

## Ways to Help Your Federal Aid Project Run Smoothly (OR . . . Be Careful What You Wish For!)

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Using Federal Highway Administration (FHWA) funding on public works projects is different than other federal funding you may be familiar with. Because of the requirements associated with FHWA funding, it is counterproductive to add a small amount of FHWA funds to a large project. One dollar of FHWA funding added to a project “federalizes” the entire project and supersedes or adds to the other state or federal funding source requirements. Your Region Local Programs Engineer (LPE) can guide you through the FHWA process. If you are already familiar with the process and its requirements, you already know there are many different ways to lose your funding.

This information is being provided to help increase awareness of what to look for, and what to avoid, while working on your projects.

Agencies receiving FHWA funds must be certified to manage and administer federal funds through the FHWA Certification Acceptance (CA) program. More information on the CA program is found in the Local Agency Guidelines (LAG), [Chapter 13](#). If your agency is not a CA agency, the Region LPE or another CA agency will need to act as CA on your agency’s behalf. In some cases your Region LPE may require your agency to hire a qualified consultant to perform work on the project.

If your agency has been approved as a CA agency, you are required to follow the terms of the CA Agreement and your agency’s Approved Right of Way Procedures when administering a project with federal funds. If your agency is not a CA agency, you are required to follow the terms of the Letter of Understanding between the LPE and your agency, as well as any Right of Way procedures your agency is approved to follow for a project using federal funds.

Federal funding for your transportation project will generally follow these steps;

- **Apply** - your agency applies for a grant through one or more of several different organizations that have FHWA money to allocate. They may have other money available as well, but for this article we will restrict the discussion to FHWA dollars.
- **Selection** – Your agency project is selected by the organization(s) in step 1 (Apply).
  - At this point you need to list your project in the Statewide Transportation Improvement Program (**STIP**). There’s more information on that process later.
- **Authorization** - Each federal project requires Federal Highway Administration authorization by phase. Any work performed prior to this authorization is ineligible for federal reimbursement. Authorization is what sets approval of the project scope and provides a start date to eligible work.
  - Once authorized, funds that have been granted to your agency are available to “**Obligate**” to your project.

Always start by checking the Project Development Checklist that is located in the LAG, [Appendix 14.52](#). This is a “cradle to grave” list of activities, and the sequence they occur to successfully develop a FHWA funded project.

There are three different project phases that may utilize federal funds. They are:

- **Preliminary Engineering/Planning (PE)**
  - Project Initiation and Planning
  - Initial Design
  - Environmental (Environmental may actually begin at different stages of the project.)
  - Develop Plans, Specifications, and Estimate (PS&E)
- **Right of Way (R/W)**
  - Right of Way
- **Construction (CN)**
  - Advertisement and Award
  - Construction
  - Maintenance Projects as allowed by funding sources

During each of these three phases, there are areas that can be troublesome. Listed are some resources and general information about the requirements of the process and where you can find more information about them.

No action taken in any phase of a project is considered eligible for reimbursement until a [Local Agency Agreement](#) (LAA) or a supplemental agreement has been submitted and approved and FHWA authorization has been received. Approval is not retroactive and cannot reimburse for work performed prior to LAA approval and FHWA funds authorization.

Before you request authorization to use those federal funds you were just told you have, you **must have secured all of the funds** necessary to complete the scope of work being authorized for the phase. That means that if the estimated costs for the phase are higher than the federal grant you were given, your agency must find enough money from a different grant or source to complete the work and show it on the LAA or Supplemental LAA. Certification that you have secured funding must be submitted with your request for authorization. See [LAG Chapter 14](#) section 14.22 for a list of required documentation for fund authorization.

When an agency signs the LAA, it agrees to follow the requirements outlined in the LAA, the CA agreement (when applicable), your agency’s Approved Right of Way Procedures, the WSDOT Construction Manual, WSDOT Local Agency Guidelines, Standard Specifications, the terms of your contract, and any Letter of Understanding that may be issued by WSDOT to your agency. Failure to follow any of these requirements can result in loss of federal funding.

## **Preliminary Engineering/Planning (PE)**

### **Project Initiation and Planning**

Before you request Authorization for any phase of a project, **the project has to be listed in the [STIP](#)**.

- This part of the process can take several months, depending on the individual schedule of your Metropolitan Planning Organization (MPO)/Rural Transportation Planning Organization (RTPO). Submit your agency TIP to the MPO/RTPO when it is adopted by your agency and as changes are made during the year.
  - When **changes** to any of the project phases occur, you will need to either **Amend or Correct** your TIP and **resubmit** through the MPO/RTPO. See [LAG Chapter 12](#), Section 12.20 and the [STIP Document](#) from our webpage.

Significant delays can be eliminated by running the project description, phase dates, and estimates by your Region LPE for their review. These need to be consistent with other project documents, and in some cases they must match word for word.

