



**ADOT**

**CERTIFICATION ACCEPTANCE MANUAL**

January 21, 2026

THE MANUAL WILL BE UPDATED FOR RULES AND PROCEDURE CHANGES ANNUALLY. FOR MANUAL UPDATE REQUESTS, PLEASE VISIT:

<https://azdot.gov/business/programs-and-partnerships/local-public-agency/certification-acceptance>

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## Contents

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ACRONYMS.....	5
<b>100.00 GENERAL ADMINISTRATION.....</b>	<b>7</b>
100.10 CERTIFICATION ACCEPTANCE.....	7
Intent and Purpose of the Certification Acceptance Manual.....	8
Scope of the Certification Acceptance Manual.....	8
Project Development and Delivery Program.....	8
Project Deferment.....	9
Designated Personnel.....	9
Communication Protocol.....	10
Program Issue Resolution.....	10
Project Issue Resolution.....	10
100.20 FINANCIAL ADMINISTRATION.....	11
Mandatory Disclosures and Conflict of Interest.....	11
Reimbursement.....	11
Inactive Projects.....	11
Period of Performance.....	12
100.30 CONTRACT ADMINISTRATION.....	13
Intergovernmental Agreements (IGAs).....	13
Claims.....	13
Termination of a Contract.....	13
Equal Employment Opportunity.....	14
Disadvantaged Business Enterprise.....	14
Prompt Payment and Payment Reporting.....	15
On the Job Training.....	15
100.40 PROJECT INSPECTIONS AND PROGRAM EVALUATION.....	16
Annual Reporting.....	16
Single Audits.....	16
Independent Project Reviews.....	16
Records Retention.....	17
Corrective Action.....	17
<b>200.00 PROJECT DEVELOPMENT PROCESS.....</b>	<b>18</b>
200.10 PROJECT DEVELOPMENT PROCESS ILLUSTRATED.....	18
200.20 PLANNING/PROGRAMMING.....	19

Pre-planning.....	19
Eligibility.....	19
Programming.....	19
200.30 PROJECT INITIATION.....	20
ADOT Project Development Administration (PDA) Fees.....	20
200.40 DEVELOPMENT/DESIGN.....	22
Authorization.....	22
Design Reimbursement.....	22
Procurement of an Engineering or Design-related Services Consultant.....	22
Design Advertisement.....	23
Project Meetings (Development/Design).....	23
Scoping Document.....	23
Scoping Changes.....	24
Design Phases.....	24
Design Criteria.....	24
NHS Projects.....	24
Non-NHS Projects.....	24
Design Exceptions.....	24
NHS Routes.....	25
Non-NHS Routes (Local Roadway).....	25
Non-NHS Routes (State Roadway).....	25
Materials and Pavement Design Guidelines.....	26
Proprietary Items.....	26
Certification of a Proprietary Item.....	26
Proprietary Item Public Interest Finding.....	27
Experimental Product.....	27
Build America Buy America.....	28
Buy America.....	28
Plans, Specifications, and Estimates.....	28
200.50 ENVIRONMENTAL.....	30
Initiation.....	30
NEPA Review Process.....	30
Environmental Commitments.....	31
200.60 RIGHT-OF-WAY.....	32
Early Acquisition of Right of Way.....	33
200.70 UTILITIES AND RAILROADS.....	34

Utilities.....	34
Railroad.....	35
Railroad Section 130.....	36
200.80 CONSTRUCTION ADMINISTRATION.....	37
Authorization.....	37
Construction Financial.....	37
Construction Reimbursement.....	37
Procurement of a Contractor.....	38
Materials-Only Procurement/Procurement of Materials and a Contractor for Installation.....	38
Construction Advertisement.....	39
Contract Provisions.....	39
Addenda.....	40
Bid Analysis.....	41
Award.....	41
Preconstruction Meetings and Submittals (Construction Administration).....	41
Construction Start and End Dates.....	42
200.90 CONSTRUCTION.....	43
Subcontracts.....	43
Bulletin Board (Job Site Posters).....	43
Davis-Bacon Act.....	43
Inspector Daily Reports (Inspector Daily Diary).....	43
DBE Commercially Useful Function (CUF) Inspection.....	44
Supplemental Agreements.....	44
Prompt Payment and Payment Reporting.....	46
Material Quality Assurance.....	46
Build America Buy America.....	47
Buy America.....	47
Final Certification of Materials.....	47
200.100 FINAL ACCEPTANCE AND PROJECT CLOSEOUT.....	48
Final Walk-Through and Inspection.....	48
Final Acceptance Request.....	48
Final Voucher - Closeout Request Cover Sheet.....	48
Final Acceptance Letter (addressed to Contractor).....	49
Completion Confirmation Letter (addressed to ADOT).....	49
Total Project Cost Summary Report.....	49
Record Drawings (formerly As-built Plans).....	50

Maintenance.....	50
<b>300.00 CIVIL RIGHTS.....</b>	<b>51</b>
300.10 AMERICANS WITH DISABILITIES ACT.....	51
300.20 TITLE VI NONDISCRIMINATION.....	52
<b>400.00 EMERGENCY RELIEF.....</b>	<b>53</b>
400.10 Emergency Relief.....	53
<b>500.00 GLOSSARY.....</b>	<b>54</b>
DEFINITIONS AND TERMS.....	54
<b>600.00 FIGURES.....</b>	<b>62</b>
PROJECT DEVELOPMENT PROCESS ILLUSTRATED – FIGURE 1.....	62
DESIGN PHASE CLOSEOUT PROCESS ILLUSTRATED – FIGURE 2.....	63

## **ACRONYMS**

A.A.C.	Arizona Administrative Code
AASHTO	American Association of State Highway Transportation Officials
ADA	Americans with Disabilities Act
ADEQ	Arizona Department of Environmental Quality
ADOT	Arizona Department of Transportation
A.R.S.	Arizona Revised Statutes
AZPR2X	Federal-aid Authorization Form/Federal-Aid Project Agreement Form
BECO	Business Engagement Compliance Office
BABA	Build America Buy America Act
CA	Certification Acceptance Agency
CA Manual	Certification Acceptance Manual
CGP	Construction General Permit
CE	Categorical Exclusion
C.F.R.	Code of Federal Regulations
CMAR	Construction Manager at Risk
CUF	Commercially Useful Function
DBE	Disadvantaged Business Enterprise
DCR	Design Concept Report
EA	Environmental Assessment
ECR	External Civil Rights Office
ECS	Engineering Consultants Section
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EO	Executive Order
EPRISE	DBE Special Provisions
ER	Emergency Relief
FAHP	Federal-aid Highway Program
FAST Act	Fixing America's Surface Transportation Act
FHWA	Federal Highway Administration
FIT	Federal Improvement Type
HPAN	Highway Project Advancement Note
HSIP	Highway Safety Improvement Program
IGA	Intergovernmental Agreement
IJA Act	Infrastructure Investment and Jobs Act
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
JPA	Joint Project Agreement
LPA	Local Public Agency
MAP-21	Moving Ahead for Progress in the 21st Century Act
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
NEPA	National Environmental Policy Act of 1969
NHS	National Highway System
NOI	Notice of Intent
NOT	Notice of Termination
NTP	Notice to Proceed

OJT	On the Job Training
OSHA	Occupational Safety and Health Administration
PA	Project Assessment
PDA	Project Development Administration
PI	Public Information
PIF	Public Interest Finding
PM	Project Manager
PPED	Period of Performance End Date
PPSD	Period of Performance Start Date
PS&E	Plans, Specifications, and Estimates
QA	Quality Assurance
ROW	Right-of-Way
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SHPO	State Historic Preservation Office
SPCC	Spill Prevention, Control and Countermeasures
SRTS	Safe Routes to School
STIP	Statewide Transportation Improvement Program
SWPPP	Stormwater Pollution Prevention Plan
TAP	Transportation Alternatives Program
TEA-21	Transportation Equity Act of the 21st Century
TIP	Transportation Improvement Program
TMP	Transportation Management Plan
TO	Transportation Operations
TPAN	Transportation Project Advancement Notes
TTC	Temporary Traffic Control
USC	United State Code
USDOT	United States Department of Transportation

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## 100.00 GENERAL ADMINISTRATION

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### 100.10 CERTIFICATION ACCEPTANCE

The Federal-aid Highway Program (FAHP) is a federally-assisted program of state-selected transportation projects on the Federal-aid System. The following legislation provides the Federal Highway Administration (FHWA) flexibility in delegating certain FAHP and project-level responsibilities to the State:

- Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)
- Transportation Equity Act for the 21st Century (TEA-21)
- Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)
- Moving Ahead for Progress in the 21st Century Act (MAP-21)
- Fixing America's Surface Transportation Act (FAST Act)
- Infrastructure Investment and Jobs Act (IIJA Act)

Title 23, United States Code (U.S.C.), Section 103 describes the Federal-aid System as the National Highway System (NHS), which is a network of approximately 160,000 miles (256,000 kilometers) of highways that are important to the nation's economy, defense, and mobility. The NHS includes the Interstate System, principal arterials serving major travel destinations, highways that provide an important function for national defense, and highways that provide connections to other intermodal transportation facilities, such as airports and seaports.

According to 23 U.S.C. § 106(c), States can assume the responsibility of the Secretary of Transportation. 23 U.S.C. § 106(c)(1) and (2) state that:

- Non-interstate NHS projects – For projects under this title that are on the National Highway System but not on the Interstate System, the State may assume the responsibilities of the Secretary under this title for design, plans, specification, estimates, contract awards, and inspections of projects unless the State or the Secretary determines that such assumption is not appropriate.
- Non-NHS projects – For projects under this title that are not on the National Highway System, the State shall assume the responsibilities of the Secretary under this title for design, plans, specifications, estimates, contract awards, and inspection of projects unless the State determines that such assumption is not appropriate.

23 U.S.C. § 106(c)(3) requires that the Arizona Department of Transportation (ADOT) and FHWA enter into an agreement outlining the responsibilities ADOT assumes from the Secretary. *The FHWA and ADOT Stewardship and Oversight Agreement for Arizona* includes information on project approvals and related responsibilities and FHWA's oversight of the FAHP, as required by 23 U.S.C. § 106(g). ADOT and FHWA work collaboratively to manage the FAHP and review, monitor, and approve activities as necessary in the designated areas of responsibility to comply with applicable laws, regulations, directives, and standards.

In accordance with Title 23, Code of Federal Regulations (C.F.R.), Sections 1.11 and 635.105, ADOT may delegate certain activities, under supervision, to local public agencies (LPAs) for FAHP projects under 23 U.S.C. § 117, Certification Acceptance. As the supervising agency, ADOT may impose requirements that are more stringent than federal requirements.

Because 23 C.F.R. § 1.11 and § 635.105 do not recognize LPAs as direct recipients of federal-aid funds, ADOT, as the supervising agency, retains responsibilities of the Secretary when LPAs construct FAHP projects. ADOT provides oversight to ensure the LPAs comply with federal-aid requirements on FAHP projects and complete the projects in conformance with approved plans, specifications, and estimates (PS&E). FHWA works in partnership with ADOT to ensure LPAs comply with federal-aid requirements on FAHP projects.

FHWA delegates certain responsibilities to ADOT through a formal stewardship and oversight agreement. In turn, ADOT delegates certain responsibilities to the LPAs using a fully executed Certification Acceptance Agreement. The Certification Acceptance Agreement requires the Certification Acceptance Agency (CA) to adhere to the most current version of the Certification Acceptance Manual (CA Manual) for delivering the FAHP in compliance with federal and state laws and regulations and managing federal-aid funds effectively and efficiently.

The FAHP supports State highway systems by providing financial assistance for the construction, maintenance and operations of the Nation's 3.9 million-mile highway network, including the interstate Highway System, primary highways and secondary local roads. FHWA is tasked with implementing the FAHP in cooperation with the State and local government.

#### Intent and Purpose of the Certification Acceptance Manual

The intent and purpose of the CA Manual is to document the roles and responsibilities of the CA, ADOT, and FHWA and provide procedural guidance with respect to delivery, oversight, and stewardship of the FAHP.

#### Scope of the Certification Acceptance Manual

The CA Manual applies to the following projects that fall within the CA's jurisdiction:

- NHS projects off the Interstate System
- NHS projects off the State Highway System unless a designated major or principal arterial
- Non-NHS project

The CA Manual covers the typical project delivery methods for Design-Bid-Build. The CA may use alternative delivery methods, such as Design Build or Construction Manager at Risk (CMAR) as long as the CA obtains prior ADOT concurrence and FHWA approval on specific projects.

#### Project Development and Delivery Program

To demonstrate that the CA has a compliant project development and delivery program, accounting controls, and a project inspection and internal program evaluation process for FAHP projects on and off the NHS, the CA must have the following written procedures:

- Procurement (Consultant and Materials and/or Install)
- Roadway Design (Pavement Design Manual, Design Exceptions, Design Guidelines)
- Materials (Quality Assurance [QA])
- Right-of-Way (ROW)
- Civil Rights (Title VI, Americans with Disabilities Act [ADA])
- Disadvantaged Business Enterprise [DBE]
- Project Delivery Manual
- Internal Operations (Staffing, Communication, Training)
- Bid Analysis and Award
- Subcontractor Approval
- Performance Measures (Finance, Audit, Oversight, Reporting)

The ADOT LPA Section will keep a copy of the CA's written procedures for the record.

The CA must have a process for updating the written procedures in compliance with federal and state laws and regulations. The CA must review the written procedures annually and update accordingly. ADOT will review any revisions to the CA's written procedures. In accordance with 23 C.F.R. § 172.9, ADOT will approve any revisions to the CA's procurement procedures. The CA must provide the ADOT LPA Section with an updated copy of its written procedures for the record.

ADOT will continually assess whether the CA has an adequate project development and delivery program, accounting controls, and quality control process to manage projects and deliver the FAHP. The State will deobligate the funding of a project upon the failure of the CA to deliver the project according to the project detailed schedule in the initiation package. Subsequently, the CA will have to compete in the following fiscal State year to get approval and obtain funding for the project.

#### Project Deferment

CAs are responsible for delivering FAHP projects in a timely manner and must ensure when programming that the project can be delivered as required. ADOT will monitor the project delivery cycle to determine if the deferment process is being misused. If the project deferment process is determined to be misused this will lead to corrective action which may result in the loss of federal funding.

When seeking deferment, the CA must inform the ADOT PM, and the COG or MPO partner (if required). A cause for the deferment must be identified and submitted with the deferment request. Additionally, the CA must provide a preferred schedule of ADOT Defined Milestones at the time of the deferral request.

#### Designated Personnel

In accordance with 23 C.F.R. § 635.105(c)(3), the CA must be adequately staffed and equipped to perform necessary work efficiently and cost effectively, including the supervision and training of staff. The CA must identify the following designated qualified personnel:

- Designated Approval Authority
- CA Liaison
- Responsible Charge
- ADA Coordinator
- DBE Liaison
- ROW Agent
- Title VI Coordinator

The CA must ensure the duties associated with the designated qualified personnel are maintained at all times. In the event of a change in personnel, the CA must reassign those duties immediately, so no lapse occurs. If a designated position cannot be filled, then the responsibility of the role will revert back to ADOT.

The CA is required to complete the CA Designated Personnel Update Form, available on the [azdot.gov](http://azdot.gov), and email it along with an updated organizational chart reflecting any reporting changes to [lpasectionom@azdot.gov](mailto:lpasectionom@azdot.gov). The form allows the user to indicate whether they plan to reassign duties to existing staff or fill the vacated position.

ADOT LPA Process Branch maintains an email distribution list of primary and secondary CA liaisons. It is the responsibility of the primary and secondary CA liaison to disseminate all communications to stakeholders.

### Communication Protocol

The CA must send agency communication to ADOT. ADOT will manage all communications with FHWA. The CA must refrain from contacting FHWA directly. If the CA needs to meet with FHWA, ADOT will arrange a meeting.

### *Program Issue Resolution*

For program-specific issues, the CA Liaison or CA's designee must work with the ADOT LPA Section Oversight and Monitoring Manager or designee, who will work with the appropriate technical team. The CA Liaison must be copied on all communications. If an issue cannot be resolved at the lowest level, then the parties need to use the CA's program-specific issue resolution matrix to resolve the issue promptly.

