

# TRIBAL/LOCAL PUBLIC AGENCY

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## HANDBOOK 2019

*Pedestrian and bicyclist underpass on St. Francis Drive just north of Cerrillos Road intersection.*

*T/LPA: City of Santa Fe*



*New Mexico* DEPARTMENT OF  
**TRANSPORTATION**



# TRIBAL/LOCAL PUBLIC AGENCY *HANDBOOK*

February 2019

(Revised December 2020)

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# AMERICANS WITH DISABILITIES (ADA) ACT INFORMATION

The primary purpose of the New Mexico Department of Transportation (NMDOT) Americans with Disabilities Act (ADA) program is to ensure that persons with disabilities have opportunity to use the transportation system in an accessible and safe manner. As part of its responsibility under Title II of the ADA and Section 504 of the Rehabilitation Act of 1973 (504), NMDOT shall not discriminate on the basis of disability in any highway transportation program, activity, service or benefit it provides to the general public; and shall ensure that people with disabilities have equitable opportunities to use the public rights-of-way system. Materials can be made available in alternative formats by emailing the NMDOT ADA Coordinator at [ADA.TitleVICoordinator@state.nm.us](mailto:ADA.TitleVICoordinator@state.nm.us) or by calling (505) 470-9668.

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# T/LPA HANDBOOK COMMENT REQUEST FORM

Date:

Phone Number:

Name:

T/LPA or Company Name:

Email:

Do you have a project currently programmed? (YES / NO)

Fiscal Year programmed: Control Number:

To: T/LPA Handbook Committee  
New Mexico Department of Transportation

Subject: T/LPA Handbook Comments

Recommendation for Improvement:

Please send comments to [Finance.TLPA@state.nm.us](mailto:Finance.TLPA@state.nm.us)

# ACKNOWLEDGEMENTS

This Handbook took close to an entire year to fully update and better reflect the current policies of the NMDOT and FHWA. The Handbook committee dedicated numerous hours to reviewing the funding and project development processes and streamlining them as much as possible. The latest revision was also a collaborative effort and involved the list of participants below.

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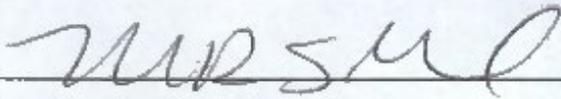
Additionally, the committee would like to acknowledge Sharon Hausam, Louis Najjar, Fran Fillerup, and Derrick Garcia for providing comments on behalf of T/LPAs and MPOs.

*Cover page photo courtesy of Sofia Bomse.*

# SIGNATURE PAGE

Approval of this Handbook by the New Mexico Department of Transportation  
Cabinet Secretary

Granted this 27 day of Feb, 2019



Signature

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Michael Sandoval  
Cabinet Secretary

Implementation of the guidelines and processes contained in this manual are effective immediately upon signature by Cabinet Secretary

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# INTRODUCTION

## **PURPOSE OF T/LPA HANDBOOK**

The Tribal/Local Public Agency (T/LPA) Handbook is a guide to assist tribal and local public agencies in successfully navigating the planning, design, and implementation of federally-funded transportation projects. This Handbook applies to projects funded by the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) and includes requirements in the governing United States Code (USC) and Code of Federal Regulations (CFR) for transportation projects. Many of the oversight duties are passed from FHWA to the New Mexico Department of Transportation (NMDOT) per the Stewardship and Oversight Agreement, which outlines the duties of the NMDOT as the grantee of federal funds. This Handbook and the Cooperative Agreement outline the duties of the T/LPAs as sub-grantees of federal funds.

## **ROLES AND RESPONSIBILITIES**

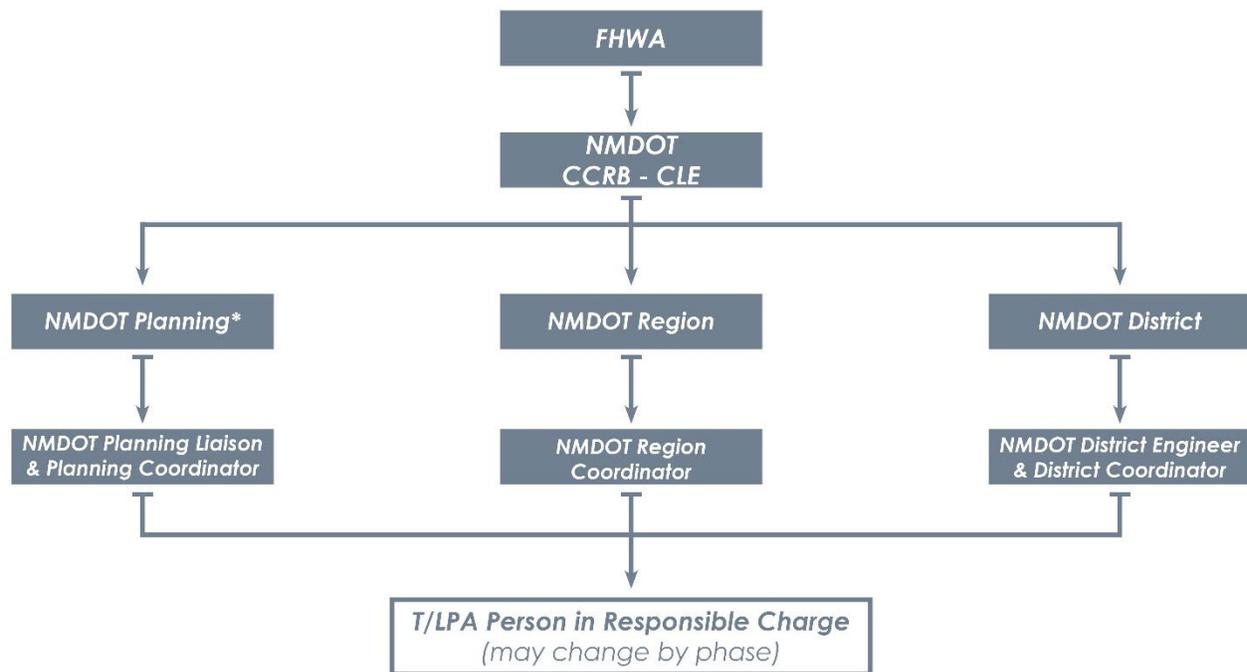
As the grantee of federal funds, the NMDOT has responsibility for assisting the T/LPA through all phases of the project and staff is identified in the Handbook for each phase. The Construction and Civil Rights Bureau (CCRB) has oversight during the entire project from planning to project implementation and closeout. NMDOT staff members assure compliance with CFRs, the terms of the Cooperative Agreements, and the requirements outlined in this Handbook, and are involved heavily during the construction phase. In addition to the CFRs, the T/LPAs must also meet any additional federal or state laws, such as compliance with the Americans with Disabilities Act (ADA) and Title VI requirements outlined in this Handbook. Tribes are not required to meet ADA and Title VI requirements, but NMDOT encourages Tribal governments to create ADA Transition and Title VI Plans as a best practice.

The responsibilities of the T/LPA related to each project are to be led by a Person in Responsible Charge, an agency staff member who is able to answer questions and make decisions about the project. The T/LPA can designate a different staff person to be in Responsible Charge for each of the two phases established for T/LPA projects: preliminary engineering and construction. T/LPAs should also contact their respective Metropolitan Planning or Regional Transportation Planning Organization (MPO or RTPO) representatives for any questions at any time during the process.

All federal funds awarded to T/LPAs and administered by the NMDOT will be included in the Statewide Transportation Improvement Program (STIP) and will be assigned a unique Control Number (CN). This CN will be assigned by NMDOT and provided to T/LPAs and

should be referenced in all documents throughout the life of the project. The entire project must be listed in the STIP along with the associated funding amounts. In order to align with STIP requirements, the entire project must be broken down into four categories: 1) preliminary engineering, 2) right-of-way, 3) construction, and 4) construction management. Preliminary Engineering includes planning, environmental, procurement, and preliminary, and final design. ROW includes ROW mapping and acquisition costs. Construction includes the actual cost of construction. Construction management includes materials testing, construction observation, and organization of project files. In all 4 categories, T/LPA projects are required to meet all NMDOT Standard Specifications.

**Figure 1: NMDOT Roles and Responsibilities**



*\*MPO/RTPO can be contacted at any time for assistance*

Federal funds administered through NMDOT are available to T/LPAs through a reimbursement program; T/LPAs must pay costs up front for all project activities. Only activities that begin after a Cooperative Agreement has been executed will be reimbursed (discussed in Chapter 2 – Agreements).

## **ORGANIZATION OF HANDBOOK**

This Handbook is organized in order of project development, with each phase as its own chapter. Each of the chapters begins with an introduction and/or general purpose and include a “What T/LPAs Need to Know” box with some of the most important aspects

from that chapter. These boxes are meant to draw attention to very important facts about each chapter but are not meant to summarize all the material, please read each chapter in its entirety.

This Handbook can be accessed [online](#) and T/LPAs should become familiar with the website and check it often for the most current forms and documents. T/LPAs may consult with their respective MPO or RTP staff with questions about getting started in the project development process.

This Handbook should be used in conjunction with all other NMDOT Manuals, Handbooks, and Guides and may refer the T/LPA to other documents that contain more specific information about the topic. Links to these manuals are in the electronic version of the Handbook and are also provided on the T/LPA website for easy access. One such manual is the ROW Handbook referenced in Chapter 7 - Right-of-Way. The ROW Handbook should be consulted for more in-depth information about the processes outlined in the T/LPA Handbook.

## **UPDATES**

A review of the T/LPA Handbook will take place annually followed by formal updates to the document, if needed. The first update is scheduled to be complete in Winter 2020, after one full year of use. Included in this section is a comment form that T/LPAs, consultants, NMDOT staff, and others can use to document desired changes or clarifications. The comments and requested changes will be reviewed by the Handbook committee and a decision will be made to update the material or not based on the expertise of the members. The website will be kept as up to date as possible and T/LPAs should check the website often for updates to required forms. Additionally, the website has an email address and an electronic version of the comment form where comments and suggestions can be submitted.



# CHAPTER 1

## PLANNING



**T/LPA:** City of Albuquerque & Rio Metro Regional Transit District

**Project:** Partnership between agencies to provide multimodal transportation options in Albuquerque

The Rail Runner is managed by the Rio Metro Regional Transit District and many of the paths and sidewalks are built and maintained by the City of Albuquerque using TAP and RTP funds.

## 1.A. Transportation Planning

### 1.A.1. Planning Context

All transportation projects utilizing federal funds administered through the New Mexico Department of Transportation (NMDOT) or affecting any portion of federal facilities managed by the NMDOT must meet federal transportation requirements and assist the NMDOT with meeting federally-mandated performance measures and targets. This section outlines those requirements and explains how NMDOT planning and funding programs ensure Tribal/Local Public Agencies (T/LPAs) can meet these requirements to support their access to federal funding.

