs verified by audit, up to the Maximum Total Amount Payable, authorized under this AGREEMENT, when accumulated with all other Actual Costs.

A summary of the CONSULTANTS cost estimate and the overhead computation is shown in Exhibit "E" attached hereto and by this reference made part of this AGREEMENT. When an Actual Cost method is used, the CONSULTANT (prime and all sub-consultants) will submit to the AGENCY within six (6) months after the end of each firm's fiscal year, an overhead schedule in the format required by the AGENCY (cost category, dollar expenditures, etc.) for the purpose of adjusting the overhead rate for billing purposes. It shall be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's overhead cost to reflect the actual rate.

Exhibit D-3

Payment (Negotiated Hourly Rate)

Exhibit D-3 Payment (Negotiated Hourly Rate)

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

1. Hourly Rates: The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibit "E" and "F" attached hereto and by this reference made part of this AGREEMENT. The rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the AGENCY. If negotiations are not conducted for the second or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written authorization(s) from the AGENCY shall be utilized. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.
2. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the Actual Cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and sub-consultant costs.
 - a. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the AGENCY'S Travel Rules and Procedures. However, air, train, and rental car costs shall be reimbursed in accordance with 48 CFR Part 31.205-46 "Travel Costs."
 - b. The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT.
 - c. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request.
 - d. All above charges must be necessary for the services provided under this AGREEMENT.
3. Management Reserve Fund: The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the Management Reserve Fund shall be made in accordance with Section XIV, "Extra Work."

DOT Form 140-089 EF Exhibit D-3
Revised 3/09

4. **Maximum Total Amount Payable:** The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
5. **Monthly Progress Payments:** Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly billing shall be supported by detailed statements for hours expended at the rates established in Exhibit "E", including names and classifications of all employees, and billings for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT'S employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the PROJECT at the time of the interview.
6. **Final Payment:** Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

7. **Inspection of Cost Records:** The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY, STATE and the United States, for a period of three (3) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

Subconsultant Fee Determination Summary Sheet

Exhibit G-1

Exhibit G-1 Subconsultant Fee Determination - Summary Sheet (Mandatory when Subconsultants are utilized)

Project: _____

Sub Consultant: _____

Direct Salary Cost (DSC):

| <u>Classification</u> | <u>Man Hours</u> | <u>Rate</u> | = | <u>Cost</u> |
|-----------------------|------------------|-------------|---|-------------|
| _____ | _____ | X | | \$ _____ |
| _____ | _____ | X | | _____ |
| _____ | _____ | X | | _____ |
| _____ | _____ | X | | _____ |
| _____ | _____ | X | | _____ |
| _____ | _____ | X | | _____ |
| _____ | _____ | X | | _____ |
| _____ | _____ | X | | _____ |
| _____ | _____ | X | | _____ |
| _____ | _____ | X | | _____ |

Total DSC = \$ _____

Overhead (OH Cost -- including Salary Additives):

OH Rate x DSC of _____ % x \$ _____ = _____

Fixed Fee (FF):

FF Rate x DSC of _____ % x \$ _____ = _____

Reimbursables:

Itemized = _____

SubConsultant Total

= _____

Grand Total

= _____

Prepared By: _____

Date: _____

DOT Form 140-089 EF Exhibit G-1
Revised 01/09

.57 Bridge Selection. The Bridge Replacement Advisory Committee (BRAC) convenes after the on-site field reviews are completed. Bridge projects are presented to the Committee ranked by their sufficiency rating or other criteria by specific funding program. Results of the field review, Review Team recommendations, and other pertinent information are presented to the committee. The Committee reviews all of the projects and then recommends projects for funding.

The BRAC consists of seven voting members and two alternates, four county engineers/public works directors, and four city engineers/public works directors and H&LP Engineering Services Manager serves as Chair. Alternates initially serve one year as a non-voting member then for three more years as a voting member. Alternates for either city or county may participate in the event a voting member from their respective association is absent.