Project limits must include all work, including staging areas. It is much easier to cut down a project footprint than it is to expand it, so go larger if in doubt.

- No expenditures incurred prior to Preliminary Engineering approval will be reimbursed. This includes charges for work on the NEPA environmental process.
- When requesting AUTHORIZATION of federal funds for a Planning only phase of a project submit:
  - A completed [Project Prospectus](#), including the backup documentation, to your Region LPE,
  - A signed [Local Agency Agreement](#), (see LAG Chapter 22) for the project to your Region LPE,
  - Evidence your project has been incorporated into the STIP (an exception for some planning projects may apply), and
  - A documented cost estimate.
  - You may also need to submit a Quarterly Project Report (QPR)
- For Preliminary Engineering fund authorization you also need to submit:
  - Typical sections and
  - Vicinity map.

### **Environmental**

You must have environmental clearance before proceeding with final design, utility relocation, or Right of Way acquisition (when using Federal funds for Right of Way acquisition).

- You may use other funding sources for Right of Way acquisition, provided you follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act requirements. See [Chapter 25](#) of the LAG.

- All changes to the project, such as scope of work, construction limits, or funding **must be evaluated in respect to your environmental document**. To do this, update the “Scope of Work” description or “Beginning and Ending MP” portions of your Environmental Classification Summary (ECS) and resubmit the updated document to your Region LPE. If you have funding changes, such as funds from another federal agency (HUD, FTA, FAA, etc.) contact your Region LPE immediately so that interagency coordination can begin.
- You must meet all National Environmental Policy Act (NEPA) requirements. See [Chapter 24](#) of the LAG and the [ECS Handbook](#). Remember to include staging areas in your NEPA “footprint”.
- Obtain all required permits and adhere to their requirements.
  - If there are changes to the work or the method of work, you must verify that the new, changed, or deleted work is still within the approved permit conditions. When changes occur, coordinate with the permitting agency before start of work. A new or revised permit may be required.
  - Implement planned/required restrictions and perform environmental mitigation work.
    - Document the required permit mitigation work thoroughly.
- Wait for approval of Area of Potential Effect (APE) before starting Section 106/archaeology work.

## Design

[Chapter 42](#) of the LAG Manual is the guide for City and County projects. The City and County Design Standards Committee is comprised of representatives from Washington Cities, Counties, Washington State Department of Transportation (WSDOT) Design, WSDOT Highways and Local Programs (H&LP), Federal Highway Administration (FHWA), Association of Washington Cities (AWC), and the County Road Advisory Board (CRAB).

Consultant advertisement and selection are a major factor for many local agencies using federal funds for part or all of their projects. Common problem areas are:

- Consultant Advertisement and Selection
  - Include Title VI language in all advertisements for consultant services. For Title VI language, see LAG [Chapter 28](#), appendix 28.71, Exhibit 2A. The **exact** language shown in Exhibit 2A must be used.
  - Be sure that consultants are licensed or qualified in their field. Someone that is a licensed PE may not have experience in traffic engineering so be sure to check that the consultant has the expertise to meet your project needs on their staff BEFORE you process an agreement.
  - Any Consultant Agreement over \$10,000 must use the Standard Consultant Agreement from the LAG, [Appendix 31.99](#)

- Include language in the consultant agreement about open, competitive, qualification-based selections.
- Make sure the consultant agreement covers the time realistically needed to complete work on the project.
- Supplement consultant agreements with an addendum when:
  - The scope or schedule of services changes (added work or changed needs).
  - Submit supplements to extend the agreement BEFORE the original contract expires. Failure to supplement the original agreement prior to the expiration date jeopardizes your federal funds and will require that you start over with the advertisement, evaluation, and award of the agreement. Your agency may also have to repay expenses incurred after the original agreement expires.

Once the decisions about where to build your project have been made and approved, the process of finalizing the plans, specifications, and estimate (PS&E) begins. PS&E documents are used to advertise, award, and administer a construction contract. If your agency is not a CA agency, the PS&E must be submitted to your Region LPE for review and approval before you may advertise for bids.

- Designing and Preparing Plans, Specifications, and Cost Estimates:
  - Design to Correct Standards/Guidance, Laws, and Rules.
    - Americans with Disabilities Act (ADA).
      - Install or replace curb ramps where needed; at correct widths and slopes. All new facilities must be in full compliance.
      - Lack of funds is not an acceptable reason to issue a “maximum extent feasible” document (WSDOT Design Manual, Chapter [1510](#)).
    - Manual on Uniform Traffic Control Devices (MUTCD).
    - AASHTO, WSDOT Standards.
  - Document design exceptions/approvals/Public Interest Findings.
  - When Preparing Plans, Specifications, and Cost Estimates (PS&E) remember:
    - All projects advertised for bids must include
      - The [FHWA 1273 Specifications](#) (Federal Aid Contract Provisions) and amendments, found after Appendix 44.78 in the LAG. Failure to incorporate this entire set of specifications will result in loss of your federal funds.
      - Buy America Specifications, (General Special Provision [GSP 1-06](#)).