The current federal transportation authorization legislation, Fixing America's Surface Transportation Act (FAST), signed into law on December 4, 2015 by President Obama, continues the performance-based approach introduced in the previous transportation bill Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21). State Departments of Transportation (DOTs) follow federal requirements and guidance to adopt performance measures in long-range plans and to set targets for achieving the performance measures. Performance measures encourage projects that relate to safety, asset management, and congestion mitigation. Federally-funded projects must contribute to achieving those targets. In compliance with federal requirements, the NMDOT follows a

continuous, cooperative, and comprehensive (3C) performance-based statewide and metropolitan multi-modal transportation planning process to develop long-range plans.

Long-range transportation plans are developed at the metropolitan, regional, and statewide levels, in coordination and with input from the T/LPAs and consultation with

#### What T/LPAs Need to Know

All transportation projects utilizing federal funds or affecting any portion of federal facilities must meet federal transportation requirements.

T/LPAs should contact MPO/RTPO staff for information on eligibility for federal funding. All funding applications are processed through MPOs and RTPOs before they are submitted to NMDOT.

Federal funds administered through the NMDOT and listed in the TIP and STIP require a non-federal matching share referred to as a local match. T/LPA projects work as a reimbursement program and the local match is typically a cash match.

Many of the activities described in Chapter 1 - Planning, including project definition, project scope, and purpose and need, are further defined in Chapter 4 - Project Development.

Tribal entities are exempt from federal performance measure requirements.

tribal governments, as well as the public and other stakeholders. In New Mexico, the plans include:

- Metropolitan planning organization (MPO) long-range transportation plans, known as metropolitan transportation plans (MTPs)
- Regional transportation planning organization (RTPO) long-range regional transportation plans (RTPs)
- A long-range statewide transportation plan (LRSTP); currently the New Mexico 2040 Plan

These plans are updated on a four or five-year cycle, depending on federal guidelines. Each of the organizations responsible for MTPs and RTPs, as well as NMDOT during LRSTP updates, will conduct outreach to T/LPAs and other stakeholders throughout the planning process.

The NMDOT is responsible for other long-range plans, such as the Freight Plan, Rail Plan, Airport System Plan, Asset Management Plan, and Strategic Highway Safety Plan (SHSP), which are required for the NMDOT to receive and utilize certain federal funds under the Federal Aid Highway Program (FAHP). These plans also contain specific performance measures and targets, which should be addressed through Federally-funded projects.

There are numerous federal and state goals that may be considered during project identification and selection. Federally-funded projects should contribute to the National Planning Factors, described below. In addition, the State of New Mexico established [climate change goals](#), described below, in its 2019 New Mexico Climate Strategy. These goals often align with the goals established in NMDOT's LRSTP, MPOs' MTPs, and RTPOs' RTPs.

#### 1.A.1.a. National Planning Factors

As described in 23 CFR §450.206, each state shall carry out a continuing, cooperative, and comprehensive statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that address the following factors:

- Support the economic vitality of the United States, the states, metropolitan areas, and nonmetropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;
- Increase the safety of the transportation system for motorized and non-motorized users;
- Increase the security of the transportation system for motorized and non-motorized users;
- Increase accessibility and mobility of people and freight;

- Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;
- Enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;
- Promote efficient system management and operation;
- Emphasize the preservation of the existing transportation system;
- Improve the resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation; and
- Enhance travel and tourism.

#### 1.A.1.b. New Mexico Climate Change Goals

Per the Governor's Executive Order 19-003 "[Executive Order on Addressing Climate Change and Energy Waste Prevention](#)" and the 2019 New Mexico Climate Strategy, New Mexico established goals to reduce greenhouse gas emissions (carbon dioxide, methane, nitrous oxide, and fluorinated gases) that contribute to climate change. To achieve these goals in the transportation sector, New Mexico set policies 1) to increase the adoption of cleaner vehicles, and 2) to reduce per capita Vehicle Miles Traveled (VMT). Projects that may advance these goals include: roundabouts, pedestrian and bicycle facility improvements, vanpool or rideshare, fleet electrification, and transit improvements.

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APPENDIX

# 1.A.2. Regional Planning and the Roles of MPOs and RTPOs

MPOs and RTPOs are charged with development and implementation of long and short-range multi-modal transportation plans. MPOs are federally designated for all urbanized areas with populations of more than 50,000 individuals [23 CFR § 450.310(a)]. The goal of the MPO is to carry out multi-modal transportation planning through development of long (MTP) and short-range (Transportation Improvement Program [TIP]) plans consistent with the goals and performance measures developed in the LRSTP. The MPO consists of a technical committee(s) and a policy board made up of elected or appointed officials and representatives from T/LPAs and NMDOT members that oversees and directs staff members in implementation of the goals listed in the MTP and TIP. MPOs must work in cooperation with the NMDOT to program federal funding for transportation projects in the urbanized area.

**What T/LPAs Need to Know**

MPOs and RTPOs are charged with development and implementation of long and short-range multi-modal transportation plans. MPOs and RTPOs also provide technical assistance to member T/LPAs, including navigating the funding application process.

Local participation in the planning process on the regional and state-level will ensure goals align and increase the likelihood of receiving federal funding.

MPOs with populations exceeding 200,000 are designated as Transportation Management Areas (TMAs) MPOs and have additional responsibilities and decision-making authority. The membership of the board includes transit operators, local elected and appointed officials, NMDOT members, and State officials (23 CFR § 450.310). TMAs also receive a direct allocation of some federal funds that are awarded to T/LPAs and other member agencies through a competitive selection process set by the MPO policy board.

T/LPAs that are not part of MPO planning areas are covered by one of the State's RTPOs. These organizations are designated to assist T/LPAs in the non-metro parts of the State with multi-modal transportation planning through development of the RTP. RTPs do not have federally-mandated requirements; however, all projects funded in RTPO planning areas should help the region meet goals identified in the RTP. There are seven RTPOs in New Mexico, generally organized in alignment with the Council of Governments or Economic Development District regions.

RTPOs consist of a policy board and sometimes a technical committee, as well as staff members to help T/LPAs implement the goals outlined in the RTP. Similar to non-TMA MPOs, the RTPOs do not receive direct federal funding allocations, thus must work in cooperation with the NMDOT to obtain federal funding for transportation projects. T/LPAs in RTPO areas may propose projects for federal funding on an annual or biannual cycle,

depending on the RTPO. This list of proposed projects, the Regional Transportation Improvement Program Recommendations (RTIPRs), is reviewed by NMDOT with funding decisions made at the NMDOT district level.

**Table 1: Transportation Planning Agencies**

Agency	Geography	Population	Programming Authority
Metropolitan Planning Organization	Small urban areas	Greater than 50,000 residents but less than 200,000	No. MPO officials and T/LPAs must coordinate with NMDOT on TIP project selection.
Metropolitan Planning Organization – Transportation Management Area	Large urban areas	Greater than 200,000 residents	Yes, for certain funding sources.
Regional Transportation Planning Organization	Rural areas	No population threshold	No. T/LPAs propose projects through the RTIPR. Project selection made by NMDOT.

For both MPOs and RTPOs, the planning process must be accessible and transparent with input from and coordination with member T/LPA agencies and other stakeholders in the development of the plans. Participation in the planning process will help T/LPAs ensure their projects are consistent with the goals and performance measures in the NMDOT LRSTP and the applicable MTP or RTP. This approach will also increase the likelihood of receiving federal funding. For more information about the roles, specific tasks, and work products produced by MPOs and RTPOs, please see the [NMDOT Planning Procedures Manual](#).

MPOs and RTPOs also provide technical assistance to member T/LPA governments and other stakeholders, and staff is available to help T/LPAs understand the planning process and access federal funds. Additionally, MPO and RTPO staff are tasked with assisting T/LPAs as they navigate the application process for various funding sources available through NMDOT. NMDOT does not accept applications for any funding source directly from the T/LPAs; the MPO and RTPO staff are responsible for checking all T/LPA applications for completion and sending qualified applications to the appropriate NMDOT contact.

T/LPAs are strongly encouraged to participate in the MPO and RTPO planning processes and attend meetings to stay informed on planning requirements, performance measures, funding opportunities, and application deadlines. During funding cycles, early coordination with MPO and RTPO staff is highly recommended. T/LPAs who receive technical assistance from MPO and RTPO staff typically have higher scoring funding applications. MPO and RTPO staff also assist T/LPAs that are awarded funding with adding projects into the TIP and Statewide Transportation Improvement Program (STIP) through an amendment process.

### 1.A.3. Short-Range Transportation Plans: STIP and TIPs

TIPs produced by MPOs are incorporated into NMDOT's short-range plan, the STIP. Projects in RTPO areas are placed directly into the NMDOT STIP. The STIP is available online in an electronic format. All projects contained in the STIP and TIPs must be consistent with the goals and performance measures outlined in the LRSTP and the relevant RTP or MTP. These short-range plans are mandated by the Federal Highway Administration (FHWA) and are four-year, fiscally constrained, planning documents that list all regionally-significant and federally-funded projects (23 CFR § 450).

#### Note to T/LPAs

Note that all federal funding programs are available as reimbursements.

Any unexpended design funds will be reverted to the NMDOT and cannot be used for the construction phase of a project. Costs incurred during bidding and award process are charged to construction management.

All projects awarded to T/LPAs through the funding programs described in this chapter are required to be in the STIP. If the project is regionally-significant and/or federally-funded through the NMDOT and located in an MPO area, it must first be included in the MPO's Transportation Improvement Program (TIP). The TIP is developed and formally adopted by the MPO policy board in cooperation with the NMDOT. Once the TIP has been approved by the MPO policy board and the Governor (or designee), it shall be included in the STIP either without modification or by reference (23 CFR § 450.326). The STIP document is approved by the FHWA and the Federal Transit Administration (FTA) every two years and can be amended quarterly.