The Director of H&LP reviews the list of projects recommended by the BRAC, accepts or modifies their recommendations, and approves a final list of bridges to receive funding. Counties and cities will receive a funding notification letter informing them that their bridge project has been approved for funding. The letter will identify the anticipated federal funding level and asks the agency to submit their request for funds through their Region Local Programs Engineer. This letter will also identify the percentage for bridge approach cost participation and any other requirements specific to the project.

.58 Cost Increases. The level of federal project funding may be increased one time only. Request for increased funding should outline the reasons why additional funding is needed.

There are two situations when an agency can request additional funding.

1. Prior to Construction Obligation/Authorization. At the construction authorization point, the agency is required to have all necessary funding secured. If the current engineer's estimate exceeds the amount of funding approved for the project, the agency may submit a request to increase federal funding.

Approval for the increase in funding must be received prior to construction authorization or all costs above the original amount approved for the project will be the responsibility of the agency.

2. After Advertisement But Before Award. If all bids received exceed the amount of funding approved for the project, the agency may submit a request to increase federal funding.

Approval for the increase in funding must be received prior to awarding the project contract or all costs above the original amount approved for the project will be the responsibility of the agency.

H&LP will send a letter to the agency approving or denying the proposed increase. If approved, the local agency must then prepare, sign, and submit a Supplemental Agreement to the Region Local Programs Engineer for further processing.

34.6 Appendices

- 34.601 NBIS Regulation Qualifications of Personnel
- 34.602 NBIS Regulation Inspection Frequency
- 34.603 Bridge Inspection Experience and Training Report DOT Form 234-100
- 34.604 Bridge Inspection Manual Chapter 6
- 34.605 Individual Bridge Record

42.1 Introduction

The City Design Standards Committee and the County Design Standards Committee, in accordance with RCWs 35.78.030 and 43.32.020, meet on a regular basis to review and update the City and County Design Standards for Non-NHS facilities.

The Local Agency Engineer may approve use of the minimum AASHTO and related standards as contained in the references. Design deviations must have the approval of the Washington State Department of Transportation (WSDOT) Highways and Local Programs in accordance with RCW 35.78.040 or RCW 36.86.080 as appropriate.

These standards apply to new construction and reconstruction projects, 3R and 2R projects, and low volume road and street projects on Non-NHS routes which are classified as Principal Arterials, Minor Arterials, or Collectors. These standards are applicable to new or reconstructed bridges on rural minor collectors, local roads and local streets.

Included in the standards are the Non-NHS Local Agency Design Matrices. The matrices are used to standardize design element requirements based on project type for Non-NHS facilities. The Local Agency Design Matrices Checklists may serve as design documentation for decisions made.

In adopting these standards, the committees seek to encourage standardization of road design elements where necessary for consistency and to assure that motoring, bicycling, and pedestrian public safety needs are met. Considerations include safety, convenience, context sensitive solutions, proper drainage, and economical maintenance. The committees recognize that cities and counties must have the flexibility to carry out the general duty to provide streets, roads, and highways for the diverse and changing needs of the traveling public.

These standards cannot provide for all situations. They are intended to assist, but not to substitute for, competent work by design professionals. It is expected that land surveyors, engineers, and architects will bring to each project the best skills from their respective disciplines. These standards are also not intended to limit any innovative or creative effort, which could result in better quality, better cost savings, or both. An agency may adopt higher standards to fit local conditions. Special funding programs may also have varying standards.

The decision to use a particular road design element at a particular location should be made on the basis of an engineering analysis of the location. Thus, while this document provides design standards, it is not a substitute for engineering judgment.

Engineers should take into account all available information, including available funding, and use the professional judgment that comes from training and experience to make the final design determination. There shall be a record, of the matters considered during the design process that justify decisions made regarding the final project design. The project Design Approval document must be stamped by a licensed professional engineer per RCW 18.43.070.