### *Project Issue Resolution*

For project-specific issues, the designated CA personnel must work with the ADOT Project Manager (PM) or designee. The CA Liaison must be copied on all communications. If an issue cannot be resolved at the lowest level, then the parties need to use the CA's project-specific issue resolution matrix to resolve the issue promptly.

Project specific issues pertaining to DBE, environmental planning, and ROW may require the CA to be in direct contact with specific SMEs. For those project specific issues, the communication protocol is to include all parties involved in the subject matter process. All communications should include but is not limited to the SME, ADOT Project Manager, CA Liaison, applicable CA staff, ADOT technical team members, respective project consultants and/or sub-consultants and any applicable internal or external stakeholders involved with the project. This will prevent situations from escalating due to non or miscommunication.

## **100.20 FINANCIAL ADMINISTRATION**

In accordance with 2 C.F.R. § 200.303, the CA must establish and maintain effective internal financial and accounting controls over FHWA awards and ensure federal-aid funds are being managed in compliance with federal and state laws and regulations.

Before incurring any costs for which reimbursement will be sought, the CA must submit a letter to the ADOT PM requesting federal authorization (preliminary engineering/design, ROW, utility, construction). Eligible project costs incurred by the CA are eligible for federal reimbursement only after the date of federal authorization by FHWA, as documented on the Federal-Aid Project Agreement form. FHWA will not reimburse any costs incurred before the date of federal authorization.

### **Mandatory Disclosures and Conflict of Interest**

In accordance with 2 C.F.R. § 200.113, the CA must disclose to the ADOT LPA Section in writing all violations of Federal criminal law that involve fraud, bribery, or gratuity violations potentially affecting the Federal award. Any potential conflicts of interest that arise and may affect FHWA awards, must also be disclosed in writing by the CA, in accordance with 2 C.F.R. § 200.112. The CA must establish internal procedures to meet these requirements.

### **Reimbursement**

The FAHP provides funding through federal reimbursement. ADOT bears no financial responsibility for CA-administered FAHP projects. The CA must bear all costs not eligible for federal reimbursement.

The CA must submit all requests for federal reimbursement to the ADOT PM for verification. In accordance with 2 C.F.R. § 200.302(b)(3), the reimbursement request will contain proper documentation supporting the payment of eligible expenses.

### **Inactive Projects**

An inactive project is a project that has not had billing activity within the established timeframes set by ADOT and FHWA. The established timeframes are from the date of last billing activity. FHWA's timeframes are subject to change and ADOT's timelines would adjust accordingly. The timeframes are as follows:

- 150 calendar days – Projects are first identified on the ADOT Potential Inactive Project report. ADOT will communicate this to the CA
- 180 calendar days – Projects are considered inactive by ADOT
- 270 calendar days – Projects authorized for greater than \$50,000 with no expenditures within the first nine months of federal authorization are considered inactive by FHWA
- 270 calendar days – Projects that have unexpended federal-aid funds and have an available balance greater than \$150,000 are considered inactive by FHWA

Inactive projects may be subject to deobligation and cancellation. This may result in the CA absorbing all project costs and potentially having to repay any federal-aid funds already reimbursed. Projects that do not show billing activity against the obligated funds at least quarterly run the risk of increased ADOT and FHWA scrutiny as potentially inactive projects. When the CA has not submitted a reimbursement request within six months, the CA must provide sufficient justification for the obligated funding and explanation for the delay. Any deobligated funds from an inactive project will be returned to the Metropolitan Planning Organization (MPO) or ADOT, as applicable, for reprogramming.

## Period of Performance

2 C.F.R § 200 mandates project Period of Performance start and end dates (PPSD – Period of Performance Start Date and PPED – Period of Performance End Date) be established for each project. Costs will only be incurred within the period of performance. After the PPED, no additional costs can be incurred and claimed for federal reimbursement. All costs, including auditing and project closeout, should be accounted for during the establishment of the PPED.

The PPED is reflected in all federal actions, including new project authorizations and modifications to previously authorized projects. The CA must establish a PPED for the first phase authorized on a project (design, ROW, utility or construction). The PPED can then be adjusted to reflect subsequent project phases, when applicable. The PPED should be established to allow enough time for the CA staff to complete a final reconciliation of costs and be reimbursed for all eligible expenditures. The PPED should not include the time required for ADOT to complete the final voucher process.

At the time of federal authorization, FHWA will ensure the estimated period of performance is in line with ADOT procedures and project schedules. ADOT will notify the CA of any change to the project end date. For PPED modifications, the CA must provide written justification to the ADOT PM on a PPED Extension Form with sufficient information for FHWA to consider the request.

The CA must provide the ADOT PM written notice of the start and end dates for construction, prior to the preconstruction meeting and monthly schedule updates ensuring the project does not exceed the approved PPED. The update will include the project name, federal and state project numbers, actual start time, days contract used, bid amount/earned to date, percent complete/time. ADOT will share this information with FHWA.

When the CA identifies the need to request an extension to the PPED, the CA must notify ADOT immediately or 90 calendar days prior to the Project End Date, whichever is sooner by completing the PPED Form. The completed form must include the reason for the extension with the proposed Period of Performance End Date. The PPED Form can be found on the ADOT Local Public Agency website. Submit the PPED Form to ADOT Resource Administration with a copy to the ADOT PM. Incomplete forms will not be processed. Any expenditures after the Project End Date are not federally reimbursable and are therefore the responsibility of the CA. Requests must be submitted individually as requests cannot be combined for multiple federal/ADOT projects. Once approved by FHWA, the ADOT PM will notify the CA. ADOT has developed an Standard Operating Procedure (SOP) for PPED that can be found on our Local Public Agency website.

Effective November 12, 2020 per 2 C.F.R. § 200.344, ADOT must submit to FHWA, no later than 120 calendar days after the PPED, all financial, performance, and other reports (e.g. Final Voucher) as required by the terms and conditions of Federal Award.

## **100.30 CONTRACT ADMINISTRATION**

### **Intergovernmental Agreements (IGAs)**

The CA must enter into an intergovernmental agreement (IGA) with ADOT when:

- A project type or activity is not covered by the CA Manual, such as Design Build or CMAR
- A project impacts an ADOT facility
- A project exceeds \$10 million in federal-aid funding total project costs and is authorized as Advance Construction (This also requires a tri-party agreement with the Metropolitan Planning Organization [MPO])
- A project is funded with either Highway Project Advancement Notes (HPAN) or Transportation Project Advancement Notes (TPAN)
- A project is funded by Railroad Section 130 funds
- Using an ADOT-administered on-call contract
- Maintenance activities intersect with ADOT's ROW
- Deemed applicable

Note: If a CA project impacts another CA facility requiring an IGA, then the CA must make the IGA available to ADOT by request.

When ADOT receives the CA's executed IGA, federal-aid funds may be authorized.

### **Claims**

The CA must process any dispute or claim not involving a question of law during the contract performance in compliance with 23 C.F.R. § 635.124(b) and 23 C.F.R. Part 140, Subpart E. The CA must provide the ADOT PM and ADOT LPA Section written notice immediately of any contract claim or issue under dispute and must keep ADOT informed throughout the settlement process. The CA must bear the costs unless approved for reimbursement or partial reimbursement by ADOT. The CA must notify the ADOT PM of proposed settlement offers before sending the offer to the contractor. The CA must settle all claims before final acceptance.

The CA must report all active claims on CA-administered FAHP projects to the ADOT PM, so the claims can be included in the quarterly claims report that ADOT submits to FHWA. If an extension is required, then see Period of Performance section for PPED extension form information.

### **Termination of a Contract**

The CA must comply with 23 C.F.R. § 635.125. In accordance with 23 C.F.R. § 635.125(a), the CA must ensure all contracts contain suitable contract provisions for termination by the CA, including the manner by which the termination will be effective and basis for settlement, conditions where the contract may be terminated for default, and conditions where the contract may be terminated due to circumstances beyond the contractor's control.

Before terminating a federal-aid contract, the CA must contact the ADOT PM to receive ADOT concurrence. ADOT will notify FHWA when a contract is to be terminated and determine whether contract termination costs, including final settlement, are eligible for federal reimbursement.

### Equal Employment Opportunity

In accordance with 23 C.F.R. Part 230, Subpart A, the ADOT Business Engagement Compliance Office (BECO) will conduct periodic Equal Employment Opportunity (EEO) compliance reviews on CA-administered FAHP projects. The CA must coordinate with ADOT BECO at every stage of the review process to ensure the contractor complies with 23 C.F.R. Part 230.

In accordance with 23 U.S.C. § 140(a) and 23 C.F.R. Part 230, Subpart A, the CA must submit a Federal-Aid Highway Construction Contractors Annual EEO Report (Form FHWA-1391) for each active contractor or subcontractor, regardless of tier level, with a contract or subcontract of \$10,000 or more. The CA must submit the report to ADOT BECO every year by August 15.

### Disadvantaged Business Enterprise

49 C.F.R. Part 26 removes barriers to participation and creates a level playing field for the participation of DBEs. This federal regulation provides the requirements for how to implement the Federal DBE Program, a program of the United States Department of Transportation (USDOT). ADOT developed and implemented an *ADOT FHWA DBE Program Plan*. The CA must adhere to this plan to be eligible for federal reimbursement.

The federal DBE Program is designed to:

- Ensure nondiscrimination in the award and administration of USDOT-assisted contracts
- Remedy past and current discrimination against disadvantaged business enterprises
- Create a "level playing field" in which those firms can compete fairly for USDOT-funded contracts

Before project advertisement, the CA must submit the DBE Goal Setting Worksheet to ADOT BECO to obtain a DBE contract goal. The CA must ensure the advertisement and contract contain the required DBE goal percentage and DBE contract language for engineering and design-related services or the ADOT DBE Special Provisions (EPRISE) for construction projects as mandated by the *ADOT FHWA DBE Program Plan*. Only BECO can set the DBE goal for an FAHP project. Inclusion of a local goal will cause the project to be ineligible for federal reimbursement.

In accordance with the *ADOT FHWA DBE Program Plan*, when there is a DBE contract goal, BECO will determine whether a bidder/offeror has met the DBE goal or has documented sufficient good faith effort to be considered for the award. The CA must provide the ADOT PM and BECO written notice immediately following bid opening if the apparent low bidder indicates on the DBE Assurance Form that it cannot meet the DBE goal.

Following bid opening for race-conscious projects only, the CA must submit to BECO the DBE Assurance Form and DBE intended participation affidavits from the apparent low bidder, bidders' list from all bidders, and if applicable, good faith effort documentation or any other documents required by the *ADOT FHWA DBE Program Plan*. The CA cannot award a contract without BECO concurrence.

For contracts with a DBE goal, the contractor's DBE commitment made at the time of bid is a condition of contract award. The CA must notify BECO as soon as the CA is aware of any potential issues that may affect DBE commitments made at time of award. If the contractor and/or DBE is/are unable or unwilling to fulfill the commitment, in compliance with 49 C.F.R. Part 26 for the duration of the contract, the CA must receive written concurrence from BECO before a committed DBE's termination, substitution, or reduction of work.

Failure to carry out the DBE Program requirements can result in withdrawal of federal funding from the FAHP project. When ADOT notifies the CA of its failure to carry out the DBE Plan, ADOT will impose sanctions, which may include measures that affect CA status and the CA's ability to receive federal funding

DBE requirements are subject to change, it is the CA responsibility to ensure current requirements are followed. For additional guidance, requirements, forms, reports, and documents please visit the ADOT BECO LPA/Subrecipient DBE Compliance website.

#### Prompt Payment and Payment Reporting

The CA must adhere to A.R.S. § 34-221, ensuring that all contractors and consultants make prompt payments to subcontractors and subconsultants within seven calendar days of receipt of payment. This complies with the requirements of A.R.S. § 34-221 and *ADOT Standard Specifications for Road and Bridge Construction*, Subsection 109.06(B).

The CA must monitor and enforce prompt payment requirements on all reportable contracts (e.g. any subcontract and subconsultant contract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor or consultant and any contract of any tier with a DBE material supplier). Failure to comply with these requirements may result in the deobligation of federal-aid funds from the FAHP project. The provisions of this subsection apply to all reportable contracts.

#### On the Job Training

ADOT BECO will assess an On the Job Training (OJT) goal at the time of the DBE goal assessment in accordance with the ADOT OJT Program requirements. The CA must include the OJT Special Provisions provided by ADOT BECO in contracts with OJT goals and monitor those contracts to ensure contractor compliance with OJT provisions.

## **100.40 PROJECT INSPECTIONS AND PROGRAM EVALUATION**

The CA's project inspection and program evaluation plan details the activities for monitoring performance and resolving issues over time. The CA monitoring activities must cover the life cycle of the project, from design through construction, to determine whether the project is on time, within budget and scope, complies with federal and state requirements, and conforms to approved plans and specifications.

For FAHP projects, ADOT and FHWA has sole discretion to inspect CA, contractor, and subcontractor documents (to include read only access to program software, when applicable) and visit the construction site to verify the project is on time and within budget and scope, complies with federal and state requirements, and conforms to approved plans and specifications. ADOT will provide notice to the CA if a CA representative is required. If the CA is unable to produce the required information at the time of request, ADOT will assume the action was not performed or properly recorded.

### **Annual Reporting**

In accordance with *The FHWA and ADOT Stewardship and Oversight Agreement for Arizona*, ADOT will provide FHWA with an annual Oversight and Monitoring Report summarizing the CA's performance based on ADOT's program and project reviews and the CA's internal reviews.

The CA must submit an annual report to the ADOT LPA Section no later than October 31 of each year, documenting compliance efforts in delivering the FAHP. The annual report will summarize the CA's accomplishments, program status, audits, independent project reviews, and any corrective action plans requiring implementation by the CA. This information will be shared with FHWA through ADOT's Oversight and Monitoring Report.

### **Single Audits**

The CA must establish and maintain effective internal controls over FHWA awards to provide substantial assurance that federal-aid funds are being managed in compliance with federal and state laws and regulations. The CA must have a Single Audit conducted annually, conforming to the specific requirements set forth in the Single Audit Act Amendments of 1996 and 2 C.F.R. Part 200, Subpart F. The CA must submit the Single Audit to ADOT no later than nine months after the CA's fiscal year end.

### **Independent Project Reviews**

The CA must conduct project reviews in specific areas outlined below with personnel familiar with FAHP project requirements and who are not involved in the project's administration.

- Contract Administration
- Construction Administration
- Environmental Commitments
- ROW
- Utilities
- Materials
- Davis-Bacon Act
- DBE
- Civil Rights
- Financial Administration
- Other

The CA must maintain project review records and take corrective action on any findings.

### Records Retention

In accordance with A.R.S. § 35-214, the CA must maintain project records for at least five years after the FHWA final voucher payment has been recorded. ADOT will provide the final voucher date for each project in a 3<sup>rd</sup> party letter to the appropriate CA Liaison.

The CA must ensure the project file is complete, readily available, organized, and kept in a manner that allows for review by ADOT and FHWA during project inspection or review. Maintaining proper content and organization of the project file serves as an indicator of effective and efficient project management as required. If the CA is unable to produce the required information at the time of request, ADOT will assume the action was not performed or properly recorded.

### Corrective Action

In accordance with the *ADOT Local Public Agency Oversight and Monitoring Operational Plan*, the ADOT LPA Section will conduct performance reviews of CA-administered FAHP programs and projects to ensure compliance with federal and state laws and regulations.