All project funding sources must be shown in the TIP (if applicable) and STIP including the federal portion and local match, as well as any other funding that will be used for the project (to include capital outlay or other state funds, and local funds beyond the local match). The STIP has four distinct phases that all project development falls within: 1) preliminary engineering covers everything from planning, environmental, utilities, preparation for Right-of-Way (ROW) activities, to preliminary and final design. 2) ROW acquisition runs concurrently with the preliminary engineering phase but it a distinct phase recognized in the STIP. 3) Construction is the actual implementation of the plans, and 4) Construction management includes project bidding, materials testing, observation and all recordkeeping for the project. All phases of a project must be entered into the STIP each with its own funding allocated and phases not requested in project applications and not entered in the STIP will not be eligible for reimbursement. Funding can be transferred between preliminary engineering, ROW and utilities, but funding does not transfer between the design and construction phases. Any unexpended design funds will be reverted to the NMDOT and cannot be used for the construction phase of a project. Funds must be obligated in the following order: 1)

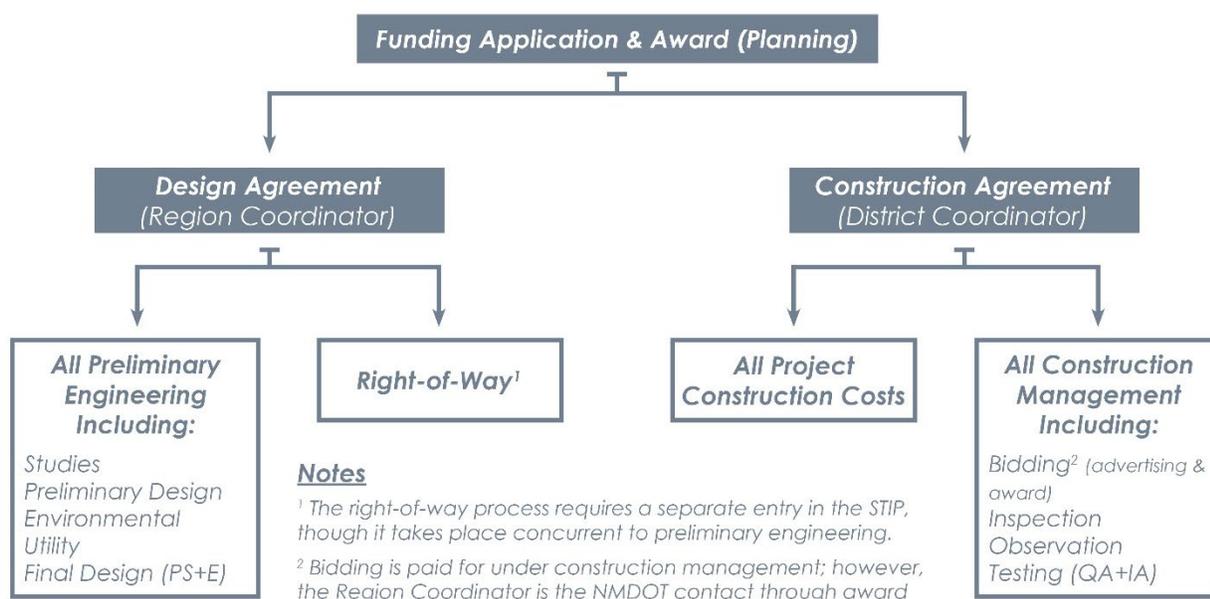
preliminary engineering, 2) right-of-way acquisition, 3) construction and construction management; no deviations to this order of obligation will be accepted.

**Figure 2: Project Phasing Flowchart**

Awarded projects cannot move forward to the agreement stage (described in Chapter 2 - Agreements) until included in the TIP and/or STIP and FHWA approves. For specific information on the development of the STIP, please see [the NMDOT STIP Procedures Manual](#). This manual also contains information describing the process and requirements for STIP amendments and administrative modifications, which both formally change the STIP document based on the nature of the change requested. The T/LPA may also consult MPO/RTPO staff with questions related to the STIP. for more information about this process.

### 1.A.4. FAHP and Project Funding

The FAHP is comprised of various funding programs, each with unique guidelines and eligibility requirements. The application process for each funding source is different and T/LPAs should consult with appropriate MPO or RTPO staff for clarification, guidance, and assistance on the process. NMDOT produces program guides (available on the NMDOT website) that outline the application and project selection processes, as well as criteria for each program. The project selection criteria for each program are designed to ensure projects address the performance measures, goals, and targets included in the LRSTP. MPO or RTPO staff submits qualified applications, regardless of funding sources, to the appropriate NMDOT contact by the program deadline outlined in the corresponding



program guide. NMDOT will not accept applications directly from T/LPAs nor will NMDOT accept late or incomplete applications.

#### 1.A.4.a. State-Level Project Selection

On a two to three-year cycle (depending on funding source) T/LPAs can apply for the following programs, which are administered by the NMDOT Multi-modal Planning and Programs Bureau (MPPB):

- [\*\*Recreational Trails Program \(RTP\)\*\*](#)
- [\*\*Transportation Alternatives Program \(TAP\)\*\*](#): TAP is a sub-allocation of the Surface Transportation Block Grant (STBG)
- [\*\*Congestion Mitigation and Air Quality Improvement Program Flexible \(CMAQ-F\)\*\*](#)
- [\*\*Highway Safety Improvement Program \(HSIP\)\*\*](#): Administered by the MPPB, guidance forthcoming

These programs have program specific requirements; each funding program has a unique Program Coordinator and program guide that are available to support T/LPAs through the funding process. For example, projects funded with CMAQ-F funds must help reduce congestion and improve air quality, while projects utilizing HSIP funds must comply with the SHSP, be data-driven, and contribute to meeting at least one of the [five required safety performance measures](#) as identified in the SHSP. If a project is awarded, the T/LPA should work with the MPO or RTPO staff to amend the project into the TIP (for MPO areas) and STIP.

#### 1.A.4.b. District-Level Project Selection

T/LPAs may qualify for funds from certain federal programs at the discretion of the NMDOT district offices (see map [here](#) for NMDOT district boundaries). This discretion is based on the availability of funds, as well as eligibility requirements. Some eligibility requirements are based on roadway classifications, including the National Highway System (NHS) and the functional classification designations; for more information about functional classification requirements, see the [NMDOT Functional Classification Guidance Manual](#) and contact MPO or RTPO staff. NMDOT districts are responsible for programming these funds, based on the needs identified in their districts, and must work cooperatively with MPOs and RTPOs to ensure projects meet goals and established performance measures in the MTPs and RTPs. Programs awarded at the NMDOT district level include:

- **National Highway Performance Program (NHPP)**: awarded at the discretion of the districts and can only be used on NHS roads
- **Surface Transportation Block Grant-Small Urban, Rural, and Flex (STBG-S, STBG-R, & STBG-F respectively)**: awarded by population area at the discretion of the districts

Funding sources awarded at the district level may not be available on a regular cycle and the amount available can vary. T/LPAs should work closely with MPO and RTPO staff to learn about upcoming funding opportunities through these funding programs; as with all other NMDOT funding sources, district offices will not accept applications directly from T/LPAs. The applications steps are outlined in the next section of this chapter. If a project is awarded, the T/LPA should work with the MPO or RTPO staff and the NMDOT district to get the project amended into the TIP (for MPO areas) and STIP (for RTPO areas).

#### 1.A.4.c. MPO-Level Project Selection

Transportation Management Area (TMA) MPOs receive a direct allocation of funding that member T/LPAs can access directly from the MPO. These sources include parts of the Surface Transportation Block Grants (STBGs) allocated to areas by population, and portions of the Congestion Mitigation and Air Quality-Mandatory Funds (CMAQ-M). The specific funds in the STBG and CMAQ programs available to T/LPAs through a TMA directly are:

- **Surface Transportation Block Grant-Large Urban (STBG-L):** Allocated to TMAs annually based on population formulas
- **Surface Transportation Block Grant-TAP Large Urban (TAP-L):** Allocated to TMAs based on population formulas and separate from TAP grants described above
- **Congestion Mitigation and Air Quality-Mandatory Funds (CMAQ-M):** Only allocated to MPOs in non-attainment or maintenance with regard to the national ambient air quality standards, as designated by the Environmental Protection Agency (EPA) guidelines for air quality. For more specific information about air quality and MPOs, see the [Planning Procedures Manual](#).

T/LPAs applying for direct allocation funds must follow the program outlined by the TMA MPO. Competitive scoring and section criteria are set by the MPO policy board and T/LPAs should work closely with MPO staff to apply for these funding categories. Once applications are scored and ranked, the MPO policy board approves funding for selected projects and MPO staff work with NMDOT to amend the projects into the TIP and STIP on behalf of the T/LPA.

Note: Right-of-way acquisition is not an allowable cost under certain MPPB administered programs (i.e. Recreational Trails, Transportation Alternatives). Contact the MPO/RTPO planner or NMDOT planning liaison for additional information on obtaining funding for ROW activities.

### 1.A.5. T/LPA Project Application Process

Each of the programs administered by the MPPB has specific criteria and guidance outlined in the program guides (see links above); however, the steps below apply

regardless of funding type and T/LPAs should work closely with MPO or RTPO staff on project applications. Similarly, funds administered by the NMDOT districts do not have specific written guidelines, but T/LPAs must also follow the steps listed below to submit project applications for federal funds. When applying for funds administered directly by TMA MPOs, T/LPAs should contact MPO staff directly for guidance on the application process as it may differ from what is presented below.

**Figure 3: Steps in the Funding Application Process**

#### STEP 1: CONTACT MPO/RTPO

T/LPA contacts appropriate MPO/RTPO staff as listed in the [MPO/RTPO Planner and Program Manager Contacts list](#) to discuss funding options and project elements. At this time the T/LPA must identify a point of contact and clearly indicate the Person in Responsible Charge for the planning process (may not be the same person throughout the life of the project).

#### STEP 2: PROJECT SCOPING/PROJECT FEASIBILITY FORM

T/LPA Person in Responsible Charge completes the PFF, a one-page form with basic project information that is used as a discussion tool to determine project feasibility prior to submittal of the application (see Step 6). This form is used to begin the project definition phase, which identifies needs and major elements of the project scope. More details on the project scoping process and Project Scoping Reports are outlined in Chapter 4, Section C. The PFF can be submitted at any time but specific deadlines apply during funding award cycles.

#### STEP 3: FEASIBILITY MEETING

MPO/RTPO staff reviews the PFF and schedules the feasibility meeting to discuss project elements and review the project development process outlined in this Handbook. MPO/RTPO staff facilitates the meeting and invites the following parties to attend:

- NMDOT District Technical Support Engineer (TSE)
- NMDOT Planning Liaison
- NMDOT Construction Liaison Engineer (CLE)
- NMDOT Environmental Bureau T/LPA Coordinator
- T/LPA Person in Responsible Charge
- NMDOT Region Coordinator
- NMDOT MPPB Program Coordinator

The T/LPA project sponsor is encouraged to bring all staff responsible for project administration. See a list of questions and discussion topics to be covered during the

#### STEP 4: FEASIBILITY DETERMINATION

If NMDOT determines that the project is feasible, the NMDOT District TSE and the T/LPA Person in Responsible Charge will document any issues identified and will both sign the PFF. A signed copy of the PFF must be submitted as part of the project application. Any projects submitted without a signed PFF will not be considered for funding. In general, a project is determined to be feasible if:

- The T/LPA has identified the matching funds and submitted a resolution or letter signed by a person with fiscal authority for the T/LPA
- The TSE has reviewed and concurred with the cost estimate and scope of work provided by the T/LPA and determined that the estimate is appropriate for the proposed scope based on experience and expertise
- The design and construction are properly phased to allow the T/LPA time to meet all deadlines, as outlined in Chapter 2, Section C of this Handbook
- The scope of work has been clearly defined and the NMDOT Environmental Bureau T/LPA Coordinator has reviewed and provided input

#### STEP 5: PROJECT PROSPECTUS FORM (PPF)

The Project Prospectus Form (PPF) includes a description of specific project elements and narrative questions addressing goals and planning factors. The goals listed in the MPO/RTPO long-range plans can help T/LPAs address these narrative questions. Depending on the funding program, the narrative part of the PPF may be replaced by a program specific application, contact the MPO or RTPO planner with questions about this step.

The T/LPA completes the PPF and submits the form to the MPO or RTPO staff. The information in this form is used by NMDOT to enter projects in the STIP and thus must be accurately and thoroughly completed. This form should include information that will be transferred to the Scoping Report as outlined in Chapter 4, Section C. T/LPA staff should completely read the appropriate funding program guide and the PPF prior to filling out the forms. MPO and RTPO staff may be consulted for assistance in filling out the form. All phases of a project must be clearly defined on the PPF with associated cost estimates, so they can be properly documented in the agreement process, as described in Chapter 2 - Agreements. Most projects have phases for the following: preliminary engineering, right-of-way, construction, and construction management (including materials testing, and observation).