42.2 Committee Membership

| City Design Standards Committee RCW 35.78.020 | County Design Standards Committee RCW 43.32.010 | Other Participants |
|---|--|---|
| Lynn Price, PE Project Manager City of Bremerton lynn_price@ci.bremerton.wa.us | Jim Whitbread, PE County Engineer Stevens County jwhitbre@co.stevens.wa.us | Ashley Probart Association of Washington Cities Ashleyp@awcnet.org |
| Dan Handa, PE <u>Development Services</u> City of Puyallup dhanda@ci.puyallup.wa.us | Bryan Thorp, PLS Design and Construction Manager Benton County bryan.thorp@co.benton.wa.us | Randy Hart, PE County Road Administration Board randy@crab.wa.gov |
| Mike Johnson, PE Roadway Design Supervisor City of Seattle mike.johnson@seattle.gov | Dale Rancour, PE County Engineer Thurston County rancoud@co.thurston.wa.us | Greg Armstrong, PE Chief Engineer Transportation Improvement Board GregA@tib.wa.gov |
| Vacant | Jon Brand, PE Assistant Director of Roads & Engineering Kitsap County jbrand@co.kitsap.wa.us | Dave Olson WSDOT Design OlsonDa@WSDOT@wa.gov |
| Martin Hoppe, PE, PTOE City of Lacey Transportation Manager mhoppe@ci.lacey.wa.us | Bob McEwen, PE Program Engineer Snohomish County Bob.mcewen@co.snohomish.wa.us | Megan Hall, PE Federal Highway Administration Megan.Hall@FHWA.dot.gov |
| Pat O'Neill, PE City Engineer City of University Place poneill@cityofup.com | Ramiro Chavez, PE <u>Project Engineering Manager</u> <u>Pierce County</u> rchavez@co.pierce.wa.us | |

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

Aaron Butters, PE, Committee Chair
Engineering Services Manager
Headquarters Highways and Local Programs
Washington State Department of Transportation

42.3 Local Agency Design Matrices – Non-NHS Routes

The Local Agency Design Matrices were created as part of the Local Agency Standards to assist designers in determining the design level for the geometric and safety elements of a project. The Local Agency Design Matrix Checklist may serve as documentation for design decisions made.

.31 Using the Matrices. The column headings on each of the three design matrices are **design elements**. They are based principally on the thirteen controlling design criteria recognized by FHWA: design speed, lane width, shoulder width, bridge width, structural capacity, horizontal alignment, vertical alignment, grade, stopping sight distance, cross slope, superelevation, vertical clearance, and horizontal clearance. Within the column headings, some of the controlling criteria have been combined (for example, design speed is part of horizontal and vertical alignment). The matrices are divided into three tables, one each for Roadways, Cross Roads, and Bridges. Within the three tables the project types are identical, design elements vary depending on which elements apply.

A blank cell within the design matrix signifies that the design element need not be addressed because it is beyond the scope of the project type.

Design levels of City and County Design Standards (D), AASHTO (A), and Agency Evaluate (AE), are used in the matrix. The design level codes are noted in the cells by D, A or AE or by a number corresponding to a footnote. For roads that have volumes less than 400 ADT, AASHTO Geometric Design of Very Low Volume Roads (ADT<400) may be used.

Optional Checklists have been provided for the designer to use with the matrix. A checklist is available for each type of project in Appendix 42.101.

Matrix Cells: Each Matrix cell is either blank or has a coded design level.

.32 Design Levels. If the Design Level is **D**, use the Geometric Cross-Section for Two-Way Roads and Streets within the City and County Design Standards on page 12.

If the design level is **A**, the design standard is AASHTO (the most current edition of the AASHTO publication “A Policy on Geometric Design of Highway and Streets,” “Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT< 400),” or as noted in the City and County Design Standards.

When the Matrix cell has either a “D” or an “A” and the final design utilizes something less than Design Level A, a Design Deviation, approved by Headquarters Highways and Local Programs, is required.

