
200.00 PROJECT DEVELOPMENT PROCESS

200.80 CONSTRUCTION ADMINISTRATION

Authorization

The CA Agency 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. 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 Agency. Following the contract award, the CA Agency must submit an electronic copy of the executed construction contract to the ADOT PM for ADOT's and FHWA's records. If the CA Agency does not receive the copy, the CA Agency must request it from the ADOT PM for their records.

The CA Agency must have a copy of the authorization form, FMISD05A (for PE authorizations) and FMISD06A (for construction authorization), in their files before proceeding with work and incurring project costs. The ADOT PM will inform the local agency when the project has been authorized.

Construction Financial

The CA Agency 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 days, as required by 23 CFR 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 days.

Project costs that exceed the amount of federal aid authorized for a project are the sole responsibility of the CA Agency. The CA Agency may coordinate with the MPO to request additional funding, if available. When the applicable TIP reflects the additional funding, the CA Agency 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 Agency must make the initial request for reimbursement within six months 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 monthly to the ADOT PM.

The CA Agency 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 Agency 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 Agency 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 Agency 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 Agency must provide the ADOT PM and ADOT LPA Section written notice immediately after the bid opening. The CA Agency 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 Agency 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 Agency procurement procedures.

When using federal-aid funds to purchase materials and/or equipment, the CA Agency must follow their own ADOT-approved competitive procurement procedures, which have been approved by ADOT, as agreed to in the Certification Acceptance agreement between the State the CA Agency. Failure to follow their own ADOT-approved competitive procurement procedures, which have been approved by ADOT, 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.

Construction Advertisement

The CA Agency 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 Agency of FHWA's authorization, the CA Agency may begin work on a FAHP project and advertise for bids. The CA Agency must send a copy of the advertisement to the ADOT

PM before advertising and notify the ADOT PM when advertised. The CA Agency 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 Agency 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 Agency issuing a request for proposal, qualifications, and/or bids within 90 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 after the advertisement concludes, the CA Agency must begin construction.

If the CA Agency believes it is unable to meet the schedule, the CA Agency 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 Agency has not begun the construction within six months of the advertisement date, the project may become inactive and subject to deobligation per the ADOT Inactive Projects Policy.

Contract Provisions

Federal laws and regulations require that specific contract provisions be included in federal-aid construction contracts. The CA Agency 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
- Cargo Preference Act Language
- 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
 - DBE Intended Participation Affidavit Individual Form (Form 3105C)
 - DBE Intended Participation Affidavit Summary Form (Form 3106C)
 - On Line 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 Commitment

- 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 2009-09
 - Federal Immigration and Nationality Act Language
- FHWA 1273 (May 1, 2012)
- Job Site Posters Required List
 - <http://www.fhwa.dot.gov/programadmin/contracts/poster.cfm>
- 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 & E
- Wage Determination Decision - Project Specific

The CA Agency 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*.

Addenda

An addendum may affect the obligation of federal-aid funds. Issuing an addendum during advertisement could have a profound impact on bid prices and the basis for bid comparisons. For any addendum, the CA Agency must notify the ADOT PM and provide justification before its release to the prospective bidders. If several changes are made through addendum, the CA Agency 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 Agency.

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 Agency 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 Agency must have an ADOT-approved bid analysis process to justify the contract award and rejection of bids. The CA Agency must notify the ADOT PM of all bid awards and bid rejections before the CA Agency takes action. The CA Agency 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 Agency must support the decision to award or reject a bid with written justification. The CA Agency 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 Agency 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 Agency believes that the apparent low bidder should be rejected, the CA Agency 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 Agency 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 Agency must award the contract competitively to the responsible contractor that submits the lowest responsive bid. Following the contract award, the CA Agency 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

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

The CA Agency must notify the ADOT PM of upcoming preconstruction meetings. The CA Agency 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 of operations
- 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 for materials
- Buy America contract provisions

The CA Agency will provide a written copy of the preconstruction meeting notes to the ADOT PM.

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

In accordance with 23 C.F.R. §§ 630.1010 and 630.1012 (b) and (c), the CA Agency must include in the PS&E either a Transportation Management Plan (TMP) or provisions for contractors to develop a TMP. The CA Agency 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 Agency determines to have less than significant work zone impacts, the TMP may consist only of a TTC plan. The CA Agency must consider TO and PI issues for all projects.

The CA Agency must review the contractor's safety plan. The safety plan is specific to the project and specifies the procedures the contractor will implement to satisfy Occupational Safety and Health Administration (OSHA) and state occupational safety guidelines for workers and the public during construction.

For projects with one or more acres of disturbed area (and do not qualify for the maintenance exemption or a waiver), 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 Waters of the United States (Construction General Permit – CGP). A SWPPP must be developed and implemented under the CGP.

If the contractor needs a staking plan, the CA Agency must review the plan before staking begins. The CA Agency must discuss the staking plan with the contractor throughout the project to ensure the contractor follows the plan.

Notice of Project Start and End Dates

The CA agency should 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. These dates should coincide with the payroll dates.