## STEP 6: SUBMITTAL OF APPLICATION

The PFF, PPF, funding program application (for TAP, RTP, CMAQ-F), and any supporting documentation must be submitted to the MPO/RTPO planner or program manager by the deadlines specified in the applicable program guide. Each MPO/RTPO sets a timeline at the beginning of the application cycle with specified due dates.

As part of the project application for funding, the T/LPA shall prepare a detailed independent estimate for each phase: preliminary engineering, construction, and construction management with an appropriate breakdown of the work or labor hours, types or classifications of labor required, and other direct costs.

## STEP 7: PROJECT SELECTION

The project selection process depends on the funding program. Programs administered by the MPPB will be ranked according to the scoring sheets in the program guide and selected at a statewide level. For funding sources administered by the NMDOT district (e.g. NHPP and STBG-S), the MPO/RTPO policy board will rank the projects according to their project scoring criteria and the ranked list of recommendations is forwarded to the NMDOT district staff for funding consideration. NMDOT MPPB Program Coordinators screen project and entity eligibility during the project selection process.

For funding sources allocated directly to TMA MPOs (e.g. STBG-L and TAP-L), the MPO policy board will approve projects based on the MPO's selection and scoring criteria.

## STEP 8: AWARD LETTER

If the project is selected, NMDOT issues an award letter and/or an award form to the T/LPA Person in Responsible Charge. The T/LPA responsible charge must review, sign, and return the award form to the NMDOT Program Coordinator indicating the T/LPA's acceptance of the award. MPOs enter the projects that fall within their boundaries into the TIP, while NMDOT District staff enters projects for the RTPO areas into the STIP. For more information on the process and requirements for including projects in the STIP, please refer to the [STIP Procedures Manual](#).

## 1.A.6. Local Match Requirements

Federal funds administered through the NMDOT and listed in the TIP and STIP require a non-federal matching share referred to as a local match. FAHP funding is issued as a reimbursement program, which means T/LPAs are responsible for paying all costs up front and submitting invoices for reimbursement (see Chapter 3 – Procurement of Consultant Services for more information), and the local match is typically a cash match. For most of the funding programs available to T/LPAs, the local match equals 14.56% of the total project cost, while the federal responsibility is 85.44%. Non-tribal agencies must use either state or local funds to meet the local match requirements. Tribal entities may also use federal funds awarded through the Tribal Transportation Program (TTP) to match FAHP funding administered through the NMDOT. Additional options for matching federal funds are outlined below:

### Considerations for Tribal Governments

Tribal entities are exempt from these “other requirements” but are encouraged to develop ADA Transition and Title VI Plans.

### 1.A.6.a. In-Kind Match

In-kind contributions are available as an option for meeting the local match. However, in-kind contributions must be approved by the NMDOT prior to execution of the funding agreement (outlined in Chapter 2 - Agreements) and should be discussed at the feasibility meeting. Examples of in-kind matches include donations of funds, materials, services, agency force account, right-of-way acquisition, and utility relocation. The local match may also be fulfilled through a combination of cash and in-kind contributions. All in-kind contributions must be quantified, tracked, and reported throughout the project just as matching funds would be.

### 1.A.6.b. Cost-Sharing

The strategy of utilizing multiple funding sources and partnerships among multiple organizations are examples of “cost-sharing,” which can be a means of tackling larger projects and achieving greater benefits than could be accomplished by a single agency or project. Examples of cost-sharing include contributions toward preparation of plans, conducting studies, developing designs, planting material, construction, and operation and maintenance activities from sources outside the T/LPA. Cost-sharing contributions may be used toward the required local match; however, any funds expended prior to the execution of a cooperative agreement with the NMDOT will not be counted toward cost-sharing. Within some programs, if a non-profit, private, or local organization is willing to provide cash, materials, or land to a project, that contribution may serve as part of the required local match. Additional information on cost-sharing and project-bundling can be found on [FHWA's website](#).

Note: Any in-kind contributions and/or cost-sharing from sources outside the T/LPA (including Capital Outlay, Local Government Road Fund, etc.) must be included in the Agreement Request Form (ARF) and approved prior to execution of the agreement (see Chapter 2 – Agreements).

## 1.A.7. Other requirements

In order to be eligible for federal funding, most T/LPAs must meet the requirements outlined below and have an Americans with Disabilities Act (ADA) Transition Plan and a Title VI Plan submitted to NMDOT. These items will be discussed during the Project Feasibility Form (PFF) meetings. MPO/RTPO staff keep updated lists indicating which T/LPAs are in compliance with these requirements; NMDOT Districts, MPPB Program Managers, and TMA MPOs will refer to these lists and funding will not be awarded if the requirements are not met, regardless of project scoring and ranking. Please see the [NMDOT website](#) for a sample of each plan. T/LPAs may be vetted by NMDOT finance specialists for financial fitness. Only T/LPAs with sound financial systems and records will be awarded federal funding.

### 1.A.7.a. ADA Transition Plan

T/LPAs with more than 50 employees must submit an ADA Transition Plan to the NMDOT ADA Program Coordinator. The number of employees includes full time and part time employees but does not include temporary and seasonal employees, or elected officials unless they also hold positions within the T/LPA. T/LPAs with less than 50 full time and part time employees are exempt from this requirement but must submit a letter certifying that their organization has less than 50 employees. The names and positions of each employee must be listed, and the letter must be on the T/LPAs official letterhead. An example of this exemption letter can be found on the [NMDOT website](#). T/LPAs with fewer than 50 employees must still submit an ADA Policy.

The ADA Transition Plan starts with an inventory of publicly-owned facilities and infrastructure within the T/LPA and a description of any ADA non-compliance issues for each one. The T/LPA will need to describe how they will bring all publicly-owned facilities into compliance, along with a timeframe for the work to be completed. This plan must be reviewed and updated by the T/LPA each year and projects that have been implemented in the plan to address ADA non-compliance should be noted. For reference, the NMDOT State-wide ADA Transition Plan can be found [here](#). The ADA Transition Plan should be formally updated every three (3) years and submitted to the NMDOT ADA Program Coordinator. The NMDOT ADA Program Coordinator determines that the T/LPAs ADA Transition Plan includes all attributes required by the Department of Justice, including:

- Official responsible for implementation of the Transition Plan

- Identification of physical barriers in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities
- Schedule for taking the steps necessary to upgrade access to meet ADA and Section 504 requirements in each year following the development of the ADA Transition Plan
- ADA Policy Statement
- Identification of ADA Coordinator including contact information
- Clear Complaint/Grievance Process to receive and address complaints/grievances from the public

### 1.A.7.b. Title VI Plan

Title VI Plan addresses Title VI of the Civil Rights Act of 1964 and is the T/LPA's written document outlining how they will ensure no persons will be discriminated against based on race, color, national origin, sex, age, disability, limited English proficiency, or income status with the implementation of programs, services, or projects that utilize federal funds. This document also addresses environmental justice concerns and identifies an employee from the T/LPA in charge of taking comments and complaints from the public. The plan also includes a formal complaint form and the process for submitting a complaint should an instance of discrimination occur. Formal complaints may be made to the T/LPA, the NMDOT, or FHWA directly, which should be reflected in the Title VI Plan. The Title VI Plan should be formally updated every three (3) years and submitted to the NMDOT Title VI Program Coordinator. An annual report, due October 1, should be sent to the NMDOT Title VI Program Coordinator outlining any complaints received and/or changes in procedural or organizational structure. If no changes were made and no complaints were received during the year, correspondence should be submitted to the NMDOT Title VI Program Coordinator to that effect.

## 1.A.8 Additional Planning Guidelines

### 1.A.8.a. Gateway Monument Guidelines

The NMDOT has completed Gateway Monument Guidelines that define the roles and responsibilities of the NMDOT and the T/LPA for the administration, design, installation, maintenance, and removal of gateway monuments. These guidelines also define the procedures for submittal, review, and processing of gateway monument proposals.

A T/LPA request to place a gateway monument in or adjacent to NMDOT right-of-way will require sequential NMDOT approvals by the local NMDOT District, the Property Management Bureau, and the Secretary of Transportation or designee. More details on the process are found in the Gateway Monument Guidelines located [here](#).

Gateway monument requests will be reviewed with consideration of safety (location), appropriateness, communicativeness, and aesthetics and for minimal disruption to the traveling public when accessed for maintenance purposes.

### **1.A.9. Failure to Complete a Project**

If a T/LPA uses federal funds to purchase right-of-way but construction of the project on this right-of-way is not undertaken by the close of the 20<sup>th</sup> year, the T/LPA must repay all incurred costs to the NMDOT. A T/LPA that has received authorization to proceed with the design of a federally-funded project and fails to purchase right-of-way or begin construction within 10 years must repay to the NMDOT all federal funds paid to the T/LPA for design, including preliminary engineering and right-of-way acquisition [23 CFR § 630.112(c)(1)].

### **1.A.10. Changes to an Awarded Project**

Any requested changes to an awarded project, such as changes to scope, termini, funding, and/or phasing require review and approval by the applicable NMDOT Program Coordinator in the MPPB the process for requesting changes is as follows:

- The T/LPA submits proposed changes via email to the appropriate Region Coordinator. The Region Coordinator contacts the appropriate NMDOT Program Coordinator to discuss the changes.
- The NMDOT Program Coordinator reviews the proposed changes to determine eligibility and feasibility. If the request is approved, the Program Coordinator issues an Award Change Form via email to the T/LPA. If the request is not approved, the NMDOT Program Coordinator responds accordingly to the T/LPA.
- The T/LPA reviews, signs and returns the Award Change Form to the NMDOT Program Coordinator.
- The NMDOT Program Coordinator emails the approved Award Change Form to all of the identified parties on the form, including the T/LPA, the Region Coordinator, NMDOT Planning Liaison, the STIP Coordinator and if applicable, the MPO TIP Coordinator. This initiates the TIP/STIP amendment process (see the [NMDOT STIP Procedures Manual](#) for more information on this process).
- The Region Coordinator notifies the T/LPA when the STIP amendment is approved which indicates final approval of the requested project changes.
- The T/LPA follows the agreement amendment process outlined in Chapter 2 – Agreements and moves forward with the project as amended.

## 1.B. Transit Planning

The Transit Bureau assists the State in the establishment and maintenance of public, private, and non-profit passenger transportation systems. Federal transit grants administered by the Transit Bureau on behalf of FTA are coordinated through working relationships with RTPOs, MPOs, local and tribal governments, private non-profit organizations, and transit providers.

Much of the federal funding that the State receives is passed through to local service providers, called sub grantees. Sub grantees are usually T/LPAs, Regional Transit Districts (RTDs), or private non-profit agencies that provide public transit service or serve seniors and individuals with disabilities. Sub grantees are notified of funding opportunities at the beginning of the annual application and funding process through the RTPOs, MPOs, and the Transit Bureau's distribution list. The Transit Bureau also places notices in newspapers statewide to announce the beginning of the new funding cycle and places a notice on its [website](#).