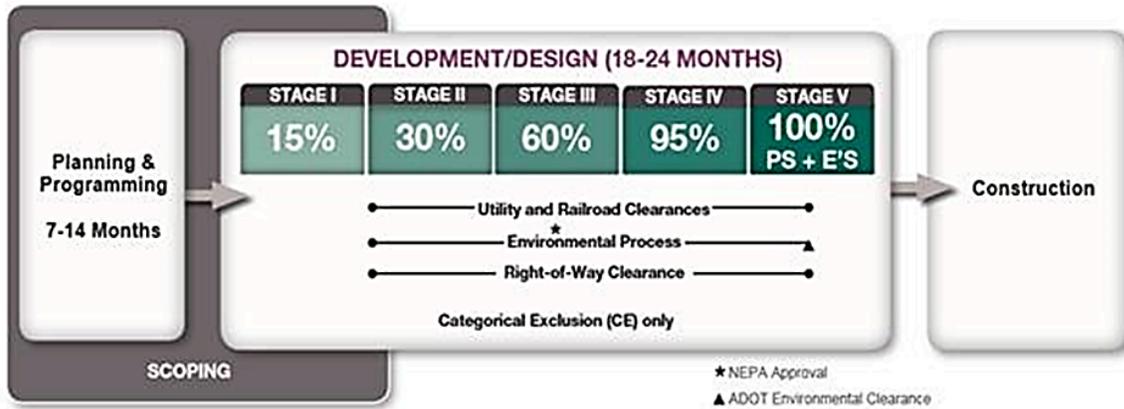
When ADOT's reviews of the CA are poor or a single incident requires corrective action, the ADOT LPA Section will notify the CA in writing of unsatisfactory performance. ADOT may take further action if the CA continues to perform poorly, repeats offenses, or is unresponsive. ADOT can terminate the CA Agreement for lack of adequate staffing and performance.

## 200.00 PROJECT DEVELOPMENT PROCESS

### 200.10 PROJECT DEVELOPMENT PROCESS ILLUSTRATED

The CA must deliver FAHP projects using a similar process as the ADOT project development process, illustrated in Figure 1. The timelines listed in Figure 1 are only estimates based on the reality of delivering FAHP projects. The design stage completion percentages for each CA may vary slightly from ADOT's completion percentages.

FIGURE 1



## **200.20 PLANNING/PROGRAMMING**

### Pre-planning

Through pre-planning activities, the CA evaluates potential issues and opportunities to identify projects that should move forward. Pre-planning considers:

- Type of work
- Project location
- Environmental issues
- ROW needs
- Utility issues
- Constructability issues
- Project schedule
- Cost analysis
- Funding source
- Other issues

As part of the MPO project application process, the CA provides project information to the MPO to confirm funding-source eligibility.

### Eligibility

All federal-aid funding programs, such as the Highway Safety Improvement Program (HSIP), Transportation Alternatives Program (TAP), and Safe Routes to School (SRTS), require projects to obtain eligibility of federal-aid funding before programming. The CA can contact ADOT for information on specific eligibility requirements. The CA must submit an application to the program. ADOT and FHWA will complete the eligibility determination prior to award by the State Transportation Board. Upon award, ADOT will provide the CA with an eligibility determination letter. For the details on the HSIP program, please see the Arizona Highway Improvement Program Manual on the ADOT LPA website under Related Documents and Sites.

### Programming

The CA must coordinate with the MPO to program the project in the MPO Transportation Improvement Program (TIP). The CA must provide project information to the MPO, so the project can proceed through the MPO's competitive prioritization process for programming in the MPO TIP. If the funding has been awarded by the State Transportation Board, the CA must provide the eligibility letter to the MPO. The MPO TIP needs to show a separate line item for federal aid for each project task (i.e., design, ROW, utilities, and construction).

The MPO will submit the MPO TIP to ADOT for review and inclusion in the Statewide Transportation Improvement Program (STIP) that FHWA reviews and approves. FHWA authorizes federal-aid funding for a CA-administered FAHP project only if the project is programmed in the MPO TIP and STIP.

## **200.30 PROJECT INITIATION**

When the project is in the MPO's TIP and STIP, the CA must request project initiation, a federal project number, and an ADOT project number from the ADOT LPA Section before the project development process begins. The request includes:

- LPA Project Initiation Letter (available in the Project Initiation section of the LPA website)
- LPA Project Initiation Form (available in the Project Initiation section of the LPA website)
- A legible copy of the MPO's TIP page, showing a fully funded project, project name, and location per FHWA guidelines
- Project Scoping Documentation that shows the scope, schedule, budget for the project
  - Project Assessment (PA), Design Concept Report (DCR), or a scoping letter
- Supporting documentation such as program eligibility letter and application
- ADOT Functional Classification Map
- Project Location Map (including project starting and ending termini)

The ADOT Defined Milestones are identified in the LPA Project Initiation Form. These dates include: IGA execution, federal authorization for preliminary engineering, bid ready (100% final design plans), construction start, and project end. The following schedule dates may be defined in the supporting documents of the project initiation packet and updated during the project kickoff meeting: pre-planning, project start-up or kickoff, National Environmental Policy Act of 1969 (NEPA) approval, ROW, utility, and railroad clearances, construction package, federal authorization for construction, bid advertisement, and bid award, and project completion date, design stages I, II, III, and IV, Pavement Design Memo, and final PS&E. The CA must notify the ADOT PM and ADOT LPA Section of changes to the initial developed schedule no later than the last business day of each State Fiscal Quarter along with detailed reasons for the delay. ADOT has developed a Standard Operating Procedure (SOP) for CA Updates to Schedule of ADOT Defined Milestones that can be found on our Local Public Agency website.

Copies of the approved portions of the MPO TIP and STIP concerning the project must show all funding sources, including the federal-aid funding source and year of programming.

ADOT will provide a federal project number and an ADOT project number. The ADOT environmental planner assigned to a project will be listed on the Project Establishment Letter provided by ADOT along with the PM assigned.

### **ADOT Project Development Administration (PDA) Fees**

The CA must pay ADOT PDA fees for required work completed by ADOT staff in the delivery of FAHP projects. The ADOT PDA fee is an estimated amount that can vary depending on the type and complexity of a project. Currently, the presumptive amount is a minimum of \$10,000. The fee funds the following ADOT work activities, which may vary depending on the type and complexity of the project:

- Project Management and Coordination
- Environmental Document Review
- ROW Activities

When the CA initiates a project with the ADOT LPA Section, ADOT will send the CA an invoice for the ADOT PDA fee before federal authorization of the project. The CA must submit payment within 30 calendar days of receipt of the invoice. When ADOT receives payment, project management and coordination can begin. During the project lifecycle, the ADOT PM will manage the ADOT PDA budget and notify the CA if the budget needs to be increased. ADOT will bill the CA in increments of \$5,000 for additional PDA fees until project construction starts. When the project has been completed and closed, ADOT will return any remaining funds in the PDA budget to the CA.

## **200.40 DEVELOPMENT/DESIGN**

### **Authorization**

FHWA will not reimburse any costs incurred before the date of federal authorization. Federal authorization for design covers the scoping document, NEPA documentation, and preliminary and final design activities. ROW and construction require subsequent federal authorizations separate from design.

The CA must submit a written request for federal authorization for design on a project to the ADOT PM and receive authorization before starting any work associated with the project tasks eligible for federal reimbursement for design. This request is to be submitted to ADOT when the work is “ready to proceed”, which, it is recommended, typically within 90 calendar days. The request includes the project end date for design in accordance with 2 C.F.R. § 200.211, after which no further charges will be eligible for reimbursement. FHWA will send an email, which serves as an official authorization, to ADOT, indicating a date of authorization and the corresponding funding amount. The ADOT PM will then forward this email to the CA to serve as their Notice to Proceed (NTP) date. When the ADOT PM receives a copy of the Federal-Aid Project Agreement from Resource Administration, which includes ADOT’s and FHWA’s electronic signatures, the ADOT PM will provide a copy to the CA.

It is expected that the CA will have a copy of the FHWA authorization email, the Federal-Aid Project Agreement, FMISD05A (for PE authorizations) and FMISD06A (for construction authorization), in their files as soon as the documents are provided by the ADOT PM. If the CA does not receive a copy of the required documents, the CA must request them from the ADOT PM for their records.

### **Design Reimbursement**

The CA must make the initial request for reimbursement within six months (180 calendar days) after the authorization of design funding. Subsequent requests for reimbursement will be made according to the CA Invoice Submission SOP that can be found on our Local Public Agency website.

### **Procurement of an Engineering or Design-related Services Consultant**

For FAHP projects, a CA’s professional service contract procurement and administration process must be an approved qualification-based selection process, requiring the consultant to provide financial information demonstrating the firm’s financial viability and compliant accounting system that complies with federal acquisition regulations. The CA must use either ADOT’s list of prequalified consultants available through ADOT ECS or its own list from an ADOT-approved prequalification process. A pre-qualified firm does not represent or guarantee an award of a contract.

When using federal funds for FAHP projects, the CA must adhere to federal and state laws and regulations, including the Brooks Act (40 U.S.C. §§ 1101 through 1104), 23 U.S.C. § 112, 23 U.S.C. § 117, 2 C.F.R. Part 200, 23 C.F.R. Part 172, 48 C.F.R. Chapter 12, and 49 C.F.R. Part 26 during the selection, negotiation, and management of design contracts.

According to 23 U.S.C. § 112(b)(2)(D) and (E), the CA must ensure the contract and subcontracts are performed and audited according to the cost principles contained in 48 C.F.R. Part 31. The CA must conduct a final/incurred cost audit to determine contract cost allowability, allocability, and reasonableness.

For a CA to use an on-call contract procurement method, the CA must receive a certification from ADOT of the CA's on-call contract administration and procurement procedures before advertising. If the CA needs to deviate from the approved procedures, the CA must submit a request with justification to the ADOT LPA Section for ADOT approval before the procurement of on-call services. ADOT's on-call contracts are not available for use by other agencies.

### Design Advertisement

The CA must administer the solicitation and contract award in compliance with 23 U.S.C. § 112, 23 C.F.R. Part 172, and ADOT-approved procurement procedures.

### Project Meetings (Development/Design)

The CA must schedule and participate in project meetings for FAHP projects. The CA must notify the ADOT PM in advance of the kick-off meeting and include the ADOT PM in the distribution of the meeting materials, notes, and documentation of engineering decisions.

### Scoping Document

The CA must determine and prepare the proper scoping document (i.e. scoping letter, PA, or DCR) commensurate with the level of effort for each project. The scoping document refines the scope and further evaluates the total project cost, schedule, and potential design and construction alternatives, including an assessment of the clearance and permit needs identified during pre-planning. In conjunction with the preliminary scoping document, supporting technical reports (i.e., geotechnical, drainage, traffic analysis, etc.) may be required when appropriate.

Typically, the scoping document and supporting technical reports provide detailed information on the following topics:

- Construction cost estimates
- Construction feasibility issues
- Current site characteristics
- Environmental considerations
- Geotechnical considerations
- Hydrologic and drainage conditions
- ROW Information/Land ownership
- Major project components
- Material source and supply
- Potential design alternatives
- Potential project footprint
- Traffic analysis
- Utility and railroad coordination
- Purpose of project
- Background
- Project Scope of Work
- Development Considerations
- Involvement Matrix
- Construction Schedule/Duration

The CA must submit the scoping document, supporting technical reports, and the accompanying design plans to the ADOT PM and Environmental Planning for review.

The CA Responsible Charge must approve the final scoping document and ensure a professional engineer or landscape architect registered in the State of Arizona signs and seals the final scoping document.

## Scoping Changes

If the scope of work for the project changes at any time during project development, the CA may need to prepare an amendment to the MPO TIP and STIP. If an amendment is needed, the CA must notify the ADOT PM and ADOT LPA Section and contact the MPO representative for instructions on how to submit amendments to the MPO TIP and STIP.

## Design Phases

The project development process is segmented into stages that follow a standardized design progression. The CA must define a phased program for completing FAHP projects or follow ADOT's phased program, as defined in the *ADOT Dictionary of Standardized Work Tasks*. The CA Liaison must send all design stage submittals to the appropriate ADOT technical areas (Environmental and ROW), with a cc to the ADOT PM, for review and comment prior to finalization. Upon finalization, all design stage submittals must be sent by the CA Liaison to the ADOT PM.

## Design Criteria

### *NHS Projects*

As specified in 23 U.S.C. § 109(c), FHWA has adopted design standards for the NHS, which are listed in 23 C.F.R. § 625.4 and 49 C.F.R. § 37.9. Regardless of the funding source for the project, the CA must comply with the FHWA-adopted design standards for all projects on the NHS, as well as FAST ACT Section 1404 (b), Design Standard Flexibility, notwithstanding 23 U.S.C. § 109(o), for additional flexibility in design standards

### *Non-NHS Projects*

In accordance with 23 C.F.R. 625.3(a)(2), FAHP projects not on the NHS are to be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards. For projects within the right-of-way of the State Highway System (SHS), but not on the NHS, ADOT's Design Guidelines shall be used.

ADOT does not review the CA's design for technical accuracy or compliance standards unless the project impacts ADOT's ROW or facility.

## Design Exceptions

Design Exceptions are required when any of the 10 Controlling Criteria (design speed, lane width, shoulder width, superelevation rate, horizontal curve radius, maximum grade, stopping sight distance, cross slope, vertical clearance, and Design Loading Structural Capacity) are not met. The CA must document the need for design exceptions and notify the ADOT PM as early as possible to discuss and seek FHWA approval. All ten controlling criteria apply to high-speed roadways on the NHS projects while only two controlling criteria, Design Speed and Design Loading Structural Capacity, apply to low-speed roadways (Design speed < 50 mph) on the NHS. The CA should submit design exceptions for consideration before 60 percent design plans. The CA must send the design exception requests with appropriate justification to the ADOT PM. Deviations from criteria contained in the standards for projects on and off the NHS which are not considered to be controlling criteria should be documented by the CA in accordance with State and local laws, regulations, directives, and safety standards.

Design exceptions, subject to FHWA's approval, or ADOT's approval on FHWA's behalf, are required to include the following as part of the Design Exception Documentation packet:

- Comparison of safety and operational performance of the roadway and other impacts such as right-of-way, community, environmental, cost, and usability by all modes of transportation.
- Specific design criteria that will not be met
- Existing roadway characteristics
- Alternatives considered
- Compatibility with adjacent sections

All design exceptions decisions and design deviation decisions should be documented to demonstrate compliance with accepted engineering principles and the reasons for the decision.

When using design exceptions in the project design, the CA must ensure a professional engineer or landscape architect registered in the State of Arizona signs and seals the design exceptions. The CA must include a statement in the federal authorization letter and the design exception in the final PS&E.

#### *NHS Routes*

In accordance with 23 C.F.R. § 625, FHWA, in its sole discretion, will approve all design exceptions on the NHS routes regardless of funding source. When controlling criteria is not met, the design exception should be submitted to the ADOT PM for State (if on ADOT ROW) and FHWA approval. FHWA and ADOT have published guidelines, procedures and requirements for the documentation and approval of design exceptions. Approval of a Design Exception by FHWA is considered a federal action. The CA is required to obtain all required environmental clearances prior to obtaining FHWA approval.

Each Local Agency must have a documented procedure for addressing, documenting, submitting and obtaining approval from ADOT and FHWA for addressing exceptions to the American Association of State Highway and Transportation Officials (AASHTO) Controlling Design Criteria and ADOT Roadway Design Guidelines.

#### *Non-NHS Routes (Local Roadway)*

Non-NHS projects are designed, constructed, operated, and maintained in accordance with State and Local laws, regulations, directives, and safety, design, and construction standards. Therefore, there is no federal requirement for design exceptions on highways and streets that are not part of the NHS, regardless of funding source. However, States (and local agencies) are encouraged to analyze situations and document exceptions on non-NHS routes in a similar fashion when design values are used that do not meet their adopted criteria.

Each Local Agency must have a documented procedure for addressing, documenting, submitting and obtaining approval for addressing exceptions to the Local Design Standards and AASHTO Controlling Design Criteria.

#### *Non-NHS Routes (State Roadway)*

Each Local Agency must have a documented procedure for addressing, documenting, submitting and obtaining approval from ADOT for addressing exceptions or variances to the AASHTO Controlling Design Criteria and ADOT Roadway Design Guidelines.

## Materials and Pavement Design Guidelines

The CA must have materials and pavement design guidelines for new pavement and pavement preservation projects. The CA must design pavement to accommodate current and predicted traffic needs in a safe, durable, and cost effective manner as required in 23 CFR 626.

For pavement improvements within an ADOT ROW, Pavement Design shall conform with ADOT's Pavement Design Manual and Design Guidelines.

## Proprietary Items

A proprietary item on a project is a specific product, specification, or process, also referred to as a patented or proprietary product. Guidance for use of proprietary items can be found in ADOT Policies and Procedures SUP 01-1 Proprietary Items (SUP 01-1). A proprietary item must meet one of the conditions listed under SUP 01-1 to be eligible for federal reimbursement or used on a FAHP project.