A **Blank Cell** on a matrix line indicates that particular design element requires no evaluation or documentation. If the agency decides to improve or modify a blank cell design element, that element must meet Design Level A and the

agency must justify in their design document files why the decision to upgrade the design element was made. Per FHWA guidelines, if an improvement in a “**Blank Cell**” area is made, it must meet all requirements of design level A. Or if, in the opinion of the agency’s design Engineer, Design Level A cannot be achieved, a **Design Exception** may be considered.

AE in a matrix cell indicates that an agency needs to determine if the existing design element is less than Design Level A. If the existing design element meets or exceeds Design Level A the agency notes that in the design documents and no further action is required. If the existing design element is less than Design Level A, the agency shall determine the impacts and cost effectiveness of upgrading the design element to Design Level A. The decision whether or not to upgrade, and its analysis and justification shall be in the agency design documentation files. If the agency upgrades, Design Level A applies. Or if, in the opinion of the agency’s design Engineer, Design Level A cannot be achieved, a **Design Exception** may be utilized.

A **Design Exception** may be utilized if, in the opinion of the local agency’s design Engineer, the existing design element is being improved but Design Level D or A cannot be achieved. For example, design standard requires a 6 foot wide shoulder for a project, the existing condition is a two foot wide shoulder but the best that can be reasonably achieved is a 4 foot wide shoulder. This is a **Design Exception**, improvement is being made but not to Design Level A.

.033 Local Agency Design Matrices NHS State Routes. Refer to the WSDOT *Design Manual* for matrix selection and documentation requirements on NHS State Routes. Contact the Region Local Programs Engineer for guidance.

42.4 Local Agency Design Matrix Definitions

.41 Design Elements. Design elements are the principal elements of design that are common to projects. The following elements are shown on the Design Matrix.

- **Horizontal Alignment** is the horizontal attributes of the roadway including horizontal curvature, superelevation, and stopping sight distance; all based on design speed.
- **Vertical Alignment** is the vertical attributes of the roadway including vertical curvature, profile grades, and stopping sight distance; all based on design speed.
- **Lane Width** is the distance between lane lines.
- **Shoulder Width** is the distance between the outside or inside edge line and the edge of in-slope, or face of barrier.
- **Lane and Shoulder Taper** (pavement transitions) are the rate and length of transition of changes in width of roadway surface.

WSDOT

Engineering Publications
Department of Transportation
PO Box 47304
Olympia, WA 98504-7304
(360) 705-7430
(360) 705-6861 (fax)

ITE

Institute of Transportation Engineers
525 School Street SW, Suite 410
Washington, DC 20024
(202) 554-8050
(202) 863-5486 (fax)

MUTCD

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

ADA

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)
(202) 272-5449 (TDD)
(202) 272-5447 (fax)

Public Rights-of-Way Access Advisory Committee (PROWAAC)
http://ite.org/accessible/PROWAAC/PROWAAC/_SpecialReport.pdf

Local Agency ADA Planning and Design Resource

<http://www.wsdot.wa.gov/ta/operations/localplanning/ADA.html>

42.10 Appendices

42.101 Local Agency Non-NHS Design Matrix Checklists

42.102 Vacant



Disadvantaged Business Enterprise Utilization Certification

To be eligible for award of this contract the bidder must fill out and submit, as part of its bid proposal, the following Disadvantaged Business Enterprise Utilization Certification relating to Disadvantaged Business Enterprise (DBE) requirements. The Contracting Agency shall consider as non-responsive and shall reject any bid proposal that does not contain a DBE Certification which properly demonstrates that the bidder will meet the DBE participation requirements in one of the manners provided for in the proposed contract. If the bidder is relying on the good faith effort method to meet the DBE assigned contract goal, documentation in addition to the certificate must be submitted with the bid proposal as support for such efforts. The successful bidder's DBE Certification shall be deemed a part of the resulting contract. Information on certified firms is available from OMWBE, telephone 360-753-9693.