Sub grantees are required to use the funding in compliance with FTA and State rules and regulations. FTA requires each State to have an approved State Management Plan (SMP), which compiles all FTA rules and regulations and serves as a guide to sub grantees. The intent of the SMP is to document the State's mission, goals, policies, procedures, and administrative guidelines for the FTA 49 USC § 5310 and 5311 programs. The SMP outlines step-by-step application procedures for all FTA grants through NMDOT, along with eligibility criteria, selection processes, timelines, and deadlines. The SMP also contains tasks and responsibilities of sub grantees to administer federal funding in compliance with FTA regulations. The SMP is updated regularly and can be found on the NMDOT Transit and Rail Division [website](#).

**Table 2: Transit Funding Programs**

Grant Program	Description	Eligible Agencies
5303	Metropolitan and Statewide Planning Grants support 3C planning for making transportation investment decisions.	MPOs only
5310	Enhanced Mobility of Seniors and Individuals with Disabilities Grant funds capital for programs to serve the special needs of transit dependent populations beyond traditional public transportation services and ADA complementary paratransit services.	Agencies that provide services to seniors and disabled individuals
5311	Formula Grants for Rural Areas provides administrative, capital, planning, and operating assistance to states to support public transportation in rural areas with populations less than 50,000.	Agencies that operate in rural areas (< 50,000 population)

5311(c)	Public Transportation on Indian Reservations Grants provides funds directly to Indian tribes for public transportation services on Indian Reservations. These funds are administered directly by FTA.	Agencies that provide services on tribal lands
5311(b)(3)	Rural Transit Assistance Program funds transportation research, technical assistance, training and related support services in non-urbanized areas.	Agencies that operate in rural areas (< 50,000 population)

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# CHAPTER 2

## AGREEMENTS



**T/LPA:** Village of Ruidoso

**Project:** One phase of a trail project in the Village of Ruidoso along the Rio Ruidoso River

The scope for this phase included the construction of a concrete trail utilizing MSE block retaining wall and gabion baskets for slope stabilization, as well as benches and a handrail along the path. Through the use of a Memorandum of Understanding, the Village was the fiscal agent for Billy the Kid Scenic Byway which provided in-kind services that were documented throughout the project and applied as the local match in lieu of a cash match. The use of in-kind match was discussed early in the planning stages and included on the Agreement Request Form and formalized in the design agreement.

## 2.A. Introduction

Once a project has been awarded federal funding, the New Mexico Department of Transportation (NMDOT) enters into a contract with a Tribal/Local Public Agency (T/LPA), referred to as a Cooperative Agreement, to clearly specify and delineate the funding sources, rights, and duties of the parties in the design, development, and/or construction of a federally-funded project. The Cooperative Agreement shall take place in accordance with this T/LPA Handbook.

Three Cooperative Agreement templates may be required, depending on the type of project:

- Design
- Construction
- Programmatic Projects (including Plans)

### What T/LPAs Need to Know

If a project utilizes any amount of federal funding, the entire project is deemed federal and must follow requirements as outlined in this Handbook and in the Cooperative Agreement. For example, a project that uses local funds for the Design phase and FHWA funds for the Construction phase must follow all federal requirements for **both** phases.

The Region Coordinator from the NMDOT can guide T/LPAs through the Cooperative Agreement process.

Unexpended design, ROW and/or utility funds **cannot** be added to the construction phase/agreement.

## 2.B. Cooperative Agreement Process

Cooperative Agreements can only be executed for federally-funded projects that are programmed in the Statewide Transportation Improvement Program (STIP) and approved by Federal Highway Administration (FHWA) – see [STIP Procedures Manual](#) for more information about this process). When FHWA has approved the STIP, NMDOT's Project Oversight Division (POD) will notify the T/LPA Region and District Coordinators and the T/LPA will receive an Agreement Request Form (ARF) from the Region Coordinator; T/LPAs can also access the ARF online [here](#) for completion. The ARF initiates the preparation of the agreement between the T/LPA and NMDOT. The T/LPA Person in Responsible Charge completes and signs the ARF and returns to the Region Coordinator, who will review and sign, then coordinate review and concurrence from the District Coordinator and the Construction Liaison Engineer (CLE). The ARF must be filled out in its entirety as this form will be used to draft the Cooperative Agreement and will be included in the appendix for reference.

When creating the project timeline, which is required as a component of the design ARF, T/LPAs should provide estimated dates for all the milestones indicated in **Figure 5** shown in Chapter 4, Section B. The construction ARF should include estimated milestones for: project bid date, project award date, substantial completion date, completion of punch list items, and project closeout date.

The funding breakdown for each phase of work (i.e. design, construction, right-of-way, and construction management) should match what has been programmed in the STIP. If the amounts do not match the STIP, the ARF will be rejected. See **Figure 4** below for additional information.

Per 2 CFR § 200.77, all federally-funded projects must identify a Termination Date for each phase of work on the project (referred to as the Period of Performance Date in the CFR). The Termination Date is the period of time during which the T/LPA is expected to complete the activities described in the ARF and to incur and expend approved funds. When determining the Termination Date, T/LPAs need to include completion of work as well as the time required to send all close-out documents to NMDOT and submit the final reimbursement request. T/LPAs must prepare a detailed timeline of the project and use this to ensure the date on the ARF is appropriate for the scope of work and all project closeout activities. The timeline needs to be submitted with the ARF and both documents will be reviewed for adequacy by the Region and District Coordinators. After review, the ARF and the project timeline will become part of the agreement, and any changes to milestone dates on the timeline will require submittal of an updated ARF requesting an amendment (see Chapter 2, Section C.4 for more information on agreements). The Termination Date submitted on the ARF will correspond to the Termination Date on the Cooperative Agreement and no reimbursements may be received after this date. All activities listed as milestones in the above section need to be finalized prior to the Termination Date.

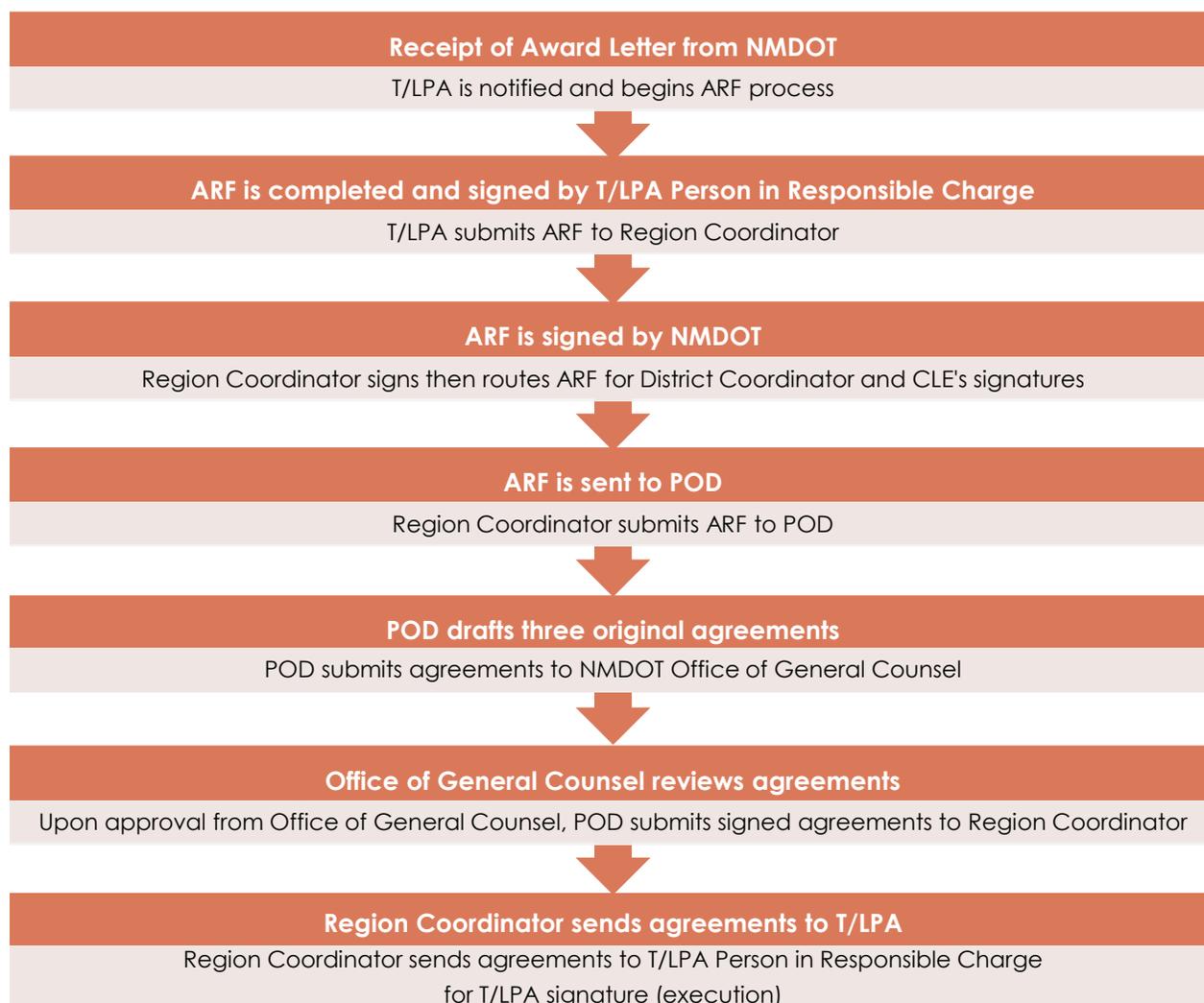
## Key Definitions

### Region Coordinator

The NMDOT staff person who guides T/LPAs through the agreement, procurement, and project development processes.

### Person in Responsible Charge

A full-time, public employee of the T/LPA qualified to ensure that the work delivered is complete, accurate, and consistent with the terms, conditions, and specifications of the Cooperative Agreement for design. The Person in Responsible Charge should be a high-level staff person rather than an elected official.

**Figure 4: Agreement Request Form Flow Chart**

Though the timeline associated with each step may vary, deadlines are outlined in the section below. When POD receives all three signed original agreements and all required documents, the agreement is executed by the NMDOT Cabinet Secretary or his or her Designee, and one (1) original copy is returned to the T/LPA (via the Region Coordinator) for their files

## 2.C. Agreement Deadlines & Requirements

In order to maximize allocated federal funding, NMDOT has established the following deadlines. Failure to follow these firm deadlines will result in loss or delayed funding of the project. The ARF and timeline should be submitted as early as possible once the project has been approved or amended into the STIP or by the deadline listed below. Missing

submittal deadlines will result in cancellation of funds in the awarded Federal Fiscal Year (FFY) and there is no guarantee that federal funds will be available in a future FFY.

See below for clarification of deadlines required for each phase of work. If the deadline falls on a non-business day, the deadline is the close of prior business day (e.g. if March 15 is a Saturday, the Cooperative Agreement is due by the close of business on Friday, March 14). Deadlines correspond to the FFY in which the phase of work is programmed.