### *Certification of a Proprietary Item*

The CA must request a certification of a proprietary item and include a statement that the particular proprietary item is either essential for synchronization with existing highway facilities or is a unique product for which there is no equally suitable alternative. The documentation will include a description of the proprietary item's:

- Uniqueness
- Essentiality
- Cost (estimate of any additional costs incurred as a result of the proprietary product requirement)
- Synchronization with existing facilities
- Maintenance requirements
- Availability
- Impacts on safety that would justify a higher standard
- Potential benefits to the Department

Synchronization may be based on a combination of:

- Function
- Aesthetics
- Logistics
- Life cycle
- Size and extent of products and systems to be synchronized with
- Relative cost of the proprietary item interest compared to the cost of replacing the existing elements requiring synchronization

The CA must obtain ADOT approval from the appropriate Assistant State Engineer through the ADOT PM before including the product or process in the plans or specifications. The Assistant State Engineer will provide approval in the form of a signed statement certifying that a particular proprietary item is either essential for synchronization with existing highway facilities or a unique product for which there is no equally suitable alternative. If the certification extends beyond a single project, the CA must obtain the Assistant State Engineer's approval through the ADOT PM.

In the federal authorization packet, the CA must include the product name, ADOT Group that certified, and certification date in the CA request letter.

If ADOT denies the certification request, the CA must competitively bid the item for it to be federally reimbursable.

#### *Proprietary Item Public Interest Finding*

The CA must submit a Public Interest Finding (PIF) letter requesting that it is in the public interest to use a specific material or product even though other equally acceptable materials or products are available. The letter includes documentation of a compelling justification of the reasonableness of the CA's minimal needs and best method to meet these needs consistent with the requirement for the broadest practical competition. The level of documentation depends on the nature of the product and project involved. Supporting materials may include:

- Additional costs, if any
- Benefits to the public
- Description of need, including limitations and conditions
- Engineering and economic considerations
- Evaluation of the pool of other equally acceptable products
- Logistical concerns
- Product availability and comparability
- Other unique considerations

The CA must obtain ADOT approval through the ADOT PM to specify a proprietary item at project authorization. In the federal authorization packet, the CA must include a statement with the product name, ADOT Group that certified, and certification date in the CA request letter and a copy of all approved PIFs.

If ADOT denies the PIF request, then the item must be competitively bid or not be eligible for federal reimbursement.

#### *Experimental Product*

An experimental product is a proprietary item used for research or a distinctive type of construction on relatively short sections of roadway on an experimental basis. The CA must designate the project as an experimental research project. The CA must develop a work plan that includes:

- Description of the experimental feature
- Experimental feature objectives
- Construction requirements (including necessary measurements)
- Characteristics to be evaluated
- Time schedules
- Reporting requirements
- Cost estimates
- Construction and post-construction inspection schedules
- Control sections
- Evaluations to be conducted

The CA must submit the work plan to the ADOT PM for ADOT approval. In accordance with the funding program, the CA must report the results to the ADOT PM, who will provide the results to FHWA upon completion of the project.

The same approval authority applies when an experimental product is requested through a construction change order.

### Build America Buy America

In accordance with Build America, Buy America (BABA) Act specified in Pub. L. No. 117-58 Title IX, Subtitle A, Part 1, Sections 70901 and 70911-70918 (Pub. L. No. 117-58 §§ 70901; §§ 70911-70918) of the Infrastructure Investment and Job Act (IIJA), 2 C.F.R. § 184, 2 C.F.R. § 200, Office of Management and Budget (OMB) Memorandum M-24-02 as well as the added requirements of ADOT Standard Specifications for Road and Bridge Construction, as modified by *Stored Specification 106CMAT*, the CA must ensure for all FAHP projects that all iron, steel, manufactured products, and construction materials (as defined above) incorporated into a project are BABA compliant by being produced in the United States.

### Buy America

In accordance with the current "Buy America" requirements of 23 C.F.R. § 635.410 as well as added requirements of *ADOT Standard Specifications for Road and Bridge Construction*, as modified by *Stored Specification 106DMAT*, no FAHP project is to be authorized for advertisement or otherwise authorized to proceed unless one of the following requirements is met:

- The permanently incorporated construction materials used consist of only materials that have been exempted from the requirements of Buy America including cement, cementitious materials, aggregates such as stone, sand, or gravel, aggregate binding agents and soil or cement additives. If non-exempt Construction Materials such as iron or steel, non-ferrous metals, plastic or polymer based products, glass including optic glass, fiber optic cable, optical fiber, lumber, including engineered wood and drywall are included this will not qualify. Permanently incorporated materials do not include materials used in construction but removed before completion such as braces or lumber concrete forms.
- When Construction Materials are permanently incorporated the total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project.
- The total amount of Federal financial assistance applied to the project, through awards or sub-awards, is below \$500,000.

The CA must address Buy America requirements during project design, because the delivery of Construction Materials could affect the project schedule and cost.

FHWA is responsible for approving Buy America waivers. Meeting the contractor's construction schedule when domestic materials are available and the cost differential between domestic and foreign products are not adequate bases for a waiver.

### Plans, Specifications, and Estimates

The CA must ensure a professional engineer or landscape architect registered in the State of Arizona shall sign and seal the final PS&E on all FAHP CA projects.

The plans and specifications shall describe the location and design features and construction requirements in enough detail to facilitate the advertising, bidding, awarding, contract control, construction, and estimation of construction costs of the project. The estimate shall show the expected project cost in enough detail to provide an initial prediction of the financial obligations to be incurred, and allow for an effective review and comparison of the bids received.

The CA must obtain NEPA approval, ROW, utility, and railroad clearances. Any work related to these clearance shall not delay the construction contractor.

The CA must submit the final PS&E and other related items to the ADOT PM for federal authorization for construction. The federal authorization package is required to be bid-ready.

The following items are required in a federal authorization package for construction:

- A request letter that includes:
  - Project name and location, ADOT project number, and federal aid number
  - Railroad, design exception, and proprietary products statements
  - Specified contract time
- All bid advertisement documents:
  - PS&E
  - Special provisions shall include the DBE Special Provisions (EPRISE), contract time, contract, and all required federal contract provisions as found under Construction Administration, subsection Contract Provisions page 41
- Clearances
  - NEPA approval that has been validated by ADOT prior to the PS&E submittal
  - ROW (Signed and approved by ADOT)
  - Utility and Railroad (railroad statement is required even when no railroad is involved)
- Current MPO TIP and STIP pages (showing the project name, funding year, and funding source)
- DBE Goal Assessment Notice (email from BECO to the agency )
- Financial recapitulation sheet
- Materials Quality Assurance project plan approval letter (signed and approved by ADOT)
- Project location/vicinity map

If applicable:

- Certification, PIF, or Experimental Product approval
- Design exception approval
- Executed IGA
- Subprogram eligibility letter
- Systems engineering checklist

## **200.50 ENVIRONMENTAL**

ADOT Environmental Planning will prepare Categorical Exclusions (CE) with supporting surveys, technical reports, consultations and public involvement conducted by the CA.

In accordance with NEPA (42 U.S.C. § 4321 et seq.) and other relevant environmental laws and regulations, the CA must prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) including engineering technical reports, environmental technical studies, agency coordination, and public involvement for all FAHP projects. The CA must prepare the NEPA documentation and analysis for ADOT approval.

NEPA approval is ADOT's responsibility that cannot be delegated to the CA under the CA Agreement. Pursuant to 23 U.S.C. 326 and 23 U.S.C. 327, FHWA has entered into two Memorandum of Understanding (MOU) agreements with ADOT, known as CE Assignment (326 MOU) and NEPA Assignment (327 MOU) respectively. These MOUs assign FHWA's authority for determining and approving CEs and NEPA documents to ADOT. The non-assigned air quality conformity determinations for projects prepared under the 327 MOU must be approved by FHWA.

### **Initiation**

During pre-planning of project design, the CA must conduct early coordination with ADOT Environmental Planning for a preliminary determination of the proper NEPA "class of action" and level of NEPA documentation needed to be included in the LPA project data sheet.

For CE-level projects, the environmental review process may start during the pre-planning and continue into design. When the scoping documents (scoping letter or PA) are completed, the CA must submit the scoping documents to the ADOT PM and Environmental Planning for review of pertinent environmental information. ADOT Environmental Planning will confirm the preliminary NEPA document determination made during the pre-planning or design contract phase and provide guidance to the CA on environmental analysis.

Typically, DCRs are prepared for EA-level projects and require the development of project alternatives that will need to be analyzed during the NEPA review process.

The level of public involvement will be commensurate with the proposed action and conducted in compliance with NEPA requirements and the CA's public involvement guidelines. The ADOT Public Involvement Plan should be followed if a public hearing is conducted.

### **NEPA Review Process**

The CA must prepare the project NEPA support documentation excluding any CE checklist. The CA and their consultant should closely coordinate scopes of work with ADOT Environmental Planning before beginning any surveys or technical reports. The CA must provide this documentation to ADOT Environmental Planning for approval.

For projects requiring a CE, the CA should obtain NEPA approval and/or coordinate with Environmental Planning before proceeding beyond the 60 percent design plans. If the CA proceeds beyond the 60 percent design plans before obtaining NEPA approval, the CA should provide the ADOT PM written notice by email. Without prior approval by ADOT, those design activities are considered "at risk" and may not be reimbursed if redesign is required due to environmental issues.

For projects requiring an EA or EIS, the CA must obtain NEPA approval before proceeding beyond the 30 percent (or CA equivalent) design plans.

After NEPA approval, ADOT Environmental Planning will send a copy of the document to the CA. When the CA receives a copy of the NEPA approval, the CA may begin final design. If any part of the scope of work changes after NEPA approval, the CA must contact ADOT Environmental Planning for reevaluation.

The CA must submit subsequent design plans to ADOT upon request of the State Historic Preservation Office (SHPO) for projects with a “no adverse effects” determination.

As part of an ADOT environmental communication protocol, all parties involved in the environmental process should be included in project communications including but not limited to the Environmental Planner, ADOT Project Manager, CA Liaison, applicable CA staff, ADOT technical team members, respective project consultants and/or sub-consultants and any applicable internal or external stakeholders involved with the project. All environmental staff should keep their team(s) actively engaged with project status announcements. This will prevent situations from escalating due to non or miscommunication.

### Environmental Commitments

Before the ADOT PM requests authorization for construction from FHWA, the CA must verify that the NEPA approval is still valid and that the environmental commitments are included in the final design plans and specifications as applicable. In accordance with 23 C.F.R. § 771.115, the CA must coordinate with ADOT Environmental Planning in advance of the construction authorization letter preparation to ensure the NEPA approval is still valid. To ensure that there is no delay in the construction authorization request the CA should coordinate with ADOT Environmental Planning at the PS&E stage.

In accordance with 23 C.F.R. § 635.309(j), the CA must incorporate the environmental commitments into the PS&E exactly as approved in the project NEPA approval. The environmental commitments include project-specific mitigation measures, any required permits, and any required species handling guidelines. The CA must adhere to and cannot change the approved environmental commitments without prior written consent from ADOT Environmental Planning. In accordance with 23 C.F.R. § 771.109(b)(1), the CA must ensure that the environmental commitments assigned to the CA and contractor are successfully implemented and documented in the project file in accordance with the CA's procedures for implementation and recording of environmental commitments. .

After receipt of the NEPA approval, the CA must contact ADOT Environmental Planning for an assessment of any design changes as changes could trigger additional environmental analysis under NEPA. This applies to pre- and post-bid activities. After NEPA approval, design changes may require reevaluation in accordance with 23 C.F.R. § 771.129.

## **200.60 RIGHT-OF-WAY**

The Project Development Process Manual for Right-of-Way is not the FHWA approved State ROW Manual.

In accordance with the FHWA approved State ROW Manual or the ADOT approved CA ROW Manual, the CA's staff, Consultant, and/or ROW agent prepares the ROW plan, administers appraisal, relocation, acquisition activities, property management activities (if needed) and prepares the ADOT Real Property Interest - ROW Certification Form. The CA must determine during pre-planning if Real Property Interest/ROW activities, including acquiring property rights including temporary or long-term easements, are required for the proposed construction of a FHWA project. The CA must demonstrate that they have the ability to comply with current FHWA requirements.

For projects requiring new ROW acquisition for which reimbursement of federal-aid funds for ROW activities will be requested, the CA must have federal authorization for ROW activities and ADOT's notice to proceed before those ROW acquisition activities may begin. Before submitting the request for ROW activities, the CA must have NEPA approval. Regardless of the funding source, Real Property Interest/ROW acquisition(s) will comply with the Federal Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (42 U.S.C. § 4601 *et seq.*), as amended, and 23 C.F.R. Part 710 and 49 C.F.R. Part 24 (Uniform Act). Additionally, the CA shall certify that all real estate related activities requiring licensure are performed by licensed individuals as defined by the Arizona Department of Real Estate (A.R.S. §§ 32-2121 and 32-2122). According to 23 C.F.R. § 710, ADOT shall have overall stewardship and oversight responsibility for the acquisition, management, and disposal of Real Property Interests on Federal-aid projects, including when those projects are carried out by ADOT's subgrantees or contractors. This responsibility includes ensuring compliance with the requirements of Part 710 and other Federal laws, including regulations.

The federal authorization request packet for right-of-way includes:

- CA authorization request letter
- Current MPO TIP and STIP pages (showing the project name, funding year, and funding source)
- NEPA approval
- Project location/vicinity map
- ROW plan
- Title report (parcel and ownership information)

For projects with federal-aid funds in any part of the project, the CA must conduct ROW activities in compliance with the FHWA-approved *ADOT Right-of-Way Procedures Manual* or the CA's own ROW procedures manual that has been reviewed and approved by ADOT for federal aid projects. A CA ROW Manual can only be used with ADOT's approval and permission. This requirement can be accomplished through one of the following ROW Manual approval methods:

- Certification in writing from the CA, that they will adopt and use the FHWA-approved ADOT ROW Manual.
- CA's own ROW Manual may be submitted to ADOT for review and determination of its compliance with Federal and State requirements. Following an approval of the ROW Manual, the CA will certify in writing that they will follow the approved ROW Manual.

After the Real Property Interest acquisition(s) are complete and before advertisement, the CA must submit the Real Property Interest - ROW package and clearance letter to the ADOT PM to obtain verification and concurrence from the ADOT ROW Group. Any deviation from these procedures must have ADOT approval with FHWA concurrence. If any Real Property Interest is acquired in advance of the project authorization, those Real Property Interests must be compliant with the Uniform Act and the FAHP.

If all Real Property Interest(s) have not been fully acquired before the request for federal authorization for the advertisement for receipt of bids for construction, the CA must submit a request for conditional clearance to the ADOT PM to obtain approval from the ADOT ROW Group Project Management's Section and concurrence of FHWA. The CA must not advertise until the ROW acquisition process is complete and has received full clearance unless ADOT ROW Group Project Management Section has approved and FHWA has concurred with a conditional ROW clearance.

In accordance with ADOT's *Requirements regarding Right-of-Way Acquisition by Local Public Agencies on Federal Aid Projects*, all FHWA projects with Real Property Interest acquisition(s) require oversight and records inspection by the ADOT ROW Group Project Management's Section throughout project development to ensure compliance with federal and state laws and regulations. The CA must maintain ROW records according to the General Records Retention Schedule Issued to All State and Local Agencies Administrative and Management Records (revised 8/26/2016), except as otherwise expressly provided. Under certain circumstances, FHWA may request a longer period. The ADOT ROW Group will conduct reviews of the CA's ROW recordkeeping activities.

#### Early Acquisition of Right of Way

In accordance with 23 C.F.R § 710.203, and 23 C.F.R.§ 710.501 "exceptions", early acquisition of Right of Way (ROW) is allowed provided the CA has received environmental clearance for early acquisition of ROW and the CA is not seeking federal reimbursement for their real estate acquisitions. To facilitate this, ADOT has developed a standard operating procedure (SOP) for the Early Acquisition of ROW that can be found on our Local Public Agency website. This process is not to be used in lieu of the standard ROW process for the acquisition of real property interest. Should the Early Acquisition of ROW be used, all criteria must be met to include following the Uniform Act and Early Acquisition regulations. If it is determined that said criteria is not properly demonstrated, the eligibility for federal reimbursement of the entire project will be jeopardized

## **200.70 UTILITIES AND RAILROADS**

The BABA and Buy America provisions apply to utility and railroad contracts eligible for assistance under the FAHP within the scope of a finding, determination, or decision under NEPA, regardless of funding source, if at least one contract within the scope of the NEPA document is funded with federal funding under the FAHP.