- Disadvantaged Business Enterprise specification (either a “no goal” or a “mandatory goal”), (General Special Provision [GSP 1-07.11](#) ).
- Title VI language, LAG [Chapter 28](#), appendix 28.71, Exhibit 2A.
- Prevailing wage rates. You must include both State and Federal Wage Rates in your contract. At this time, wage rates must be in printed form and included in the bid documents.
  - [Wage Rates](#) must be current within ten days of bid opening. Some exceptions do apply. See LAG section [44.21](#), item b, for information on wage rate requirements and exceptions.
- When the PS&E is complete send a copy to your region LPE for review and concurrence.
  - When comments are returned, incorporate them into the PS&E prior to advertising. Failure to do so could result in “non-participation” and loss of federal dollars . . . maybe all of them.

### **Right of Way (R/W) Phase**

Failure to comply with any of the requirements during the Right of Way process will jeopardize your federal funding for the entire project. It may also prevent the use of federal funds on future projects through the same right of way. . . . as in, through the end of time, so be careful. Before you undertake any action regarding right-of-way, request assistance from your Region LPE who will contact the WSDOT Region Local Agency Right of Way Coordinator for your area.

Due to the extensive knowledge and experience required to successfully adhere to Right of Way requirements, all individuals appraising and acquiring right of way must be on the [WSDOT Approved Appraiser List](#).

- To use FHWA funds in the R/W phase of a project, you must have each of the following **prior** to FHWA R/W authorization:
  - Inclusion in the STIP with funding shown for the Right of Way phase,
  - LAA or LAA supplement,
  - QPR, if necessary,
  - Documented cost estimate, including true cost estimate,
  - NEPA approval,
  - An approved relocation plan (where applicable),
  - An approved right of way plan (when applicable), and
  - Project Funding Estimate ([LAG Appendix 25.174](#)) for the Right of Way Phase.

- If the only work outside the right of way includes relocating utilities, or work that requires a construction easement, the agency needs to note this on the project prospectus and ECS (See LAG Appendix [24.71](#)).
  - Permits and Easements are generally considered Right of Way acquisitions. In this circumstance you need a Right of Way certification.
- Wait for Individual utility agreements and project funding authorization before relocating utilities.
- Wait for environmental approval and/or property appraisals before communicating with property owners.
- Follow the Uniform Relocation Assistance and Real Properties Act and your agency's approved Right of Way Procedures during Right of Way acquisition and relocation. This includes upgrading from certification 3 to certification 2 or 1 before bid opening.

### **Construction (CN)**

There are a number of requirements that apply to federal aid construction contracts which demand attention. All projects must comply with the Buy America requirements for steel and iron materials. All projects also need to be evaluated for possible DBE participation. Before you advertise the project for construction, your agency must contact WSDOT to have a DBE goal established for the project. The basic premise of the federal aid program is that all projects will be competitively bid and constructed by private industry. Any deviation from this approach requires approval by WSDOT and appropriate documentation. Additional requirements and guidance are located in [Chapters 26, 44, 46](#) and [52](#) of the LAG.

Using FHWA funds in the construction phase of a project means the project must follow both state and federal requirements for contract administration.

- Before advertising a project:
  - The LAA between the state and the local agency must be approved by WSDOT H&LP. Information on an LAA and how to complete it can be found in the LAG, [Chapter 22](#). Before the LAA is approved:
    - The project must be in the STIP with funds showing in the CN phase.
    - You must submit a [QPR](#), if necessary.
  - You must have Right of Way certification if any Right of Way, easements, or permits were acquired.
  - Your project must have FHWA authorization for the CN phase.
    - Notice of construction fund authorization will be by a letter from H&LP.
  - ITS projects must have an "ITS Project Systems Engineering Review Form" (Design Manual, chapter [1050](#)).
  - You must have an approved PS&E
    - Send the final PS&E and Engineer's Estimate to the LPE and request a review for [Disadvantaged Business Enterprise\(DBE\)](#)

goal evaluation. This is also a good time to request a Record of Materials from the State Materials Lab.