The deadlines outlined below apply to all funding sources. Additional requirements must be met in order for agreements to be executed; see Chapter 4 - Project Development for more information on Plans, Specification, and Estimates (PS&E) packages and requirements.

### 2.C.1. Design Agreement

The design agreement is used for the preliminary engineering phase of an infrastructure project that has been selected for federal funding. Preliminary engineering may include: environmental, survey, right-of-way planning, design, and utilities and railroad coordination.

**Table 3: Design Agreement Actions and Responsibilities**

Date	T/LPA Actions	NMDOT Responsibilities
August 8	Submit ARF and timeline to the Region Coordinator as early as possible after the project has been approved in the STIP.	ARF must be signed by the Region Coordinator, District Coordinator, and the CLE prior to submittal to POD. POD will then prepare a Cooperative Agreement to circulate for signatures.
March 15	T/LPA's Person in Responsible Charge coordinates T/LPA's signatures on the Cooperative Agreement for Design and returns to Region Coordinator.	Region Coordinator will receive signed agreement from T/LPA and send to POD for execution.

## 2.C.2. Construction Agreement

The construction agreement is used for the construction phase of an infrastructure project that has been selected for federal funding. The construction phase may include construction and construction management services (including materials testing and observation) as well as any environmental commitments that have been made during the design phase.

**Table 4: Construction Agreement Actions and Responsibilities**

Date	T/LPA Actions	NMDOT Responsibilities
August 8	Submit ARF and timeline to the Region Coordinator as early as possible after the project has been approved in the STIP.	ARF must be signed by the Region Coordinator, District Coordinator, and the CLE prior to submittal to POD. POD will then prepare a Cooperative Agreement to circulate for signatures.
March 15	T/LPA Person in Responsible Charge coordinates T/LPA signatures on the Cooperative Agreement for Construction and returns to the Region Coordinator.	Region Coordinator will receive signed agreement from T/LPA and send to POD for execution (upon completion of Project Production Package and submittal of the Obligation Letter).
June 1	The T/LPA must submit a complete PS&E package to the Region Coordinator (see Chapter 4 - Project Development).	Review the PS&E package and attend the PS&E meeting.
June 15	The T/LPA must submit a complete Project Production Package, including the Obligation Letter signed by the T/LPA Person in Responsible Charge, to the Region Coordinator (see Chapter 4 - Project Development).	Region Coordinator will facilitate signatures from the District Coordinator and the CLE on the Obligation Letter, and the CLE will submit to POD.

## 2.C.3. Programmatic Agreement

Programmatic agreements are used for T/LPA non-infrastructure projects (e.g. plans, safe routes to schools, coordinator positions, soft-surface recreation trails, etc.) that are selected for funds managed by the SPB. Applicable funding programs include Transportation Alternatives (TAP), Recreational Trails (RTP), and Congestion Mitigation and Air Quality Improvement Program (CMAQ). The following procedures apply for developing a programmatic agreement:

- T/LPA works directly with the Program Coordinator in the SPB for the individual funding program on the Planning Programmatic Agreement. The Program Coordinator will initiate the agreement process and will obtain concurrence and

signature from the NMDOT Office of General Counsel. The T/LPA is not required to submit an ARF, nor will the agreement go through POD in the processes described in prior sections.

- The Program Coordinator will send the agreement to the T/LPA for signature. Once the T/LPA signs and sends back, the Program Coordinator will work with the Cabinet Secretary or Designee to execute the agreement.
- The Agreement cannot be fully executed until after October 1 and must be fully executed no later than June 15.
- Once the Agreement is fully executed, the NMDOT Program Coordinator in the SPB will submit the documentation to request the obligation of federal funds and notify the T/LPA. The T/LPA will receive an original copy of the executed agreement for their files.

#### **2.C.4. Cooperative Agreement Amendments**

In limited cases where the T/LPA experiences unforeseen delays during project development, the Termination Date identified on the ARF and the project timeline included as appendices of the executed cooperative agreement may be modified with an updated Termination date on the ARF. Along with the updated ARF, the T/LPA must submit a letter justifying the time increase. Changes in scope or funding amount (includes adding additional state, local, or federal funds) also require an amendment to the cooperative agreement. The T/LPA should discuss any delays or changes to funding and scope that arise with the Region Coordinator as early as possible to ensure timelines are met. Some of these changes might require a Transportation Improvement Program (TIP) or STIP amendment (see the [STIP Procedures Manual](#) for more information) and will require an updated ARF and timeline. If the Region Coordinator concurs that the cooperative agreement should be amended, they will assist with coordination of any TIP/STIP and agreement amendments. If the T/LPA's agreement was issued by the NMDOT Multi-Modal Planning and Programs Bureau (MPPB) they must work directly with the NMDOT Program Coordinator, and not the Region Coordinator, to amend the agreement.

## 2.D. Inactive Projects

An inactive project is one for which no expenditures have been charged against federal funds for a period of 12 months. The NMDOT will review inactive projects on a monthly basis.

If the NMDOT determines a project to be inactive, the NMDOT may, as directed by FHWA, terminate the Cooperative Agreement and redirect the unexpended balance to other projects [23 CFR § 630.106(a)(6)]. A project that becomes inactive for an extended period of time can result in the need to repay the federal funds expended so far.

## 2.E. T/LPA Grant and Cooperative Agreement Conditions

As the recipient (grantee) of federal funds for the State, the NMDOT is responsible for ensuring that federal funds are expended in accordance with applicable laws and regulations. The NMDOT is not relieved of this responsibility when the project development and implementation authority are passed on to a T/LPA; however, when receiving federal funds administered by the NMDOT, the T/LPA (the sub recipient) must comply with three sets of general conditions: (1) federal conditions; (2) state conditions; and (3) NMDOT conditions.

Federal conditions are based on laws passed by Congress, regulations issued by the federal department making the funds available and published in the Code of Federal Regulations (CFR), and financial guidance also created by the federal department making the funds available. Additionally, in most cases, there may be requirements and conditions associated with specific federal grant-streams, which are not conditions of receipt of federal funds generally. Both will be referenced in the cooperative agreement itself and in the pages attached to it.

### How to Avoid the Inactive List

- Request an agreement if the project is shovel ready. For construction projects this includes having all design and certifications finalized, and right-of-way purchased (see Chapter 4 - Project Development for more information).
- Submit payment reimbursements monthly if possible, but at a minimum quarterly [23 C.F.R. § 1200.33 (d-e)].
- Correspond with Region Coordinator to make sure projects are in good standing and that payments are being processed accordingly.

# CHAPTER 3

## PROCUREMENT



**T/LPA:** Village of Hatch

**Project:** ADA-compliant sidewalks along NM 187

Due to the small size of the project (under \$60,000 was allocated for design), the Village of Hatch was able to use a small purchase agreement to procure design services from Bohannon Huston (BHI).

### 3.A. Introduction

The requirements of Chapter 3 apply to all Tribal/Local Public Agency (T/LPA) projects utilizing federal funds to pay for any portion of engineering and design-related services, including program management, feasibility studies, environmental studies, preliminary and final design, surveying, mapping, or architectural-related services with respect to a highway construction project. Procurement for construction management services will need to follow this chapter as well. This chapter also applies if the design will be used as a match for federally-funded projects. For projects that will **not** have a Cooperative Project Agreement for Design (i.e. no design funding is included in the STIP), the NMDOT will not oversee the T/LPA's procurement process, except for construction management, if applicable.

The T/LPA shall identify a Person in Responsible Charge (see Chapter 2, Section B for additional information). An independent consultant may also be procured to serve in a project management support role or to provide technical assistance.

An executed Cooperative Agreement shall be in place prior to advertising/soliciting for any consultant services. If the T/LPA has a current on-call consultant contract, they may request approval from the Region Coordinator to issue a task order instead of beginning a new Request for Proposals (RFP). In order to be eligible for use, the original on-call contract must have followed the underlining procurement processes outlined under Chapter 3, Section C. The T/LPA shall request that the Region Coordinator review the original RFP for the on-call contract to ensure compliance with state and federal requirements.

Regardless of the method of procurement used, the Region Coordinator shall review and approve all procurement documentation prior to solicitation (or issuance of a task order if using an eligible existing on-call contract). For all methods of procurement, the T/LPA shall retain supporting documentation of the solicitation, proposal, evaluation, and

#### What T/LPAs Need to Know

Procurements requirements apply to all T/LPA projects utilizing federal funds for design and/or construction management.

Region Coordinators verify federal requirements are met and the procurement process is followed accordingly. T/LPAs have authority and control over the selection process, negotiations with selected consultants, and payment methods.

T/LPAs can seek assistance from NMDOT in creating an RFP and following the requirements for the procurement process. NMDOT can provide RFP templates to the T/LPA upon request.

An executed Cooperative Agreement must be in place prior to advertising/soliciting for any consultant services.

Tribal governments and home rule entities are exempt from the requirements in this chapter and must follow their own procurement codes.

selection of the consultant in accordance with Chapter 3, Section F and the provisions of 2 CFR § 200.333.

Per NMSA 1978, 13-1-154.1, the T/LPA is responsible for ensuring that the total amount of multiple contracts and all renewals for a single consultant does not exceed seven million five hundred thousand dollars (\$7,500,000) over four years and that a single contract, including any renewals, does not exceed six hundred fifty thousand dollars (\$650,000).

## **3.B. Recommended Insurance Requirements**

### **3.B.1. General Considerations**

Insurance coverage serves as part of the financial backing for the liability assumed by a contracting party through the indemnification language in a contract. Instead of intentionally utilizing its own assets to support the liability, the contracting party is transferring the risk to the insurance company in return for payment of the insurance premium. Without insurance, most consultants would not be able to meet their indemnification obligations when a significant loss occurs.

Required coverages and minimum limits are intended to be a reflection of the perceived risk potential that the activities of the consultant could impose onto the T/LPA but in no way limits the liability of the consultant.

For most consultants, the following reflect a minimum level of insurance limits on four types of insurance coverage: General Liability (Bodily Injury Liability and Property Damage Liability), Workers' Compensation, Business and Umbrella or Excess Liability. The New Mexico Department of Transportation (NMDOT) recommends that the T/LPA not issue a notice of award until its consultant has met the appropriate insurance requirements.

### **3.B.2. Liability Insurance**

The consultant shall obtain General Liability (Bodily Injury Liability and Property Damage Liability) insurance coverage applicable in full to the subject project in the following minimum amounts:

- **Personal and Bodily Injury Liability:** \$1,000,000.00 each person; \$2,000,000.00 each occurrence (annual aggregate)
- **Property Damage Liability:** \$2,000,000.00 each occurrence; (annual aggregate)

### 3.B.3. Worker's Compensation Insurance

The consultant shall carry worker's compensation insurance and otherwise fully comply with the New Mexico Worker's Compensation Act (NMSA 1978, § 52-1-1 et seq.) and the New Mexico Occupational Disease Disablement Law (NMSA 1978, § 52-3-1 et seq.). With very limited exceptions, state laws require all businesses are required to either purchase workers' compensation coverage unless otherwise exempt.