### **Utilities**

The CA must ensure utilities affected by FAHP projects are identified during the design phase.

If using federal funds for utility relocation, the CA must obtain design authorization from FHWA and send a utility letter to the utility company identifying utilities located within the project limits before requesting federal funds. After receipt of federal authorization, the CA can authorize the utility company to start work. No utility design or relocation work done before federal authorization will be eligible for federal reimbursement.

When a FAHP project involves either the installation of new utilities or the retention, relocation, or adjustment of existing utilities, the CA must comply with 23 C.F.R. Part 645. Utility coordination must occur during design and continue throughout construction. The CA must coordinate with all utility companies in compliance with ADOT's *Accommodating Utilities on Highway Rights-of-Way* and the Arizona Utility Coordination Committee's *Public Improvement Project Guide*.

The CA must provide written notice to the utility companies when utilities are located within the project limits, explaining and showing the proposed scope of work. The notice includes the scoping document and submission of design plans at phased stages and final PS&E. The CA must obtain the utility clearance letter from the utility company during the project design and comply with the ADOT-approved CA utilities and railroad checklist or ADOT Utilities and Railroad Section Stage Submittal Checklist in Appendix 1 of the *ADOT Utility Coordination Guide for Design Consultants*.

The CA must identify and determine prior rights for all utilities within the project limits. When prior rights for utilities exist, the CA must prepare and execute a formal agreement with the utility company and pay for utility relocation work. If using federal funds for any part of the project, all utility agreements for utilities with prior rights will be in accordance with 23 C.F.R. Part 645 and include the BABA and Buy America provisions regardless of what funding source is used to fund the relocation.

Before federal authorization for construction, the CA must prepare a utility clearance letter certifying that all utilities have been relocated or arrangements for relocation of all conflicting utilities have been made. The clearance letter includes final relocation dates, mitigation measures, and construction requirements, and certifies that all federal and state laws and regulations have been met. The letter also includes the utility company name, contact person, phone number, description of work, resolution of the utility conflict, and schedule of work to be completed before the construction contractor starts work. The CA must include a statement that the utilities are cleared and there is no conflict or identify what work needs to be completed in the special provisions. Utility design relocations and construction work will be completed in conformance with approved plans and specifications.

For utilities not relocated before bid advertisement, the CA must include the scope and schedule of pending relocations and the contractor's responsibility in the construction contract. Submission of the utility clearance constitutes an affirmative representation by the CA that the CA has performed all acts necessary to accomplish the utility investigation and has completed all necessary utility relocations or has arranged for them to be completed during construction.

### Railroad

The CA must ensure railroads affected by FAHP projects are identified during the design phase. Railroad coordination must occur during design and continue throughout construction. If additional ROW is required, federal authorization for ROW must be obtained through the ADOT PM before contacting the railroad. If no railroads are affected by FAHP projects, a railroad clearance is still required stating that there is no railroad involvement. The CA must request and receive federal authorization for railroad design or construction work. After receipt of federal authorization, the CA can authorize the railroad to start work. No railroad design or construction work done before federal authorization will be eligible for federal reimbursement.

The CA must provide written notice to the railroad companies when railroad ROW is located within the project limits, explaining and showing the proposed scope of work. The notice includes the scoping document and submission of design plans at phased stages and final PS&E. The CA must obtain the railroad clearance letter from the railroad company during the project design and comply with the ADOT-approved CA utilities and railroad checklist or ADOT Utilities and Railroad Section Stage Submittal Checklist in Appendix 1 of the *ADOT Utility Coordination Guide for Design Consultants*.

When a FAHP project impacts a railroad, the CA must coordinate with the railroad to identify additional ROW needs and associated mitigation measures. The CA must comply with the *ADOT Utility Coordination Guide for Design Consultants*. Mitigation measures involving work by railroad forces, on railroad facilities, or in coordination with railroad personnel will be documented in the railroad clearance letter and special provisions. The CA must execute a formal agreement with the railroad company using guidance from the ADOT Utility and Railroad Section. The railroad agreement includes mitigation work and flagging requirements. All railroad agreements will be in accordance with 23 C.F.R. Part 645 and include the BABA and Buy America provisions.

Signal relocations or other parts of the railroad crossing road surfacing work required under the agreement between the CA and railroad company will be paid through the agreement, as invoiced by the railroad company.

When a CA-administered FAHP project adds or deletes an at-grade crossing, widens an existing crossing, or installs or changes the configuration of protective warning devices, the CA must request an opinion and order from the Arizona Corporation Commission, which has legal jurisdiction over the installation, operation, maintenance, use, and protection of railroad crossings. All adjustments and execution of work will comply with 23 C.F.R. §§ 140.900 through 140.922 and 23 C.F.R. Part 646.

Submission of the railroad clearance constitutes an affirmative representation by the CA that the CA has performed all acts necessary to accomplish the railroad investigation and has completed all necessary railroad work or has arranged for them to be completed during construction.

### Railroad Section 130

When railroad-highway grade crossing safety funds are used in accordance with 23 U.S.C. § 130 (Section 130), the ADOT Utility and Railroad Section will manage and administer the agreements and obtain all federal authorizations for Section 130 projects. The CA must perform all railroad civil activities (i.e., sidewalks, road approaches, ramps, typical roadwork, curb and gutter, median work, signing and striping associated with updated crosswalks, utility relocation, traffic control associated with any of the improvements, and non-railroad work) under Section 130, as detailed in the IGA/Joint Project Agreement (JPA) between the CA and ADOT.

## **200.80 CONSTRUCTION ADMINISTRATION**

### **Authorization**

The CA must obtain federal authorization for construction through the ADOT PM before advertising the project. In accordance with 23 C.F.R. 630.106(a)(3), the request for authorization must be supported by a documented cost estimate. The request must also include the project end date, after which no charges will be eligible for federal reimbursement. This request is to be submitted to ADOT when the work is “ready to proceed”, which, it is recommended, typically within 90 calendar days. When FHWA approves the request, the ADOT PM will provide notice to proceed by email. When the ADOT PM receives a copy of the Federal- Aid Project Agreement from Resource Administration, which includes ADOT’s and FHWA’s electronic signatures, the ADOT PM will provide a copy to the CA. Following the contract award, the CA must submit an electronic copy of the executed construction contract to the ADOT PM for ADOT’s and FHWA’s records.

It is expected that the CA will have a copy of the FHWA authorization email, the Federal-Aid Project Agreement, FMISD05A (for PE authorizations) and FMISD06A (for construction authorization), in their files as soon as the documents are provided by the ADOT PM. If the CA does not receive a copy of the required documents, the CA must request them from the ADOT PM for their records.

### **Construction Financial**

The CA must provide award recapitulations to the ADOT PM within 30 calendar days of making the award on FAHP projects and any adjustments to project cost estimates, project phase completions, or when a design change is approved, etc. This is to ensure the ADOT PM revises the Federal funds obligated within 90 calendar days , as required by 23 C.F.R. § 630.106(4). For those projects in which the authorized amount exceeds the awarded amount, the project funds will be deobligated down to the authorized amount and those federal-aid funds will be returned to the MPO for reprogramming. ADOT will revise the federal-aid funds obligated within 90 calendar days.

Project costs that exceed the amount of federal aid authorized for a project are the sole responsibility of the CA. The CA may coordinate with the MPO to request additional funding, if available. When the applicable TIP reflects the additional funding, the CA must notify the ADOT PM to request subsequent federal authorization.

For construction projects requiring an increase in funding or exceeding one year in duration, ADOT will rebalance the funding by Federal Improvement Type (FIT) to ensure costs are properly accounted for by FIT.

### **Construction Reimbursement**

The CA must make the initial request for reimbursement within six months (180 calendar days) after the authorization of construction funding. After construction is awarded, a copy of the notice to proceed will be submitted to the Department. Subsequent requests for reimbursement will be made according to the CA Invoice Submission SOP that can be found on our Local Public Agency website.

The CA may seek federal reimbursement for the cost of preparing record drawings by including it in the construction engineering cost for the project.

All reimbursement requests will identify cost breakouts by FIT. The CA must provide the FIT information on the reimbursement request, so ADOT can meet the federal requirement to report federal expenditures by FIT.

#### Procurement of a Contractor

23 C.F.R. § 635.110 requires that procedures and requirements used for qualifying and licensing contractors who may bid for, be awarded, or perform Federal-aid highway contracts, shall be submitted to ADOT LPA section for advance approval. Only those procedures and requirements so approved shall be effective with respect to Federal-aid highway projects. Any changes in approved procedures and requirements shall likewise be subject to approval by the ADOT LPA section. Additionally, the CA must not require that the contractor obtain a license before submitting a bid.

23 C.F.R. § 635.113 requires that all bids be received, opened, and read without regard to licensing requirements. The reading of bids reveals the apparent lowest responsive, responsible bidder. A successful responsive bidder will have 60 calendar days to obtain the proper contractor's license required by the State. If the lowest responsive bidder cannot obtain the required license, the project may be awarded to the next lowest responsive bidder who has the required license.

In accordance with 23 C.F.R. § 635.113(a), the CA must not negotiate or alter the scope of work, quantities, or pay items with contractors after the opening of bids and before contract award.

In the event of a tie between two or more bidders for the low bid, the CA must provide the ADOT PM and ADOT LPA Section written notice immediately after the bid opening. The CA must receive ADOT concurrence before award.

Failure to comply with competitive bidding requirements is a violation of federal and state laws and regulations that will jeopardize federal reimbursement.

#### Materials-Only Procurement/Procurement of Materials and a Contractor for Installation

When federal funds are used, the CA must award contracts for the procurement of materials only and procurement of materials and a contractor for installation in compliance with federal regulations, the Arizona Procurement Code, and ADOT-approved CA procurement procedures.

When using federal-aid funds to purchase materials and/or equipment, the CA must follow their own ADOT-approved competitive procurement procedures. These procedures must comply with the Arizona Procurement Code and be approved by ADOT, as agreed to in the Certification Acceptance agreement between the State and the CA. Failure to follow their own ADOT-approved competitive procurement procedures is a violation of federal and state laws and regulations that will jeopardize federal reimbursement and may cause rescission, in whole or in part, of the Certification Agreement.

The standard work for the delivery of Materials-Only Procurement projects with or without contractor installation can be found on the LPA website under the Federal Aid Highway Programs (LPA) tab.

## Construction Advertisement

The CA must administer the bid advertisement and contract award in compliance with 23 C.F.R. § 635.112 and Arizona Revised Statutes (A.R.S.) § 34-201 through 34-203.

When ADOT PM notifies the CA of FHWA's authorization, the CA may begin work on a FAHP project and advertise for bids. The CA must send a copy of the advertisement to the ADOT PM before advertising and notify the ADOT PM when advertised by providing the Affidavit of Publication. The CA must include the DBE contract goal in the contract bid advertisements and request for proposals or other solicitation documents. In accordance with 23 C.F.R. § 635.112 (b), the CA must advertise for at least three weeks prior to opening of bids and make the contract files and records available for public inspection after award.

FHWA may only authorize the work that is ready to proceed, which typically anticipates the CA issuing a request for proposal, qualifications, and/or bids within 90 calendar days and awarding the contract soon thereafter. Authorizing a phase of a project before it is ready to advance is a significant cause of project inactivity and is not allowable. Authorization is FHWA's internal control mechanism to ensure federal and state laws and regulations have been met before costs are incurred. Three months (90 calendar days) after the advertisement concludes, the CA must begin construction.

If the CA believes it is unable to meet the schedule, the CA must provide the ADOT PM written notice with justification and a revised schedule. ADOT has sole discretion to approve the revised advertisement and award schedule. If the CA has not begun the construction within six months (180 calendar days) of the authorization date and submitted invoices for reimbursement to ADOT, the project may become inactive and subject to deobligation per the ADOT Inactive Projects Policy which supports the FHWA Funds Management Guide.

## Contract Provisions

Federal laws and regulations require that specific contract provisions be included in federal-aid construction contracts. The CA must ensure the bid package and awarded construction contract are complete. The package includes the most current version of the following contract clauses:

- Breach of Contract Language
- Buy America Provisions
- Build America, Buy America (BABA) Act
- Use of Prohibited Products Provisions
- Changes and extra work and contract time and contract time extensions per 23 CFR § 635.120 and §635.121
- Contract Notice to Proceed, Commencement, and completion of Work Dates
- Disadvantaged Business Enterprise (DBE):
  - DBE Goal percentage
  - DBE Special Provisions (DBE EPRISE)
  - DBE Assurance Form (3102C)
  - DBE Intended Participation Affidavit Individual Form (Form 3105C)
  - DBE Intended Participation Affidavit Summary Form (Form 3106C)
  - Online Bidders List
  - Bidders List Email Confirmation Notice

- DBE Good Faith Efforts 103C
- DBE Termination/Substitution/Reduction (TSR) Request (Form 3108C)
- Commercially Useful Function (CUF) Language DBE Certification of Final Payment Form 3110C
- DBE Joint Check Request Form 3109C
- DBE Joint Check Agreement (Form 3114C)
- Energy Efficiency Language
- Environmental Commitments
- Equal Employment Opportunity (EEO):
  - Equal Employment Opportunity Clauses
  - Executive Order 11246 (revised 5-12)
  - EEO Compliance Reports (Form FHWA-1273) – for construction contracts only
  - Certification, Contracts, or Subcontracts Subject to EEO Clause (April, 1969)
  - Executive Order 2023-01
- Federal Immigration and Nationality Act Language
- FHWA 1273
- Job Site Posters Required List
  - <http://www.fhwa.dot.gov/programadmin/contracts/poster.cfm>
  - The ADOT Poster Identification Guide for Project Bulletin Board Quantlist can be found on the ADOT website
- Non-Collusion Provision
- On the Job Training Provision (If Applicable)
- Prompt Pay Provision and Payment Reporting Provisions
- Record Retention Language
- Recovered Materials Language
- Standard Change Condition Clause
- Termination of Contract Language
- Title VI Assurances and Title VI Appendix A and E
- Wage Determination Decision - Project Specific
- Forced Labor of Ethnic Uyghurs Ban Certification Form, Rev. November 2022

The CA must ensure that the contractor and subcontractors comply with federal, state, and local immigration laws and regulations, as set forth in *Arizona Executive Order 2005-30*.

The CA must ensure that the required contract provisions are the most current version at the time of contract award.

### Addenda

An addendum may affect the obligation of federal-aid funds. Issuing an addendum during advertisement may have a profound impact on bid prices and the basis for bid comparisons. For any addendum, the CA must notify the ADOT PM and provide justification before its release to the prospective bidders. If several changes are made through addendum, the CA or ADOT may need to consider a bid extension to allow ample time for bidders to respond. All bidders will bid the project on the same basis, so that no particular advantage or disadvantage occurs to any potential bidder or the CA.

## Bid Analysis

Bid analysis is the basis for justifying the contract award or rejection of bids. A bid analysis helps ensure that federal-aid funds are being used effectively. In accordance with 23 C.F.R. § 635.114(c), the bid analysis process examines the unit bid prices for reasonable conformance with the engineer's estimated prices. The CA must conduct a bid analysis on all bids. When the low bid is more than 110 percent or less than 85 percent of the engineer's estimate, a thorough analysis must be undertaken to justify contract award.

The CA must have an ADOT-approved bid analysis process to justify the contract award and rejection of bids. The CA must notify the ADOT PM of all bid awards and bid rejections before the CA takes action. The CA must obtain all proper statements and affidavits as required by federal laws and regulations.

In accordance with 23 C.F.R. § 635.114(d) and (e), when obvious unbalanced bid items exist, the CA must support the decision to award or reject a bid with written justification. The CA may award a bid that is mathematically unbalanced, but not materially unbalanced. When a low bid is determined to be both mathematically and materially unbalanced, the CA must notify the ADOT PM for ADOT concurrence before making an award to any other bidder. The ADOT PM will notify FHWA.