_____ Name of Bidder certifies that the Disadvantaged Business Enterprise

(DBE) Firms listed below have been contacted regarding participation on this project. If this bidder is successful on this project and is awarded the contract, it shall assure that subcontracts or supply agreements are executed with those firms where an "Amount to be Applied Towards Goal" is listed. (If necessary, use additional sheet.)

| Name of DBE Certificate Number | Project Role * (Prime, Subcontractor, Manufacturer, Regular Dealer) | Description of Work | Amount to be Applied Towards Goal ** |
|-----------------------------------|--|---------------------|--|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |
| 7. | | | |
| 8. | | | |
| 9. | | | |
| 10. | | | |

Disadvantaged Business Enterprise Subcontracting Goal: _____ DBE Total \$ _____ ***

* Regular Dealer status must be approved prior to bid submittal by the Office of Equal Opportunity, Wash. State Dept. of Transportation, on each contract.

** See the section "Counting DBE Participation Toward Meeting the Goal" in the Contract Document.

*** The Contracting Agency will utilize this amount to determine whether or not the bidder has met the goal. In the event of an arithmetic difference between this total and the sum of the individual amounts listed above, then the sum of the amounts listed shall prevail and the total will be revised accordingly.

DOT Form 272-056 EF
Revised 7/07

Disadvantaged Business Enterprises Utilization Certification (DOT Form 272-056 EF)



**Region Ad and Award Contract
Proposal - Signature Page**

The undersigned hereby agrees to pay labor not less than the prevailing rates of wages in accordance with the requirements of the special provisions for this project.

Receipt is hereby acknowledged of addendum(s) No.(s) _____, _____ & _____

Signature of Authorized Official(s)

Proposal Must be Signed

Firm Name _____

Address _____

State of Washington Contractor's License No. _____

Federal ID No. _____

Note:

- (1) This proposal form is not transferable and any alteration of the firm's name entered hereon without prior permission from the Secretary of Transportation will be cause for considering the proposal irregular and subsequent rejection of the bid.
- (2) Please refer to section 1-02.6 of the standard specifications, re: "Preparation of Proposal," or "Article 4" of the Instruction to Bidders for building construction jobs.
- (3) Should it be necessary to modify this proposal either in writing or by electronic means, please make reference to the following proposal number on in your communication _____.
- (4) RCW 47.28.030 (2) applies: No bid deposit or performance bond shall be required but it shall be specified in the bidding proposal that each month the contractor may be required to submit paid invoices showing that disbursements have been made to laborers, materialmen, mechanics, and subcontractors due such persons from the previous progress payment. If such disbursements have not been made, the monthly progress payment shall be withheld pending receipt of the paid invoices.

DOT Form 272-036C EF
Revised 10/04

Region Ad and Award Contract Proposal - Signature Page (DOT Form 272-036C EF)

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

Section I, **General**, is supplemented with the following:

7. Section 902 of the American Recovery and Reinvestment Act (ARRA) of 2009 requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

“(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

(2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.”

The Contractor shall include the following provision in all contracts, subcontracts, and other contracts for services for an ARRA funded project:

“Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.”

“Section 1515(a) of the ARRA provides authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the inspector general have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.”

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

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

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

The contractor, sub-recipient 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.

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

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

Under Section IV, the applicability statement is supplemented with the following:

(Applicable to all ARRA funded construction contracts and related subcontracts regardless of location, including projects on local roads or rural minor collectors, and Transportation Enhancement projects outside the highway right-of-way.)

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

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

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

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

Under Section IV, Paragraph 4c is deleted.

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

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

Under Section V, the applicability statement is supplemented with the following:

(Applicable to all ARRA funded construction contracts and related subcontracts regardless of location, including projects on local roads or rural minor collectors, and Transportation Enhancement projects outside the highway right-of-way.)

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

Under Section V, Paragraph 2b, the first sentence is revised to read:

“The payroll records shall contain the name and an individually identifying number (e.g., the last four digits of the employees social security number) for each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Payrolls shall not include the full social security number and home address of covered workers. Contractors and subcontractors shall maintain the full social security number and home address of each covered worker and shall provide them to the SHA upon request.”