### 3.B.4. T/LPA As Additional Insured

The consultant shall name the T/LPA and any third party so designated in the contract as an additional named insured on the comprehensive general liability form or commercial general liability form furnished by the consultant. The certificate of insurance (COI) shall state that the coverage provided under the policy is primary over any other valid and collectible insurance. The additional insured endorsement shall conform to the most current version of the Insurance Services Office's CG 2010 or equivalent, Additional Insured Endorsement Form.

### 3.B.5. Certificate of Insurance

A COI is a simple, standardized way of documenting proof of insurance coverages. Although a certificate of insurance is not legally binding and does not impose any obligation onto the insurance company(s) listed, it does serve to identify the key information about the consultant's insurance. The certificate shall indicate compliance with these sections and shall certify that the coverage shall not be changed, canceled, or allowed to lapse without giving the T/LPA thirty (30) days written notice. The consultant shall provide a certificate of insurance to the T/LPA on renewal of a policy or policies as necessary during the term of the Contract.

### 3.B.6. Umbrella Coverage

The insurance limits cited in this section are minimum limits. The NMDOT does not intend that this Handbook defines what constitutes adequate insurance coverage for the individual consultant. The T/LPA may recognize excess coverage (i.e. umbrella coverage) as meeting the insurance requirements of section titled "Liability Insurance," if the limits of the umbrella coverage meet the individual requirements of this section.

### 3.B.7. Professional Liability/Errors and Omissions Insurance

The services performed by a consultant may not be covered under a Commercial General Liability policy. In addition to the four basic coverages previously described, a consultant should be required to carry Professional/Errors and Omissions Liability

insurance. The liability exposures created by an improper act, error or omission in the performance of professional services can be significant. Without insurance, a consultant may not be able to meet their indemnification obligations when a significant loss occurs. Coverage should be provided for at least for the duration of the agreement. The T/LPA may want to give consideration to requiring an endorsement that adds an “extended reporting period” (“ERP”) or a “discovery” feature— to allow the T/LPA to report a claim— for a period of not less than three (3) years following the initial policy's expiration, or following the completion of the consultant's services, whichever date is later. The consultant should be required to provide a certificate of insurance to the T/LPA showing the coverage, limits of liability, covered operations, effective dates and date of expiration.

### **3.C. Procurement Methods and Procedures**

NMDOT oversees the procurement process and ensures that the evaluation criteria are administered properly. T/LPAs have authority and control over the selection process, negotiations with selected consultants, and payment methods allowable within the state procurement code and CFRs. T/LPAs can seek assistance from NMDOT in creating an RFP and following the requirements for the procurement process. NMDOT can provide RFP templates to the T/LPA upon request. The use of NMDOT templates is highly recommended as RFPs that do not meet federal guidelines will not be eligible for reimbursement with federal funds.

Per federal guidelines, there are three approved procedures for the procurement of engineering and design-related consultant services:

- Competitive negotiation, or qualifications-based selection procurement
- Small purchases procurement for small dollar value contracts
- Non-competitive procurement where specific conditions exist allowing solicitation and negotiation to take place with a single consultant (i.e. sole source procurement)

### 3.C.1. Competitive Negotiation

If the total estimated consultant fees from project conception through construction (Preliminary Engineering [PE] and construction management combined, independent of funding source) are anticipated to exceed the small purchase threshold (see Chapter 3, Section C.2) the T/LPA must use the competitive negotiation procurement process. If an estimate is close to the small purchase threshold, it is recommended that the T/LPA use the competitive negotiation method as supplemental agreements or change orders may result in exceeding the threshold which may jeopardize federal and/or state funding.

#### Use of On-call Contracts

On-call contracts may be utilized following a pre-qualification process to contract with a consultant(s) for a particular project. If the T/LPA has a current on-call consultant contract, they may request approval from the Region Coordinator to issue a task order instead of beginning a new RFP.

Competitive negotiation (as specified in 23 U.S.C. § 112(b)(2)(A) and 23 CFR 172.7(a)(1)) is based on qualifications-based selection procedures (as specified in 40 U.S.C. §§ 1101–1104 (the Brooks Act)), and is the primary method of procurement for Federal-aid highway program (FAHP) funded engineering and design related service contracts associated with a construction project. Engineering and design related services are defined as: program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services (as specified in 23 U.S.C. § 112(b)(2)(A) and 23 CFR § 172.3). The Brooks Act further defines architectural and engineering related services as professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed, approved, or logically/justifiably performed by a person licensed, registered, or certified as an engineer or architect to provide the services (as specified in 40 U.S.C. § 1102(2)).

In accordance with the requirements of the Brooks Act, the procedures for the competitive negotiation procurement (qualifications-based selection) method for engineering and design related services are solicitation, RFP, evaluation, negotiation, and award.

#### 3.C.1.a. Solicitation

The solicitation process shall be by public announcement, public advertisement, or any other public forum or method that assures qualified consultants (both in-state and out-of-state) are given a fair opportunity to be considered for award of the contract. The solicitation should include the evaluation criteria with its weighting/relative importance that will be used to rate the firms for their competency and qualifications to perform the

type of work requested. The solicitation should provide a clear and precise statement of the work to be performed, estimated schedule to accomplish the services, and method of compensation/payment. The solicitation must also allow sufficient time for firms to prepare and submit a proposal in response to the solicitation (as specified in 23 CFR 172.7(a)(1)(ii)(G)). Price shall not be used as a criterion in the evaluation and ranking/selection of the most highly qualified firm (as specified in 23 CFR 172.7(a)(1)(iii)(B)). The solicitation may involve:

- A single-step process, with issuance of a Request for Proposal (RFP) to all interested consultants.
- A multi-phase process with issuance of a request for statements or letters of interest or Request for Qualifications (RFQ) whereby responding consultants are ranked based on qualifications. An RFP is then provided to three or more of the most highly qualified consultants.
- A prequalification process whereby annual statements of qualifications and performance data are used to assess minimum qualifications of consultants to perform services under general work categories or areas of expertise.

### 3.C.1.b. Request for Proposals

The RFP shall provide all information and requirements necessary for interested consultants to provide a response and compete for the solicited services. The T/LPA should submit the draft RFP to the Region Coordinator for review prior to advertising. The RFP shall:

- Provide a clear, accurate, and detailed description of the scope of work, technical requirements, and qualifications of consultants necessary for the services to be rendered
  - To the extent practicable, the scope of work should detail the purpose and description of the project, services to be performed, deliverables to be provided, estimated schedule for performance of the work, and applicable standards, specifications, and policies
- Identify the requirements for any interviews that may be conducted with three or more of the most highly qualified consultants following submission and evaluation of proposals, if applicable
- Identify evaluation factors including their relative weight of importance
- Specify the contract type and method(s) of payment anticipated to contract for the solicited services (23 CFR § 172.9). Refer to the Chapter 3, Section D for more information.
- Identify any special provisions or contract requirements associated with the solicited services

- Provide an estimated schedule for the procurement process and establish a submittal deadline for responses to the RFP that provides sufficient time for interested consultants to receive notice, prepare, and submit a proposal, which shall be not less than 14 calendar days from the date of issuance of the RFP

### 3.C.1.c. Evaluation

Evaluation factors are the criteria used for evaluation, ranking, and selection of consultants to perform engineering and design-related services. Evaluation factors must assess the demonstrated competence and qualifications for the type of professional services solicited.

- i. Qualifications-based factors may include, but are not limited to:
  - Technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures)
  - Work experience
  - Specialized expertise
  - Professional licensure
  - Staff capabilities
  - Workload capacity
  - Past performance
- ii. The following non-qualifications-based evaluation criteria are permitted under the specified conditions, provided the combined total of these criteria do not exceed a nominal value of 10% of the total evaluation criteria:
  - A local presence may be used as a nominal evaluation factor ( $\leq 10\%$ ), where appropriate. This criterion is not to be confused with an in-state or local preference criterion, which is not allowed with federal funding (see iv. Below). The local presence shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, or where a local presence will add value to the quality and efficiency of the project. The application of this criteria must leave an appropriate number of qualified consultants, given the nature and size of the project. If a consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.

- The participation of qualified and certified Disadvantaged Business Enterprise (DBE) program sub consultants may be used as a nominal evaluation criterion, where appropriate (49 CFR § 26). Contact the Region Coordinator for guidance on the use of an evaluation criterion for DBE participation in the qualifications-based selection of firms.

iii. Ineligible Evaluation Criteria

- Price *shall not* be used as a factor in the evaluation, ranking, and selection phase. All price or cost-related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.
- In-state or local preference *shall not* be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement for the minimum qualifications and competence of a consultant to perform the solicited services.

iv. Evaluation, ranking, and selection:

- The T/LPA shall establish a selection committee to evaluate consultant proposals based on the criteria established and published within the public solicitation.
- Although the contract will be with the consultant, proposal evaluations shall consider the qualifications of the consultant and any sub consultants identified within the proposal with respect to the scope of work and established criteria.
- From the proposal evaluation, the T/LPA's selection committee shall rank, in order of scoring, at least three consultants determined most highly qualified to perform the solicited services. In instances where only two qualified consultants respond to the solicitation, the T/LPA may proceed with evaluation and selection if it is determined that the solicitation did not contain conditions or requirements that arbitrarily limited competition. Alternatively, the T/LPA may pursue procurement following the noncompetitive method when competition is determined to be inadequate and it is determined not to be feasible or practical to re-compete under a new solicitation.
- Notification must be provided to responding consultants of the final ranking of the three most highly qualified consultants.

- The T/LPA shall retain supporting documentation of the solicitation, proposal, evaluation, and selection of the consultant at least three years from the date that the T/LPA submits its final reimbursement request to the NMDOT.

v. Independent Cost Estimate.

An independent cost estimate (ICE or CE) is required for each contract and contract modification. Prior to receipt of the consultant's cost proposal, the T/LPA must prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The ICE becomes the basis for ensuring that the consultant work and services are obtained at a fair and reasonable cost. It will be used as a basis for the T/LPA negotiations with the selected consultant.

The CE is based on detailed breakdown of tasks, an appropriate breakdown of specific types of labor (employee classifications) required, work hours, indirect costs, and an estimate of the consultant's fixed fee for profit to be used during negotiations. The fixed fee for profit is calculated by multiplying the total labor costs and indirect costs by a percentage. The T/LPA and selected consultant may independently use a detailed work plan matrix outlined in the previous paragraph. The ICE will be used by the T/LPAs negotiating team and is to be kept confidential. If the detailed work plan is found to be insufficiently detailed to prepare the estimate, the detailed work plan must be updated before the ICE is completed.

For every contract modification between the T/LPA and the consultant, the T/LPA must sign and date the ICE, submit it to the Region Coordinator for review and approval, and retain a copy of the documentation including NMDOT's letter of concurrence for their records.

After the detailed work plan and T/LPA CE, including the completed work schedule, are approved in writing by the Region Coordinator, the consultant shall submit their fee proposal to the T/LPA.

The consultant's fee proposal should include a detailed estimate of the hours for each of the major tasks. The estimated labor costs are determined by applying the employee's labor rates shown in the staffing, along with the consultant's current overhead rate, and a completed work schedule and expenses estimate. In addition to charges for labor, the consultant should, if appropriate, indicate the costs for sub consultants, travel, living expenses, reproduction, and other out-of-pocket expenses expected to be incurred.