In accordance with 23 C.F.R. § 635.114(f), when the CA believes that the apparent low bidder should be rejected, the CA must notify the ADOT PM for ADOT concurrence before making an award to the next lowest responsive and responsible bidder. The ADOT PM will notify FHWA.

In accordance with 23 C.F.R. § 635.114(h), the CA must notify the ADOT PM for ADOT concurrence before rejecting all bids received for a federal-aid contract. The ADOT PM will notify FHWA.

## Award

Contracts for the construction of FAHP projects will be awarded under 23 U.S.C. § 112, 23 C.F.R. Part 635, and A.R.S. § 34-221. The CA must award the contract competitively to the responsible contractor that submits the lowest responsive bid. Following the contract award, the CA must submit an electronic copy of the executed construction contract to the ADOT PM for ADOT and FHWA's records. If the project award is less than the authorized amount of funding, the excess funding will be released back to the MPO for reprogramming on other eligible projects.

## Preconstruction Meetings and Submittals (Construction Administration)

When the CA has awarded a project to the contractor, the CA must administer and oversee the preconstruction meeting and preconstruction submittals.

The CA must notify the ADOT PM of upcoming preconstruction meetings and provide a written copy of the meeting notes. The CA must conduct the preconstruction meeting, prepare meeting materials, notes, and documentation of engineering decisions, and discuss the following items, if applicable:

- Contractor's submittals
- Railroad or utility adjustments
- Public relations and interests of abutting property owners
- Contractor's work plan and schedule
- Specific contract requirements, including EEO, DBE, and OJT
- Safety and traffic control plans
- Environmental commitments

- Erosion control/Stormwater Pollution Prevention Plan (SWPPP)
- ROW available for use by the contractor
- Time limits and performance of operations, including materials delivery considerations
- Construction time and cost control
- Emergency response to incidents
- Escalation process
- Authorized signature form
- Quality assurance/Quality control for materials
- Buy America contract provisions
- BABA provisions
- Spill Prevention, Control and Countermeasures (SPCC) Plan

The CA must be fully acquainted with the contractor's plan of operations, planned progress schedule, shop drawings, and other submittals. Before construction begins, the CA must have a traffic control plan, contractor's safety plan, and SWPPP and SPCC, if applicable.

In accordance with 23 C.F.R. §§ 630.1010 and 630.1012 (b) and (c), the CA must include in the PS&E either a Transportation Management Plan (TMP) or provisions for contractors to develop a TMP. The CA must approve a contractor-developed TMP before implementation. A TMP consists of a Temporary Traffic Control (TTC) plan and addresses both Transportation Operations (TO) and Public Information (PI) components. For projects that the CA determines to have less than significant work zone impacts, the TMP may consist only of a TTC plan. The CA must consider TO and PI issues for all projects.

The CA must review the contractor's safety plan. The safety plan is specific to the project and specifies the procedures the contractor shall implement to satisfy Occupational Safety and Health Administration (OSHA) and state occupational safety guidelines for workers and the public during construction. Upon its review, the safety plan must be signed by the project's responsible charge or designee.

For projects with one or more acres of disturbed area and that meet the definition of construction activities and/or support activities stipulated in the permit, the CA community must ensure permit coverage and compliance under the Arizona Department of Environmental Quality's (ADEQ's) Arizona Pollutant Discharge Elimination System General Permit for Stormwater Discharges Associated with Construction Activity to Protected Surface Waters (Construction General Permit – CGP). A Notice of Intent (NOI) and SWPPP must be developed and implemented or an Erosivity Waiver Certification must be obtained to comply with the CGP for any operators as defined in the CGP.

If the contractor needs a staking plan, the CA must review the plan before staking begins. Upon its review, the staking plan must be signed by the project's responsible charge or designee. The CA must discuss the staking plan with the contractor throughout the project to ensure the contractor follows the plan.

#### Construction Start and End Dates

The CA shall maintain a record of the first day of project construction (start date) and the last day of project construction (end date) for all federally funded construction projects. Project payroll dates must be within the project start and end dates.

## **200.90 CONSTRUCTION**

### **Subcontracts**

In accordance with 23 C.F.R. § 635.116, the CA must not allow any contract work to be performed under a subcontract unless an arrangement has been authorized by the CA in writing. Before authorizing a subcontractor, the CA must ensure each subcontract has the required assurances, prompt pay and payment reporting provisions, and wage determinations of the prime contract.

All contractors/subcontractors must document their start date (the actual date work begins) and end date (the actual date work is complete) for all projects. The CA must document the contractors/subcontractors' start date and end date in the CA's inspector daily reports/project diaries.

### **Bulletin Board (Job Site Posters)**

Per 29 CFR 5.5(a)(1)(i) The CA must ensure that job site notices or posters are displayed at all times by the contractor and subcontractors at the site of the work in a prominent and accessible place where they can be easily seen by the workers. The CA must adhere to all federal and state requirements related to jobsite posters. It is the CA's responsibility to ensure all required jobsite posters are up to date.

### **Davis-Bacon Act**

Federal-aid contracts exceeding \$2,000 will comply with the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*). The CA must monitor and enforce the labor standard provisions of the Davis-Bacon and Related Acts.

The CA must conduct employee interviews of all employee classifications and contractors on the project to determine if the contractor is complying with the Davis-Bacon prevailing wages. In accordance with 29 C.F.R. § 5.6(a)(3), interviews will be a sufficient number to establish the degree of adequacy and accuracy of the records based on the CA's determination and nature and extent of any violations.

A fringe benefit plan is only required when a contractor reports contributions the contractor makes on behalf of the employee to bona fide fringe benefit plans as a way to meet the prevailing wage requirement. If a contractor's fringe benefit plan has already been approved by ADOT and/or the Department of Labor (self-funded plans are required to be approved by the Department of Labor), the CA will not need to re-approve the plan. In cases where the contractor does not have a valid approved plan, the CA will be required to approve the contractor's fringe benefit plan. ADOT will provide assistance for fringe benefit plan review, as needed.

### **Inspector Daily Reports (Inspector Daily Diary)**

The CA must ensure the inspectors' daily reports, progress charts, and other data are compiled in the field to facilitate job control and ensure that the project is completed safely and in reasonably close conformity with final PS&E, including supplemental agreements.

The CA must verify that discussions and decisions with the contractor are documented. The project documentation must be complete, concise, accurate, factual, and in sufficient detail to document the completion of project work. The CA must ensure that the reports/diaries are signed and dated by an

inspector and reviewed by the CA's Responsible Charge or designee. For construction management review, the CA must have complete documentation for work conducted, measured, and paid to include quantities. Additionally, the diaries/reports should contain details, such as, contractors/subcontractors on site, labor classifications worked and any other details to confirm that labor matches the work performed.

### DBE Commercially Useful Function (CUF) Inspection

The CA must use the ADOT Business Engagement Compliance Office (BECO) Commercially Useful Function (CUF) checklist to conduct a CUF Site Visit for all DBEs working on an FAHP project (RC and RN). This form is available to the CA upon request to BECO.

CUF Site Visit documentation must be uploaded into the LPA DBE System under the "Site Visit" tab.

### Supplemental Agreements

Supplemental agreements are used to make changes to construction contracts. They change work in the contract and adjust the contract cost accordingly. They create new pay items or increase, or decrease existing pay items or quantities. Supplemental agreements, specifically Change Orders, may also be used to change or waive specifications or add days to contract time, even when there is no effect on contract costs. Bid Items are never deleted; quantities must be adjusted to zero. When signed by the contractor and the CA's Responsible Charge, supplemental agreements are binding legal documents that supplement the original contract. Three different types of supplemental agreements may be used to amend construction contracts: Change Orders, Force Accounts and Letters of Agreement.

Change Orders use existing items and unit prices in the bidding schedule or establish new items and unit prices to pay for extra work. A Change Order is also used to extend contract time, adding additional days to complete a project.

- Major Change Orders as defined by ADOT:
  - Alters the scope of the work (Deviation from Project Assessment (PA) or Deviation from Design Concept Report (DCR))
  - Work is outside the limits of the environmental clearance or outside the project limits (need new R/W)
  - Major item of work (as defined in Section 101.02 and 104.02 of ADOT Standard Specifications for Road and Bridge Construction) increased by more than 125 percent or decreased below 75 percent of the original contract quantity
  - Changes the total contract value by 5% of the original contract
  - All Compensatory Time Extensions (Any extended overhead, indirect, or nondirect costs)
  - Cumulative extension of contract duration by either 20 working days or 30 calendar days.
- Major Change Orders as defined by FHWA:
  - On NHS Projects: FHWA approves major Change Order
  - On non-NHS projects the CA notifies the ADOT State Construction Engineer of major Change Order
  - Major changes of scope. (Deviation from Project Assessment (PA) or Design Concept Report (DCR))
  - Work outside the project limits or outside environmental clearance limits
  - An increase of over \$1 million to the project
  - An increase of 20% or more to the project

Force Accounts compensate the contractor for extra work based on the actual hours worked, equipment and materials used (time and materials). It is the most cumbersome and administratively complex Supplemental Agreement. It contains all the supporting documents found in a Change Order, plus additional record keeping requirements once the Force Account work begins.

Letter of Agreements change order work as per ADOT standard specification 109.04, can be used only on major projects and as long as it is part of the contract special provisions. A Letter of Agreement is not to be used to change, add or delete plans or a specification or to add contract time extensions.

For the complete detailed process, the *ADOT Supplemental Agreement Approval Process for Local Public Agency Projects* can be found on the ADOT LPA website.

The CA must send notifications and requests for concurrence prior to authorizing or executing a Supplemental Agreement and it shall not be held until finalization.

When ADOT notification/concurrence is required, the Supplemental Agreement, as per ADOT Standard Specification sub-section 109.04, with backup documentations (engineer cost analysis, contractor cost estimate, plans and special provisions changes (if any) and approval by the CA designated engineer) shall be sent to the ADOT State Construction Engineer or his/her designee for prior notification/concurrence, and not the ADOT Project Manager (PM). The ADOT State Construction Engineer will review and respond to notify/concur or ask for further clarification within four business days via email. Once the completed Supplemental Agreement is finalized, the CA shall send a copy of the finalized Supplemental Agreement to the ADOT PM and ADOT District for their records. This step should be done at the finalization of the Supplemental Agreement, not the end of the project.

When a time extension Change Order is compensatory, then the compensatory costs for contractor's field and office overhead needs to be concurred by the ADOT State Construction Engineer for the Construction Group with a copy sent to the appropriate ADOT District Engineer (i.e. Central District Engineer, South Central District Engineer).

The CA must ensure on NHS and non-NHS projects, that any work outside the project environmental clearance limits, has been reviewed and that prior concurrence is obtained from ADOT Environmental Planning before starting the work.

The CA can use any approved national standards that are approved and adopted by FHWA, such as ADOT, MAG, and PAG. However, if there are undefined rules/specifications, topics, issues and threshold limits that are not covered in the other approved standards, then ADOT approved specifications shall prevail.

For force accounts when the CA and contractor cannot reach an agreement, the CA must record the labor, equipment, rentals, direct charges, and materials for work identified in the supplemental agreement. 23 C.F.R. § 635.120(d) requires the CA to document the reason or reasons for using the force account. The CA must ensure that an inspector is present to document and verify the actual work being conducted and labor, materials, and equipment used to accomplish the work. The CA must ensure the daily diaries are comprehensive and the contractor compares cost account records daily and resolves any discrepancies.

The CA is required to follow the approval process outlined in the *ADOT Supplemental Agreement Approval Process for Local Public Agency Projects*.

### Prompt Payment and Payment Reporting

The CA must adhere to A.R.S. § 34-221, ensuring that all contractors and consultants make prompt payments to subcontractors and subconsultants within seven calendar days of receipt of payment. This complies with the requirements of A.R.S. § 34-221 and *ADOT Standard Specifications for Road and Bridge Construction*, Subsection 109.06(B).

The CA must monitor and enforce prompt payment requirements on all reportable contracts (e.g. any subcontract and subconsultant contract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor or consultant and any contract of any tier with a DBE material supplier). Failure to comply with these requirements may result in the deobligation of federal-aid funds from the FAHP project. The provisions of this subsection apply to all reportable contracts.

### Material Quality Assurance

In accordance with 23 C.F.R. Part 637, Subpart B, Quality Assurance Procedures for Construction, the CA must adhere to the Appendix A of *ADOT Materials Quality Assurance Program* or use its own ADOT-approved quality assurance program. The *ADOT Materials Quality Assurance Program* applies to NHS and non-NHS projects.

The CA must have an ADOT-approved Materials Quality Assurance Project Plan for inclusion in the federal authorization packet. The CA must clearly define the contractual relationship between the acceptance laboratory, sampling/testing personnel, contractor, and CA. The CA must submit to the ADOT PM and the ADOT Materials Group the following:

- Copy of the Materials Sample Checklist
- Materials Certification Log
- Bid Tabulation
- Contractual statement detailing the contractual relationship between the acceptance laboratory, independent assurance laboratory, field sampling/testing personnel, contractor, and the CA

The ADOT Materials Group Materials Quality Assurance Manager will evaluate and approve the project's quality control and acceptance procedures, personnel, and facilities.

The CA must ensure FAHP project inspections meet the ADOT-approved Materials Quality Assurance Project Plan and testing personnel have the required certifications and training to conduct assigned roles and duties. The CA must sample and test materials in compliance with the ADOT- approved CA specification and test method.

The CA must verify and accept materials by Certificate of Compliance or Certificate of Analysis to ensure materials meet the requirements of *ADOT Standard Specifications for Road and Bridge Construction*, Subsection 106.05, as revised by *Stored Specification 106CERT*.

The CA shall maintain all test reports, certificates and test summaries for a minimum of five years after the project has been completed and properly closed with FHWA. All records shall be available for review by ADOT at any time while the project is in construction or during the five year retention period.

### Build America Buy America

In accordance with Build America, Buy America (BABA) Act specified in Pub. L. No. 117-58 Title IX, Subtitle A, Part 1, Sections 70901 and 70911-70918 (Pub. L. No. 117-58 §§ 70901; §§ 70911-70918) of the Infrastructure Investment and Job Act (IIJA), 2 C.F.R. § 184, 2 C.F.R. § 200, Office of Management and Budget (OMB) Memorandum M-24-02 as well as the added requirements of ADOT Standard Specifications for Road and Bridge Construction, as modified by Stored Specification 106CMAT, the CA must ensure for all FAHP projects that all iron, steel, manufactured products, and construction materials (as defined above) incorporated into a project are BABA compliant by being produced in the United States.

### Buy America

In accordance with the current "Buy America" requirements of 23 C.F.R. § 635.410 as well as added requirements of ADOT Standard Specifications for Road and Bridge Construction, as modified by *Stored Specification 106DMAT*, the CA must ensure that all construction and manufactured products permanently incorporated into a FAHP project will be certified as domestically produced, including application of coating, and have proper certification statements from the manufacturer. Buy America certifications will accompany each shipment of construction material that is otherwise not excluded or exempt, be submitted in compliance with the CA Buy America provision that meets ADOT requirements, and be documented in the daily diaries or field reports.

The Buy America provision in 23 C.F.R. § 635.410 applies to the entire FAHP project as defined by the project environmental clearance limits including utility relocations within the project limits even if entirely separately funded.. Failure to comply with 23 C.F.R. § 635.410 will jeopardize federal funding for the entire project. Buy America certification is not the same as Buy American certification. Buy American certified materials is unacceptable on FAHP projects.

### Final Certification of Materials

In accordance with the *ADOT Materials Quality Assurance Program*, the CA must submit the summary of testing materials of the entire project, materials sample checklist, materials certificate log, and materials certification/exception report electronically to the ADOT Materials Group, Materials Quality Assurance Manager, at project completion. The ADOT Materials Group, Materials Quality Assurance Manager will review these items and, if necessary, notify the CA of any deficiencies that require corrective action within 30 calendar days.

Construction materials that do not meet specification requirements that were incorporated into the project must be summarized in the materials certification/exception report with a detailed explanation listing penalties or justification for acceptance. The CA must ensure a professional engineer registered in the State of Arizona signs and seals the materials certification/exception report.

## **200.100 FINAL ACCEPTANCE AND PROJECT CLOSEOUT**

### **Final Walk-Through and Inspection**

When project construction is near completion, the CA must provide the ADOT PM written notice 10 calendar days before conducting the final walk-through and inspection. ADOT has the right to attend the final walk-through and inspection. The CA must ensure that any issues identified during the inspection are resolved before the CA completes final acceptance.