- All [proprietary items](#) or [local agency force](#) work must have an approved Public Interest Finding (PIF).
  - A contract number has been obtained from the Region Local program Engineer.
  - FHWA has authorized the project in FMIS.
- You may not advertise your project until you receive notice from H&LP that your project construction funds have been authorized and you have received notice of your DBE/Training goal determination.
- With few exceptions, a minimum three week advertisement period is required for all projects using FHWA funding. See LAG [Chapter 46](#), section 46.24.
- Bid Opening and Evaluation. Bids must be publicly opened and announced. Your agency must verify that all the required bid documents have been properly submitted and executed.
  - Projects with a mandatory DBE goal must be checked to be sure the bid includes enough work for DBE firms to meet the specified goal.
  - When a project includes a mandatory DBE goal you must have concurrence in the award by your Region LPE. Failure to obtain LPE concurrence will jeopardize the project's federal funding.
- All contract award notifications must be in written form. See LAG [Appendix 46.42](#) for a sample award notice.
- You may not execute a contract with any contractor that is not registered or licensed in accordance with state laws, or with a contractor that is on the [Excluded Parties List System](#) (EPLS). Contractors on the EPLS have been barred from receiving Federal contracts, subcontracts, and Federal financial and nonfinancial assistance or benefits.

Once the contract has been awarded, administration by the local agency, or by a consultant hired by the local agency, must follow the guidance in the CA Agreement, WSDOT [Construction Manual](#), [Local Agency Guidelines Manual](#), [Standard Specifications for Road Bridge and Municipal Construction](#), Contract Plans and Specifications, and any Federal, state, or local laws that apply.

Administration of the construction contract presents several more challenges that can endanger your federal funding:

- Changes to the Condition of Award DBE work must be carefully evaluated before any change orders are written that affect the potential for the contract to meet the established goal.
- Buy America verification must be obtained prior to installation of all steel or iron items.

- Material testing must follow the contract documents, the LAG Manual [Chapter 52](#), the WSDOT Construction Manual, [Chapter 9](#) and the Record of Materials that may be modified by the LAG Manual or contract documents.
- All Americans with Disabilities Act (ADA) features must be fully installed, measured, and completely documented.
- All contractor payments must be fully documented and quantified, as well as backed up by bid item, lump sum breakdown, or delivery tickets. You must show dual custody of all payments. That means one person calculates and a different person checks those calculations. Initials and dates must be shown on all contract payment documentation.
- Change Orders must be justified, calculated independently, approved, and documented. See the [Change Order Checklist](#) in LAG Appendix 52.107 and read LAG section 52.5. Change Orders must be approved by a CA authority.

Ultimate responsibility for all actions taken during a contract, regardless of those by an agency's staff or a hired consultant, belongs to the local agency that owns the project. Don't misunderstand your liability and think you have no responsibility to provide oversight because you hired a consultant to do the work.

### **Other**

If there is any question regarding eligibility or clarification of federal requirements contact your Region LPE. A complete listing, including contact information is available on the WSDOT website at <http://www.wsdot.wa.gov/LocalPrograms/regional.htm>

**Tribes** – Please note that FHWA does not allow Indian preferences in the award of FWHA funded projects. Special additional specifications may be needed to address tribal sovereignty and FHWA certified acceptance requirements. Your Region LPE can provide examples of these specifications.

## HOT LINKS

[Project Development Checklist](#) (LAG Appendix 14.52)  
[Local Agency Agreement and Supplement](#) (LAG Chapter 22)  
[Fund Authorization documentation](#) (LAG section 14.22)  
[STIP](#) (LAG section 12.21)  
[Project Prospectus](#) (LAG Appendix 21.41)  
[Right of Way](#) (LAG Chapter 25)  
[WSDOT Approved Appraiser List](#)  
[Right of Way Project Funding Estimate](#) (LAG Section 25.21)  
[Environmental](#) (LAG Chapter 24)  
[Environmental Classification Summary Handbook](#)  
[Design](#)  
[Title VI language](#) (LAG appendix 28.71)  
[Standard Consultant Agreement](#) (LAG appendix 31.79)  
[Design Manual](#) – Maximum extent feasible (ADA Design) Chapter 1510  
[FHWA 1273 Specifications](#) (LAG Chapter 44, Pg 44-51)  
[Buy America Specifications](#) (GSP 1-06)  
[Wage Rages](#)  
[Disadvantaged Business Enterprise](#) (DBE) Program  
[DBE Mandatory Goal](#) GSP  
[DBE No Goal](#) GSP  
[Proprietary Item Public Interest Finding](#) (LAG Section 44.2)  
[Local Agency Force work Public Interest Finding](#) (LAG Section 61.4)  
[3 week Advertisement](#) (LAG Section 46.24)  
[Contract Award](#) (LAG Section 46.27)  
[Excluded Parties List System](#)  
[WSDOT Construction Manual](#)  
[Local Agency Guidelines Manual](#) (LAG)  
[Standard Specifications for Road Bridge and Municipal Construction](#)  
[Materials Testing Construction](#) (LAG Chapter 9)  
[Documentation Construction Manual](#) (LAG Chapter 10)  
[ADA](#)  
[Region Local Programs Engineers \(LPEs\)](#)  
[ITS Project Systems Engineering Review Form](#) (Design Manual Chapter 1050)