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

Section VI, Records Of Material, Supplies, And Labor, is deleted

Appendix 53.51

**Local Agency Project
Management Review Checklist**

Agency: _____ Date: _____
Project Title: _____
Federal Aid Project No.: _____ Contract No.: _____
Reviewers: _____

LAG Ref.

13 Table of Organization and CA Agreement Review:

| <u>Action</u> | <u>Approving Authority</u> |
|-------------------------|----------------------------|
| Design Approval | _____ |
| PS&E Approval | _____ |
| Contract Award | _____ |
| Contract Administration | _____ |

Preliminary Engineering:

- 14.62 Project Development Checklist Date: ___/___/___
- 24 NEPA Approval Date: ___/___/___
- 42 Design Matrix Checklist Yes ___ No ___
- 43.1 Design Approved By: _____ Date: ___/___/___
- 44.1 PS&E Approved By: _____ Date: ___/___/___
- 44.22 Agency Supplied Materials Approved By: _____
- 44.22 Sole Source Items? Yes ___ No ___
- 21.1 Changes in Scope, Limits, Character, Cost? Yes ___ No ___
- 44.22 Tied Bids Approved By: _____ Date: ___/___/___

Advertising and Award:

- 46.21 FHWA Construction Authorization Date: _____
- 46.24 Advertising Dates: _____
- 46.24 Three Week Advertising Period? Yes ___ No ___
- 46.24 Affidavits of Publication in File? Yes ___ No ___
- 46.25 Bid Opening Date: _____
- 46.27 Award Date: _____
- 46.26 Award to Lowest Bidder? Yes ___ No ___
If Not, Explain: _____
- 46.28 Contract Execution Date: _____
- 46.28 Contract Award Amount: _____
- 46.3 Award Information Transmitted to WSDOT? Yes ___ No ___

52 First Working Day: _____ No. of Working Days: _____
No. of Working Days Complete: _____

52.2 Preconstruction Conference Minutes Review:
Meeting held? Yes _____ No _____
Meeting documented? Yes _____ No _____

44.1 Commitment File:

24.94 Environmental and Permit Conditions Met Yes _____ No _____

LAG Ref.

25 Right-of-Way

Right-of-Way Acquired Yes _____ No _____
Right-of-Way Acquisition Procedures Dated: _____
Listing of Right-of-Way Staff Current Yes _____ No _____
25.11 Project Right-of-Way Certification Dated: _____/_____/_____

52 Administrative Settlements

52.51 Were any claims settled by Administrative Settlement? Yes _____ No _____
Were claims submitted to Local Programs Engineer? Yes _____ No _____
Comments: _____

52.1 Project Diaries and Inspector's Daily Reports signed and reviewed?
Yes _____ No _____

52.4 Payrolls:

Wage Rates Included in Contract? Yes _____ No _____
Certified by Contractor? Yes _____ No _____
Checked and Initialed by Agency? Yes _____ No _____

27 EEO Compliance:

27.32 PR-1391 on File and PR 1392 sent to Region Local Programs? Yes _____ No _____
Comments: _____

Training:

Training Goal Set? Yes _____ No _____ Hours _____
Training Plan Approved by Agency: Yes _____ No _____
Training Goal Met? Yes _____ No _____ Hours _____
Comments: _____

Bid Item Documentation Review – Mobilization

Agency: _____ Project Title: _____

Federal Aid Number: _____

Reviewed by: _____ Date: _____

Standard Specification 1-09.7 Mobilization

Contract Bid Amount _____ Mobilization Bid Amount _____

5 % of Contract Bid Amount _____ 50% Mobilization Bid Amount _____

10 % of Contract Bid Amount _____

Mobilization Paid on Estimate No. _____

Contract Items Paid that Estimate _____ Mobilization Paid that Estimate _____

Mobilization Paid on Estimate No. _____

Contract Items Paid that Estimate _____ Mobilization Paid that Estimate _____

Mobilization Paid on Estimate No. _____

Contract Items Paid that Estimate _____ Mobilization Paid that Estimate _____

Mobilization Paid after Substantial Completion _____

Notes:

1. When 5 percent of the total original contract amount is earned from other contract items, excluding amounts paid for materials on hand, 50 percent of the amount bid for mobilization, or 5 percent of the total original contract amount, whichever is the least, will be paid.
2. When 10 percent of the total original contract amount is earned from other contract items, excluding amounts paid for materials on hand, 100 percent of the amount bid for mobilization, or 10 percent of the total original contract amount, whichever is the least, will be paid.
3. When the substantial completion date has been established for the project, payment of any amount bid for mobilization in excess of 10 percent of the total original contract amount.

Acceptable _____ Corrections Needed _____

62.1 General Discussion

All public agencies are allowed to administer projects funded by Enhancement, Scenic Byways, and Safe Routes to School programs. Agencies must follow the guidelines established by this chapter of the *LAG Manual*. Electronic access to the entire LAG Manual can be found at: <http://www.wsdot.wa.gov/TA/Operations/LAG/LAGHP.htm>

Non-profit groups may administer projects that will not require design, the acquisition of property or construction (such as bicycle maps, educational or enforcement only projects, archaeological planning and research projects, or development of a corridor management plan for a scenic byway). At the completion of the project the non-profit group shall provide a Certification Statement that the work has been completed in accordance with the approved project prospectus.

Projects within the Interstate right of way shall be designed and constructed in accordance with the Washington State Department of Transportation (WSDOT) guidelines and standards. WSDOT or a CA agency with oversight by the WSDOT must administer the project. For additional information see *Local Agency Guidelines (LAG) Section 14.4*.

Only public agencies are allowed to administer projects that include design, acquisition of property, or construction. All non-profit groups must obtain a public agency sponsor for the project. The public agency sponsor will oversee the administration of the design, acquisition of property, and construction phases and provide the Certification Statement at the completion of the project.

62.2 Consultants

If the agency requires the consultant services of architects, landscape architects, land surveyors, or engineers then LAG Chapter 31 needs to be followed. (Public agencies shall follow the rules outlined in LAG Chapter 31). If there are any questions, contact your Region Local Programs Engineer for assistance.

62.3 Design Standards

The design standards for roadway and pedestrian projects shall be at a minimum the City and County Design Standards which can be found in LAG Chapter 42. The design standards for bicycle or shared use facilities shall be the WSDOT *Design Manual*. The design documents are to be signed and stamped by a Professional Engineer Licensed in the State of Washington.

All other projects shall be designed and approved in accordance with state law, and if applicable, in accordance with US Department of Interior Standards for Archeology and Historic Preservation, Volume 90 #140:44716.

.35 Design Documentation and Approval. For projects on the National Highway System (NHS), design documentation shall be in accordance with applicable sections of the WSDOT Design Manual. Please contact your Local Programs Engineer for guidance.

Local agency projects with work on, over, or below state highway routes may require design and traffic documentation approval from WSDOT as a separate step prior to completion of the Plans, Specifications and Estimate (PS&E) and Advertisement. Please contact your local Program Engineer to determine what design documentation is needed for your specific project, especially if working on intersections, between backs of curbs or within the paved roadway and shoulders.

62.4 Environmental

NEPA environmental documentation is required on all Right of Way and Construction projects. Most Enhancement, Safe Routes to School, and Scenic Byways projects will fall under the documented categorical exclusion (DCE) classification and require only the completion of an Environmental Classification Summary (ECS) form for NEPA documentation. DCEs typically are projects that a local agency is capable of preparing much of the necessary documentation with minimal direction. Detailed instructions on completing the ECS form are available in the ECS Guidebook, which can be downloaded from the H&LP's Environmental Web site. The Region Local Programs Engineers are the local agency's primary point-of-contact for advice to complete the ECS. When the initial draft of the ECS is completed, H&LP Environmental Engineers will review documents, provide technical assistance, and answer questions as needed.