### **Final Acceptance Request**

Before Final Acceptance, the CA must ensure completion of the CA's punch list, contractor's affidavit of final payment, consent of surety for final payment, bonding lien release waiver, subcontractor's waiver, and release on final payment. If a contractor disputes final payment, the CA must provide the ADOT PM and ADOT LPA Section written notice immediately and include an estimated timeframe for resolution.

Upon Final Acceptance of the project, the CA must ensure that the contractor files a Notice of Termination (NOT) with ADEQ for projects with a NOI. Upon final stabilization of the project, (as defined in the CGP), the CA must file a NOT with ADEQ for projects with a NOI.

The CA must submit final acceptance documentation to the ADOT PM within 90 Calendar days after construction is completed (i.e. completion of the CA's punch list, affidavit of final payment, lien release waiver, final acceptance to the contractor, NOT, all contract work, etc...).

Once the project is completed and ready for closeout, the CA's Closeout Request Packet is to include the following:

- Completed Final Voucher - Closeout Request Cover Sheet
- CA's Final Acceptance Letter to the contractor with applicable specification
- Completion Confirmation Letter attesting to project completion (addressed to ADOT)
- Statement of final reconciliation
- Statement of verified and closed certified payrolls
- Contractor's affidavit about the settlement of claims
- Copy of Final Pay Request with no remaining obligation
- Total Project Cost Summary Report by scope of work including non-federal reimbursable expenses
- Certificate of Final Payment to DBE firms
- DBE Goal Assessment Notice
- Record Drawing Documentation Form
- Procurement only: List of items installed and locations

### **Final Voucher - Closeout Request Cover Sheet**

The Closeout Request Cover Sheet provided by ADOT is to be completed by the CA to include the contact information, project information and project completion confirmations. This will be submitted to the ADOT PM as part of the Closeout Request Packet.

### Final Acceptance Letter (addressed to Contractor)

The CA's Final Acceptance Letter (addressed to the Contractor) is to include:

- Federal Project Number and ADOT Project Number
- Project Location and Description/Scope
- Contractor's Name
- Work Completion Date
- Final Inspection Date
- Final Acceptance Date
- Signature
- Document is to include reference to the specifications used that outlines the Acceptance Process (e.g., Section 105.20 of the ADOT Standard Specifications for Road and Bridge Construction)

If a project doesn't have any construction, a final acceptance addressed to ADOT is sufficient and no completion confirmation letter is needed.

### Completion Confirmation Letter (addressed to ADOT)

The CA's Completion Confirmation Letter to ADOT will be on the CA letterhead. The Completion Confirmation Letter includes:

- Federal Project Number and ADOT Project Number
- Project Location and Description/Scope
- A statement that the project is complete
- A statement that the CA accepts and will maintain the project or there is an IGA showing another agency's acceptance and maintenance responsibility
- Confirmation of receipt of final payment or final pay request
- A statement that the results of the tests used in the Materials Quality Assurance Project Plan indicate materials incorporated in the construction work and construction operations controlled by sampling and testing were in conformity with the approved contract
- A list of documents included

### Total Project Cost Summary Report

The Total Project Cost Summary Report lists the Federal reimbursable expenses, local match, ineligible and non-federal reimbursable expenses by scope of work (e.g. Design, ROW, Construction) to ensure all project cost will be reported to FHWA as per 2 C.F.R § 200.402.

A project will not be accepted until the CA verifies that it is acceptable, including certifications. All physical work shall be completed before the final acceptance letter date.

The CA must submit the final payment request and final acceptance letter to the ADOT PM and cc the ADOT LPA Process Manager and/or Oversight and Monitoring Manager. When the ADOT PM has verified that the CA has received final reimbursement, ADOT's internal project closeout process begins. Upon FHWA approval, the project will be closed and no additional federal reimbursement of project costs can be made.

### Record Drawings (formerly As-built Plans)

The CA must ensure redlines are drawn accurately and to scale with necessary explanation and references noted. Redlines include all changes from the as-bid documents, permit work, subcontract work, supplemental agreements, addendums, field adjustments, requests for information, and discovered, relocated, or abandoned irrigation systems and utilities.

The CA should submit a Record Drawing Form to their ADOT PM. The form can be found under “Additional Resources” located on the ADOT Project Resource Office site. The form will then be placed on the ADOT ROAD portal site for future reference. Do not submit complete record drawings to your ADOT PM. Record drawing should be archived with the CA.

### Maintenance

Post-construction operation and maintenance activities, including repairs such as filling potholes, do not qualify for federal funding, with the exception of preventive maintenance costs allowed under 23 U.S.C. § 116(d). The CA must maintain FAHP projects and commit financial resources and adequate personnel for on-going maintenance operations in compliance with 23 C.F.R. § 633.208. These maintenance activities cannot be transferred to another party except through an IGA or annexation.

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## **300.00 CIVIL RIGHTS**

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### **300.10 AMERICANS WITH DISABILITIES ACT**

Section 504 of the Rehabilitation Act of 1973 (49 C.F.R. Part 27) prohibits discrimination based on disability in programs, activities, and services that receive federal financial assistance. Title II of the American with Disabilities Act of 1990 (28 C.F.R. Part 35) prohibits discrimination based on disability in state and local government services regardless of whether the public entity receives federal financial assistance.

In accordance with 49 C.F.R Part 27 and 28 C.F.R. Part 35, a CA that receives federal financial assistance from FHWA must comply with the following:

- Notify the public of ADA obligations
- Designate an ADA Coordinator
- Adopt and implement complaint/grievance procedure for ADA complaints received by the CA
- Conduct a self-evaluation of programs and services for accessibility
- Develop and implement a transition plan to make structural modifications to facilities in order to achieve program accessibility. For FHWA recipients and public entities with responsibilities over roads, highways and pedestrian facilities, the transition plan must include a curb ramp installation schedule
- Provide assurances to ADOT and FHWA when receiving federal financial assistance that the CA does not discriminate based on disability in any of its programs, services, and activities
- Conduct programs, services, and activities in accessible facilities or provide alternative means of accessibility
- Make new and altered buildings and facilities accessible in accordance with accessibility guidelines
- Provide effective communications using auxiliary aids (sign language interpreters, large print, or Braille text) so that individuals with hearing, visual, sensory, or cognitive impairments have access to programs, services, and activities

The CA must submit an ADA Action Plan report to the ADOT External Civil Rights Office (ECR) for review and acceptance, by January 30th. The CA's annual ADA Action Plan must include:

- Identify staff and/or consultants to review each facility for compliance. The ADA/504 Coordinator should be the lead staff member in the development and implementation of the transition plan so that efforts to achieve and maintain accessibility can be effectively coordinated throughout the entity and so that there is balance in the transition plan between entity programs and services, buildings and facilities, as well as pedestrian right of way facilities.
- Establish the public involvement process by which the disability community and others will participate.
- Identify facilities used by each of the recipients/public entities programs and services. Which includes an inventory and/or maps of streets, sidewalk, intersections, that would need to be made accessible.
- Map out the usage.
- Survey tool or list of standards.
- Incorporate capital improvement plan;
- Identify funding and timelines.

### **300.20 TITLE VI NONDISCRIMINATION**

In accordance with Title VI of the Civil Rights Act of 1964 (49 C.F.R. Part 21) and related statutes and regulations, the CA must comply and further ensure that:

*“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration.*

In accordance with 23 C.F.R. Part 200, the CA must submit a Title VI program plan to the ADOT ECR for review and acceptance, and an Annual Goals and Accomplishment report by August 1. The Title VI Implementation program plan must include:

- Signed Policy Statement
- Signed Title VI Assurances
- Organization and Staffing/Designated Title VI Program Coordinator
- Program Review Procedures
- Special Emphasis Program Areas
- Sub-Recipient Review Procedures
- Data Collection/Reporting/Analysis
- Title VI Training
- Complaint Procedures
- Dissemination of Title VI Information/Public Participation Plan
- Limited English Proficiency
- Environmental Justice
- Compliance and Enforcement Procedure
- Review of CA Directives

In accordance with *USDOT 1050.2A*, the CA must insert the following notification in all solicitations for bids, requests for proposals for work, or material subject to the Acts and regulations made in connection with all FAHP and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*“The CA, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color national origin in consideration for an award.”*

In accordance with *USDOT Order 1050.2A*, the CA must insert the clauses of Appendix A and E of the Title VI Assurances in every contract, subcontract, or agreement. When applicable, the CA must insert Appendix B, C, or D of the Title VI Assurances in contracts and subcontracts.

The CA must forward Title VI complaints filed against the CA on a federal-aid program or project to ADOT ECR for investigation.

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## **400.00      EMERGENCY RELIEF**

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### **400.10 Emergency Relief**

The Federal Highway Administration (FHWA) Emergency Relief (ER) program provides funds for the repair or reconstruction of Federal-aid highways and roads that suffered serious damage from natural disasters or catastrophic failures from external causes.

For a disaster event to be eligible for ER, funding must have caused a total of \$700,000 in eligible damage to federal-aid roadway(s) by one or a combination from several agencies that are affected by a particular event. The President and/or Governor must issue an official declaration of emergency for reimbursement.

There are two categories of emergency relief, Emergency Repairs and Permanent Restoration.

- Emergency Repairs are undertaken during or immediately after a disaster to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities.
- Permanent Restoration refers to those repairs undertaken to restore the highway to its pre-disaster condition and generally not with the primary purpose to restore essential traffic, minimize the extent of damage, or protect the remaining facilities.

ADOT Systems Management Group will serve as the main point of contact for ER fund requests. All sites must be reported within two years of the disaster event, although sites should be reported immediately to ensure their inclusion in the ER Program. In addition, all ER funded projects are expected to proceed to the construction phase by the end of the second federal fiscal year following the end of the fiscal year in which the disaster event occurred.

Additional ER information can be found on the ADOT Local Public Agency website.

**DEFINITIONS AND TERMS****Acquisition**

The process required to obtain an interest in, and possession of, real property.

**ADOT project number**

Project identification number assigned by ADOT. A project must be included in the Statewide Transportation Improvement Program and scoped in order to receive an ADOT project number. ADOT provides federal-aid and ADOT project numbers for all federally funded design, right-of-way, utility, and construction projects.

**Authorization**

Approval by FHWA for a given project to move forward. Authorization is required at several phases of the project development process (preliminary engineering, right-of-way, and construction). Funding authorization must be secured before work begins; work that is completed before the federal-aid authorization effective date will not be reimbursed.

**Bid advertisement**

Advertisement of a project in order to receive bids from consultants and contractors to provide advice or services for the project. Federal-aid projects must be advertised either by ADOT or by an authorized LPA.

**Bid package**

All plans, specifications, estimates, construction documents, bid forms, and bid bonds relevant to a construction project prepared for advertising and soliciting contractor bids.

**Categorical Exclusion (CE)**

A category of action that meets the definition contained in 40 Code of Federal Regulations (CFR) 1508.1(d) and 23 CFR 771.117 and, based on past experience with similar actions, that does not involve significant individual or cumulative environmental impacts. These actions do not induce significant impacts on 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; and do not otherwise, either individually or cumulatively, have any significant environmental impacts.

### **Certification Acceptance Agreement (CA Agreement)**

Legally binding document that delegates approval authority to an LPA for specified areas of authority; this agreement is required for Certification Acceptance projects.

### **Certified Acceptance Agency (CA)**

An LPA that has been approved under the Certification Acceptance Program to independently manage most aspects of the project development process, with ADOT oversight. A certified LPA retains a significant degree of approval authority at the local level when developing federally funded transportation projects.

### **Class of Action**

There are three classes of actions which prescribe the level of documentation required under NEPA: (a) Class I (EIS). Actions that significantly affect the environment require an EIS (40 CFR Part 1502). (b) Class II (CE). Actions that do not individually or cumulatively have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in 23 CFR §§ 771.117(c) and (d) for FHWA actions. When appropriately documented, additional projects may also qualify as CEs pursuant to 23 CFR § 771.117(d). (c) Class III (EA). Actions in which the significance of the environmental impact is not clearly established. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

### **Commercially Useful Function (CUF)**

Performed when a Disadvantaged Business Enterprise is responsible for the execution of a distinct element of the work of a contract by actually managing, performing, and supervising the work involved (49 CFR 26.55).

### **Construction administration**

Management of construction activities. Typical construction-administration responsibilities include approval of construction staking and surveying, review of shop drawings and contractor submittals, materials testing and certifications, daily reviews and inspections of construction activities, and ensuring that the workmanship and materials are in accordance with the approved project specifications and estimates and other documents incorporated by reference in the project specifications and estimates package. An LPA is also responsible for ensuring that independent quality-assurance activities related to workmanship and materials are completed as part of construction administration.

### **Davis-Bacon Act**

A federal law requiring federal contractors to pay prevailing wages on public works projects. All federal government construction contracts, and most contracts for federally assisted construction over \$2,000, must include provisions for paying on-site workers no less than the locally prevailing wages and benefits paid on similar projects.

## **Deobligation**

Downward adjustment of the obligations for a given project. Federal funds may be deobligated if the obligated amount exceeds the current cost of the project or if the project becomes inactive.

## **Design Concept Report (DCR)**

Scoping document for complex projects. Design concept reports include a completed project schedule, preliminary project design plans (to Stage I), details and cross sections, and a detailed cost estimate based on the format provided at the predesign conference.

## **Design exceptions**

An exception to established design standards or criteria that is required when any of the 13 Controlling Criteria (design speed, lane width, shoulder width, bridge width, horizontal alignment, superelevation, vertical alignment, grade, stopping sight distance, cross slope, vertical clearance, lateral offset to obstruction, and structural capacity) are not met.

## **Design stages**

The standardized design segments for ADOT's design process: 15% design (Stage I), 30% design (Stage II), 60% design (Stage III), 95% design (Stage IV), and 100% design (Stage V, also known as plans, specifications, and estimates).

## **Design criteria or standards**

Specifications of dimensions, materials, procedures, etc., that directly affect the project design. Design criteria ensure that project designs provide safe and fully functional transportation-related facilities. All applicable federal, state, and local design criteria must be followed for LPA projects.

## **Early Acquisition**

Early acquisition means acquisition of real property interests by an acquiring agency prior to completion of the environmental review process for a proposed transportation project, as provided under 23 CFR 710.501 and 23 U.S.C. 108.

## **Environmental Assessment (EA)**

Document prepared pursuant to the National Environmental Policy Act, 40 Code of Federal Regulations (CFR) 1500–1508 and 23 CFR 771.119, in order to assist in determining the significance of impacts of a proposed transportation project. An EA describes the positive and negative environmental effects of a proposed action and should be prepared for each proposed action that does not meet the criteria for a categorical exclusion and that does not clearly require the preparation of an environmental impact statement. An EA may satisfy National Environmental Policy Act compliance or may only assist in determining if further analysis is needed in the form of an environmental impact statement. If it is found that significant impacts will result, the preparation of an environmental impact statement should commence immediately.

## **Environmental Commitments**

Action taken; (a) to avoid an impact altogether by not taking a certain action or parts of an action; (b) to minimize impacts by limiting the degree or magnitude of the action and its implementation; (c) to rectify an impact by repairing, rehabilitating, or restoring the affected environment; (d) to reduce or eliminate an impact over time by preservation and maintenance operations during the life of the action; or (e) to compensate for an impact by replacing or providing substitute resources or environments [see 40 CFR 1508.1(s)].

## **Environmental Impact Statement (EIS)**

Document prepared pursuant to the National Environmental Policy Act, 40 Code of Federal Regulations (CFR) 1500–1508 and 23 CFR 771.123 and 771.125, for a proposed project that is likely to cause significant impacts on the environment. An EIS is a full-disclosure document that details the process through which a transportation project was developed, describes a range of reasonable alternatives, analyzes the potential positive and negative impacts resulting from the proposed action and the alternatives, and demonstrates compliance with other applicable environmental laws and executive orders. An EIS is a decision-making tool.

## **Federal-Aid Highway Program (FAHP)**

An umbrella term, not defined in law, which in general refers to most of the federal programs providing highway funds to the states. When used in a budgetary context, Federal-Aid Highway Program specifically refers to highway programs financed by contract authority out of the Highway Account of the Highway Trust Fund, plus any Highway Trust Fund supplemental appropriations for the Emergency Relief Program. Such authorizations are contained in Titles I and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users and in 23 United States Code 125, as well as in acts providing supplemental appropriations.

## **FHWA and ADOT Stewardship and Oversight Agreement for Arizona**

An agreement document that outlines the roles and responsibilities of both FHWA (Arizona Division) and ADOT in the oversight and administration of the Federal-Aid Highway Program in Arizona. Through the agreement, FHWA delegates specific oversight roles and approval responsibilities to ADOT for certain project-level actions and authorities (i.e., design, plans, specifications, estimates, contract awards, and inspections of projects), as defined in Title 23 USC 106.

## **Intergovernmental Agreement (IGA)**

Legally binding documents that define the obligations of all parties involved in a project; required for ADOT-administered and self-administered LPA projects. Intergovernmental agreements and joint project agreements carry the same statutory requirements, but they generally differ in that intergovernmental agreements are agreements between public entities and joint project agreements are agreements between ADOT and the private sector.

## **Local Public Agency (LPA)**

Any city, town, county, or tribal government.

## **Major Change Order**

As defined by ADOT:

- Alters the scope of the work. (Deviation from Project Assessment (PA) or Deviation from Design Concept Report (DCR))
- Work is outside the limits of the environmental clearance or outside the project limits (need new R/W)
- Major item of work (as defined in Section 101.02 and 104.02 of ADOT's Standard Specifications for Road and Bridge Construction) increased by more than 125 percent or decreased below 75 percent of the original contract quantity
- Changes the total contract value by 5% of the original contract
- All Compensatory Time Extensions (Any extended overhead, indirect, or nondirect costs)
- Cumulative extension of contract duration by either 20 working days or 30 calendar days.

As defined by FHWA:

- On NHS Projects: FHWA approves major CO
- On non-NHS projects the CA notifies the ADOT State Construction Engineer of major CO
- Major changes of scope. (Deviation from Project Assessment (PA) or Design Concept Report (DCR))
- Work outside the project limits or outside environmental clearance limits
- An increase of over \$1 million to the project
- An increase of 20% or more to the project

## **Metropolitan Planning Organization (MPO)**

A federally funded organization consisting of representatives from local governments and governmental transportation authorities that organizes and directs transportation planning processes for all urbanized areas. MPOs are required for areas with populations of 50,000 or more. MPOs are also responsible for the development of regional transportation plans and transportation improvement programs that conform to the State Long-Range Transportation Plan and Statewide Transportation Improvement Program processes.

## **Notice of Intent (NOI)**

The application to operate under a general stormwater permit. On non-tribal lands in Arizona, NOIs must be submitted electronically to the Arizona Department of Environmental Quality.

## **Notice of Termination (NOT)**

Notice that the LPA is no longer authorized to discharge stormwater associated with construction activity under the Arizona Pollutant Discharge Elimination System program for the project. A Notice of Termination must be submitted by all operators as stipulated in the Construction General Permit.

## **Notice to proceed**

Notice from ADOT to the LPA stating the date work can begin on a project.

**Obligation**

A legal commitment from FHWA to reimburse the eligible costs of the authorized federal portion of the project.

**On the Job Training (OJT) program**

An apprenticeship program that is managed by ADOT Civil Rights Office for the purpose of training and upgrading minorities and women toward journey worker status.

**Prior rights**

The identification that utilities (public and private) were in place before establishment of a public roadway. If the roadway is in place before the establishment of the utilities, then the utilities are there “by permit” and must be relocated at the utility companies’ expense. If the utility has “prior rights,” then ADOT is responsible for utility relocations.

**Procurement**

Purchasing goods or services using federal funds; procurement can take place only after the project is in the State Transportation Improvement Plan and has received federal funding authorization. For ADOT-administered and self-administered projects, an intergovernmental agreement must also be in place.

**Programming**

Programming occurs on the project level and involves the development of short-term, fiscally constrained, capital improvement programs that commit funds to specific projects. During programming, ADOT works to carry out federal transportation policy and administer federal funding requirements.

**Project Assessment (PA)**

A scoping document that ensures project components have been sufficiently defined, a reliable cost estimate has been established, and a schedule has been developed that meets the LPA’s desired construction start date.

**Project closeout**

Process in which ADOT conducts a final review of a project to ensure the LPA completed the project in accordance with the approved contract documents and federal-aid requirements.

**Public Interest Finding (PIF)**

As used in ADOT SUP 01-1, based on a request from a contracting agency (e.g., LPAs, ADOT), that it is in the public interest to allow the contracting agency to require the use of a specific material or product even though other equally acceptable materials or products are available.

### **Quality Assurance (QA)**

The establishment of quality standards and a system of observation/sampling techniques to confirm that those standards are met.

### **Quality control (QC)**

The active implementation of control measures to ensure quality standards are met.

### **Record drawings (formerly as-built plans)**

The final set of ADOT construction plans showing improvements as ultimately constructed. These plans are generated upon completion of project construction; they often differ from the plans generated at the time the contract for the project is awarded due to changes made “in the field” during the construction and landscaping phases of a project.

### **Responsible charge**

The full-time LPA staff member who serves as the agency contact for the project, ensures project compliance with applicable regulations, commits resources for project activities, closely monitors the project progress, participates in decisions that may modify the project, and maintains project records.

### **Right-of-Way (ROW) plan**

A plan associated with a transportation project that indicates all properties required to construct and maintain the project, including temporary construction easements. To develop a ROW plan, the LPA must assess ROW ownership and title data and determine the amount of lead time and certification required. If new ROW is needed, the ROW plan must also contain data essential for appraisal and negotiation activities and for preparation of legal descriptions of the properties to be acquired.

### **Scoping Letter (SL)**

A scoping letter is a document that describes the scope, schedule and cost of a project. This is the simplest form of project scoping documentation.

### **Staking Plan**

Construction staking consists of placing stakes on the ground where proposed features are to be built. The proposed feature location is taken from the construction plans.

### **Statewide Transportation Improvement Program (STIP)**

A capital improvement program for statewide transportation. This program is a 4-year project-specific, fiscally constrained capital improvement program made up of all projects contained in current regional Transportation Improvement Programs and the Five-Year Transportation Facilities Construction Program. The inclusion of projects in the Statewide Transportation Improvement Program is necessary for obligating federal-aid funds.

**Stormwater Pollution Prevention Plan (SWPPP)**

A SWPPP is a site-specific, written document that identifies potential sources of stormwater pollution at the construction site. A SWPPP also describes practices to reduce pollutants in stormwater discharges from the construction site as well as identifies procedures the operator will implement to comply with the terms and conditions of a construction general permit.

**Subrecipient**

Receiver of federal assistance indirectly through a recipient or another subrecipient. Subrecipients are subject to Title VI/nondiscrimination and compliance obligations.

**Title VI**

The section of the 1964 Civil Rights Act intended to prevent individuals from being excluded in, denied the benefit of, or subjected to discrimination on the basis of race, color, national origin, age, sex, and disability.

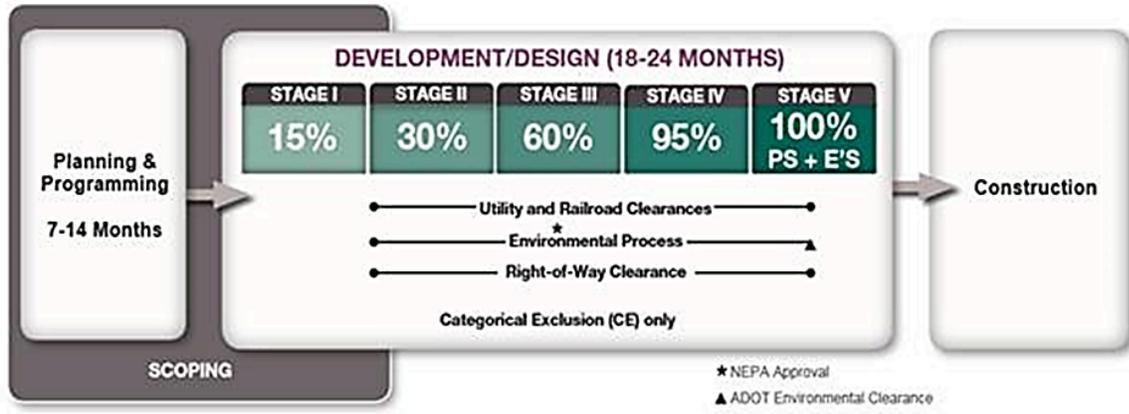
**Transportation Improvement Program (TIP)**

A regional collection of LPA projects programmed with federal-aid funds as identified in Title 23 and Title 49 of the Code of Federal Regulations. Projects contained in a TIP are developed in cooperation with their respective metropolitan planning organization or council of governments, technical advisory committees, and executive board or administration committees in consultation with the ADOT Multimodal Planning Division.

**Uniform Relocation Assistance and Real Property Acquisition Policies Act for Federal and Federally Assisted Programs (Uniform Act)**

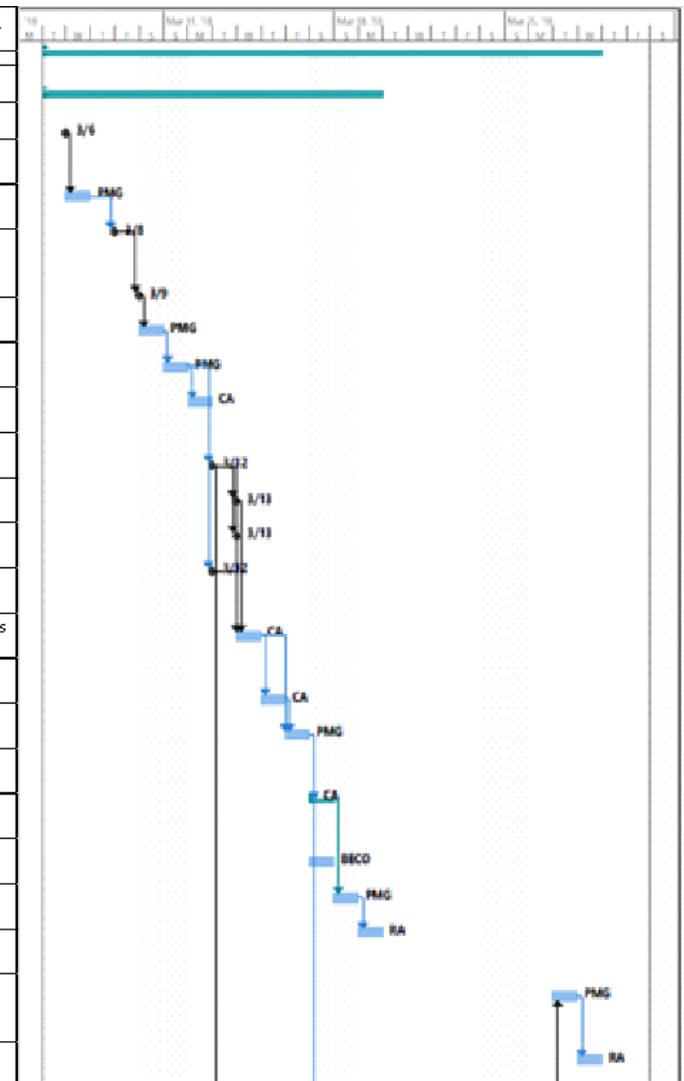
The primary law for acquisition and relocation activities on federal or federally assisted projects and programs (42 United States Code 61). The Uniform Act provides assistance and protection to people affected by federally funded projects. The law protects individuals and groups whose real property is acquired or who are displaced by projects that receive federal funds.

PROJECT DEVELOPMENT PROCESS ILLUSTRATED – FIGURE 1



**DESIGN PHASE CLOSEOUT PROCESS ILLUSTRATED – FIGURE 2**

ID	Task Name	Precedes	Input	Output	Initiator	Performed by	Owner
1	<b>Project Closeout Framework - Local Design</b>						
2	<b>D - Design - Federal Aid</b>						
3	Initiation Request from Local Agencies to LPA		Initiation Request	Initiation Request	CA	CA	CA
4	Project Setup and Initiation	3	Initiation Request	Initiation Letter to Local	PMG	PMG	PMG
5	Receive Payment for Project Development Administration (PDA)	4	Invoice to Local Agency	Paid Invoice	PMG	AR	PMG
6	Scoping Document from Local Agencies	5	Scoping Document	Scoping Document	CA	CA	CA
7	Concurrence of Scoping	6	Scoping Document	Concurrence Email	PMG	PMG	PMG
8	Authorization of Design from FHWA	7	Request for Authorization	Signed Authorization	PMG	FHWA	PMG
9	Contracting for Design	8	scoping Document, Signed Authorization for	Executed Contract for Design	CA	CA	CA
10	NEPA/Env. Clearance	8	Scoping Document	NEPA Approval, Environmental Clearances	PMG	EP	EP
11	Right of Way Clearance	10	NEPA Approval, Environmental Clearances	ROW Clearance	CA	CA	CA
12	Utility Clearance	10	NEPA Approval, Environmental Clearances	Utility Clearance	CA	CA	CA
13	Approval of Materials Checklist/Log	8		Approved Materials Checklist	CA	Materials Group	Materials Group
14	Final PS&E (Stage 5)	10,13	Scoping Document, NEPA Approval, Environmental Clearances	Plans, Specs & Estimate (PS&E)	CA	CA	CA
15	DBE Goal Assessment for Construction	14	DBE Goal Request	DBE Goal	CA	BECD	CA
16	Authorization of Construction from FHWA	14,15	Authorization Package	Signed Construction Funding Authorization	PMG	FHWA	PMG
17	Local Agency Advertise/Award	16	Signed Construction Funding	Construction Contract	CA	CA	CA
18	BECD Approval of DBE Packet		DBE Verification Package	Approved DBE Package	CA/PMG	BECD	BECD
19	Adjust the Construction Funding based on Award	17	Award Recap	\$\$\$\$	CA/PMG	RA	PMG
20	Close and Release the OSD Phase	19	Award Recap	\$\$\$\$	PMG	RA	RA
21	Additional Invoice for Project Development Administration (PDA)	48	Closeout Package	Invoice for PDA	PMG	AR	PMG
22	Complete the 01D Phase	21				RA	RA



**ADOT Certification Acceptance Manual Revision History**

Revision Date	Manual Reviewer	CA Review	Comments
November 2017	ADOT LPA Section ADOT Technical Groups	Yes	
April 2019	ADOT LPA Section ADOT Technical Groups	Yes	<ul style="list-style-type: none"> <li>● Creation of Online Manual Update Form</li> <li>● Format Change</li> </ul>
May 2019	ADOT LPA Section	No	<ul style="list-style-type: none"> <li>● FHWA Request</li> <li>● Construction Administration - Construction Financial</li> <li>● Award Recapitulations extended language</li> </ul>
June 2019	ADOT Environmental Planning and ADOT LPA Section	No	<ul style="list-style-type: none"> <li>● Content updates to the Environmental section such as updated U.S. codes, NEPA assignment information and C.F.R. clarification.</li> <li>● In the PS&amp;E section, added clarifying text to NEPA approval.</li> <li>● Revised language in the Supplemental Agreements section.</li> <li>● Added Class of Action and Scoping Letter to the Glossary.</li> </ul>
May 2024	ADOT LPA Section ADOT Technical Groups	Yes	<ul style="list-style-type: none"> <li>● Revision of the entire manual due to the 2024 certification cycle</li> </ul>
January 2026	LPA Section	No	<ul style="list-style-type: none"> <li>● Revision of specific sections of the manual, including: <ul style="list-style-type: none"> <li>○ Acronyms</li> <li>○ Duration times changed to calendar days</li> <li>○ Deferred Projects</li> <li>○ Designated Personnel</li> <li>○ Design Phases</li> <li>○ Design Reimbursement</li> <li>○ Plans, Specifications, and Estimates</li> <li>○ Disadvantaged Business Enterprise</li> <li>○ Prompt Payment</li> <li>○ Communication Protocol</li> <li>○ NEPA Review Process</li> <li>○ Contract Provisions</li> <li>○ Preconstruction Meetings</li> <li>○ Supplemental Agreements</li> <li>○ Civil Rights</li> </ul> </li> </ul>