When additional documentation is required to support the DCE determination, such as a biological assessment, cultural resources, and hazardous waste discipline reports, it is the responsibility of the local agency to prepare that documentation. Any additional documentation shall be prepared and submitted in accordance with LAG Chapter 24.

For those projects that require higher level NEPA documentation—Environmental Impact Statement (EIS) or Environmental Assessment (EA)—it is the responsibility of the local agency to prepare the NEPA document. Development of the EIS or EA shall be in accordance with the process outlined in LAG Chapter 24.

The local agency is responsible for ensuring compliance with SEPA and obtaining all applicable local, state, and federal permits.

62.5 Acquisition of Property

If the project requires additional right of way (the acquisition of land, buildings, or easements), the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 apply. If your agency is not a Certified Acceptance (CA) agency with approved Acquisition Procedures, contact your Region Local Programs Engineer for consultation and assistance prior to beginning any right of way processes.

62.6 Construction/Contract Documents

There are two options for a public agency to use in the construction of a project. A public agency may advertise for bids or use in-house forces with an approved “Public Interest Findings” document.

The “Public Interest Findings” document shall contain justification that includes cost estimates that clearly shows that it is more cost effective to do the work by agency in-house forces versus competitive bidding. The public agency shall submit the “Public Interest Findings” with their agreement requesting construction funding to the Region Local Programs Engineer.

The contract documents for bids are required to incorporate federal requirements such as competitive bidding, DBE/EEO, and Buy America provisions, see 62.10 for the list of federal specifications. Projects within the highway, city street or county road right of way may require the inclusion of Davis Bacon prevailing wage rate. Please contact your Region Local Programs Engineer to determine if Davis Bacon prevailing wage rates apply. Contract documents shall be signed and stamped in accordance with state law.

Sole sourcing or use of trade names in specifications and on plans are discouraged and if used, is subject to the approval of the Region Local Programs Engineer.

Prior to advertising for publishing, manufacturing, and/or construction of a work product or project a copy of the PS&E, Scenic Byway Corridor Management Plans, interpretive signage, literature, etc., shall be provided to the WSDOT Region Local Program Engineer for final review and concurrence.

62.7 Advertising, Award, and Execution

The contract advertisement period is a minimum of two weeks. The agency will award and execute the contract to the lowest responsive bidder, unless the agency decides that all bids are to be rejected.

62.8 Certification Statement

After the completion of the contract and acceptance by the agency, a Certification Statement shall be provided to Region Local Programs Engineer. The Certification Statement must state that the work has been completed in accordance with the approved project prospectus and provide a Building Permit that has been signed off by the building inspector or must state that the work has been completed in accordance with the approved project prospectus, and applicable federal, state and local codes, public works contracting requirements and laws.

62.9 WSDOT's Final Inspection

After the contract work is completed, the Region Local Programs Engineer will conduct a final inspection of the project.

62.10 Federal Specifications

Washington State Department of Transportation's Standard Specifications for Road, Bridge, and Municipal Construction

- 1-04.4 Changes
- 1-04.7 Differing Site Conditions (Changed Conditions)
- 1-07.11 Requirements for Nondiscrimination
- 1-08.1(1) Subcontractor Completion and Return of Retainage Withheld
- 1-08.9 Liquidated Damages

Washington State Department of Transportation's *General Special Provisions*

- GSP 0651.GR1 Buy America
- GSP 07112.GR1 EEO
- GSP 07112B.GR1 DBE Zero Goal (Race Neutral) or
- GSP 07112C.FR1 DBE Mandatory Goal (Condition of Award)
- GSP 0712.GR1 Federal Agency Inspection
- FHWA 1273 Federal Aid Contract Provisions
- Davis Bacon Federal Wage Rates, if applicable.

62.100 Appendices

62.101 Project Administration Review (PAR)

62.102 Project Standards