The T/LPA will review the submitted fee proposal, compare it to the CE, and prepare a pre-negotiation memorandum. The memo will identify the differences between the two estimates and document the T/LPA negotiation strategy. The pre-negotiation memorandum is intended to help the T/LPA prepare for the negotiations and identify misunderstandings and portions of the detailed work plan that require discussion.

#### Best Practice Consultant Evaluation

The T/LPA may prepare an evaluation summarizing the consultant's performance on a contract. The performance evaluation should include, but not be limited to, an assessment of the timely completion of work, adherence to contract scope and budget, and quality of the work conducted. The T/LPA shall provide the consultant a copy of the performance evaluation and an opportunity to provide written comments to be attached to the evaluation. The T/LPA should prepare additional interim performance evaluations based on the scope, complexity, and size of the contract as a means to provide feedback, foster communication, and achieve desired changes or improvements. Completed performance evaluations should be archived for consideration as an element of past performance in the future evaluation of the consultant to provide similar services.

#### 3.C.1.d. Negotiation

The T/LPA and the consultant will negotiate a final detailed work plan and cost. The T/LPA and the selected consultant should jointly develop a detailed work plan which includes a detailed Scope of Services (SOS) and a staff plan. The detailed SOS is developed from the scope of work included in the RFP/RFQ. The detailed SOS describes what services will be required, a schedule of milestones, a list of deliverables, completion date, expectations for quality, and the responsibilities of both the consultant and the T/LPA. A staffing plan contains employee classifications specific to the procured services and their associated labor rates. Completion dates shall be established for the milestones based on a total number of days to complete the work (as described in the scope of work) within the timeframe allowed by the T/LPA's cooperative agreement for design and the selected consultant shall submit a fee proposal. The T/LPA shall attempt to negotiate professional services for compensation that the T/LPA determines is fair and reasonable. In determining fair and reasonable compensation, the T/LPA shall consider the scope, complexity, professional nature, and

#### Best Practice

The goal is to complete contract negotiations promptly. The NMDOT has set an internal timeline of 60 calendar days from beginning of negotiations to NTP issued to consultant. T/LPAs are encouraged to use this timeline or try and complete the negotiation and issue an NTP as quickly as possible. Any time saved during this part of the process will help the T/LPAs meet the deadlines outlined in Chapter 2 – Agreements.

estimated value of the services to be performed. It is important to document a record of negotiations and include it in the project file.

- **Overhead Audit Rates and Audit Requirements:** Each consultant under contract with the T/LPA must comply with the policies related to Overhead Audit Rates and Audit thresholds. A summary of the NMDOT's policy can be found on the NMDOT Program Management [website](#).
- **Wage and Labor Rates:** Approved wage and labor rates will be determined at the time of negotiation based on certified wage and labor rates supplied by the consultant firm. The wage and labor rates approved at the time of negotiations will remain in effect for the consultant contract lump sum fee through the tenure of the phase negotiated. If supplemental phases are negotiated as part of the contract, the consultant may adjust the wage and labor rates at the time of negotiations for the supplemental phase. Supplemental phases must be included in the original RFP or justified through a sole source procurement.
- **Negotiations for On-calls and/or Unit Rate (Indefinite Quantity) Contracts:** If a T/LPA intends to use their existing on-call contract to secure a consultant, then procurement negotiation shall include the following:
  - Approved overhead rate
  - Approved wage and labor rates as determined during negotiations (and approved by the New Mexico Department of Workforce Solutions)
  - Profit margin as determined by negotiation
  - Gross Receipts Tax (GRT) and other applicable taxes
    - The use of incentive/disincentive clauses will be project-specific and will be
    - Indicated in a specific RFP.
- **Failure to Reach Agreement:** In the event negotiations are terminated with the top-ranked consultant, the T/LPA may initiate negotiations with the second-ranked consultant. Negotiations will continue in this manner until an agreement is reached with a qualified firm. Once negotiations have been terminated with a firm and begun with another, they cannot be reopened with the former firm. If agreement cannot be reached with any of the short-listed firms, the project may need to be re-scoped and re-advertised, or the decision to utilize consultant services may need to be revisited.

### 3.C.1.e. Award

Once negotiations are complete and a satisfactory agreement has been reached by the T/LPA and their selected consultant, the parties will enter into a contract.

Once the contract is signed, a written Notice to Proceed (NTP) is issued by the T/LPA to the consultant. The NTP, with a fully executed contract attached, gives the consultant the authority to begin work on the project. No work completed by the consultant prior to the NTP is eligible for federal participation. The T/LPA will provide a copy of the NTP to the Region Coordinator for their files.

### 3.C.1.f. Orientation Meeting

NMDOT recommends that the T/LPA hold an orientation meeting with the consultant if they are unfamiliar or unclear about the federal requirements associated with the T/LPA program. This orientation meeting should be scheduled by the T/LPA and held within seven (7) working days after the notice to proceed (NTP) is issued. The meeting should be attended by the T/LPA's Person in Responsible Charge, the consultant's project manager and key staff members, the Region Coordinator, and any other NMDOT staff with an interest in the project. The objectives of the orientation meeting are to:

- Introduce T/LPA staff and consultant project team members.
- Set the proper tone for the project team working relationships, lines of communication, and information exchanges.
- Clearly establish the principal contacts for both the T/LPA and the consultant regarding technical and administrative issues.
- Review project objectives, critical design issues, and any federal, state, or local requirements that will govern or affect the services to be provided.
- Discuss the procedures for conflict resolution.
- Review the consultant's detailed work plan, schedule, and any key dates that affect the T/LPA or consultant actions such as providing date, delivering plans, or attending review meetings and public hearings.

#### Best Practice

- T/LPAs may review the following: NMDOT requirements for technical reviews, quality control, progress reporting, and invoicing.
- NMDOT performance evaluation program, including timing and content of evaluations and consultant's method for responding to the evaluations.

### 3.C.2. **Small Purchases**

For small dollar value contracts, the T/LPA may use the state's small purchase procedures for the procurement of engineering and design-related services provided the total contract costs do not exceed \$50,000 (excluding GRT) for engineering service and \$60,000 (excluding GRT) for professional services, per NMSA 1978, 13-1-125 "Small

Purchases.” The small purchase procedures cannot be used for landscape architectural or surveying services costing \$10,000 or more (excluding GRT).

The following additional requirements shall apply to the small purchase procurement method:

- The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures.
- Quotes from at least three consultants should be obtained. In the event less than three quotes are obtained, the T/LPA must justify the absence of more competition. The agreed upon costs of services should be at a fair and reasonable price to the T/LPA. All reimbursable costs must be consistent with the federal cost principles contained in 48 CFR § 31 and FHWA 23 CFR § 172. The full amount of any contract modification or amendment that would cause the total contract amount to exceed the threshold (excluding GRT) is ineligible for federal funding and may jeopardize federal participation for the project.
- For the procurement of engineering and design-related services less than \$20,000 (excluding GRT), a direct purchase order can be issued based upon the best obtainable price.

### 3.C.3. Non-Competitive (Sole Source Procurement)

The T/LPA may award a contract by non-competitive procedures under the following limited circumstances and pre-approved by Region Coordinator:

- The service is available only from a single source (see Chapter 3, Section C.4)
- After solicitation of a number of sources, competition is determined to be inadequate (i.e. less than three (3) proposals are received)

Contract costs may be negotiated in accordance with T/LPA non-competitive procedures; however, the allowability of costs shall be determined in accordance with the federal cost principles. The T/LPA shall submit a justification letter to the Region Coordinator and receive approval from Federal Highway Administration (FHWA) before using this form of contracting.

### 3.C.4. General Rules Applicable to Sole Source Contracts

In very limited circumstance and with pre-approval by the Region Coordinator, a contract may be awarded without competitive sealed bids or competitive sealed proposals regardless of the estimated cost when the T/LPA, employing due diligence, determines in writing that:

- There is only one source for the required service
- The service is unique, and this uniqueness is substantially related to the intended purpose of the contract, and
- Other similar services cannot meet the intended purpose of the contract

Because procurement by sole source is a noncompetitive procurement, it should be treated as an “exception-to-the-norm” and is one that is subject to close scrutiny due to the limited circumstances which justify its use. The T/LPA must determine whether or not there is a valid justification to obtain the service using the sole source method without risking the use of federal funds for those purposes. It will be difficult to justify use of the sole source procurement method if the T/LPA agency itself is responsible for the situation. For example, lack of advance planning, delays in procurement administration due to a shortage of procurement personnel or the incompetence of procurement personnel, and insufficient funds due to budgeting constraints may not be sufficient justification. It is strongly recommended that T/LPA document very thoroughly and carefully the rationale for proceeding with a sole source procurement.

### 3.C.5. Other Requirements

The following requirements apply to the procurement of engineering and design-related services, regardless of which method is used:

- Uniform administrative requirements, cost principles, and audit requirements for federal awards
- **Suspension and debarment:**
  - The T/LPA shall verify suspension and debarment actions and eligibility status of consultants and sub-consultants prior to entering into an agreement or contract (2 CFR § 1200 and 2 CFR § 180).
  - The T/LPA shall check the government-wide System for Award Management (SAM), maintained by the General Services Administration (GSA), to determine whether a person is excluded (<https://sam.gov/SAM/>). If the project has state funds, the T/LPA only needs to check the General Services Department list ([https://www.generalservices.state.nm.us/statepurchasing/Debarment\\_Notices.aspx](https://www.generalservices.state.nm.us/statepurchasing/Debarment_Notices.aspx)). A T/LPA may have its own authority to suspend and debar. See NMSA 1978 13-1-177.
  - The Professional Engineering license of the engineer can be verified at [http://www.rld.state.nm.us/Look\\_Up\\_a\\_License.aspx](http://www.rld.state.nm.us/Look_Up_a_License.aspx)
- **Conflicts of interest:**
  - As a sub recipient of federal funds, the T/LPA must maintain a written code of standards of conduct governing the performance of their employees

- engaged in the award and administration of engineering and design related service contracts and governing the conduct and roles of consultants in the performance of services under such contracts to prevent, identify, and mitigate conflicts of interest in accordance with 2 CFR § 200.112, 23 CFR § 1.33 and the provisions of 23 CFR § 172.7(b)(4). The T/LPA must disclose in writing any potential conflict of interest to the Region Coordinator.
- Federal conflict of interest provisions prohibits public employees, public officials, officers, agents and others from having a direct or indirect financial interest, real or apparent, in any contract with the public entity for which he or she is a public official or is employed. This includes real estate interests adjacent to or within the limits of the project that is owned by an official or employee of the T/LPA, or by an owner or employee of the selected consultant firm. An example of a prohibited financial interest would be a situation involving a part-time county highway superintendent awarding a professional service contract to a firm in which the superintendent is presently a partner. Many other less obvious situations may also represent a conflict of interest.
  - State law prohibits public employees or public officials from having certain personal interests in contracts entered into by the employee or the official's governmental entity. See, for example, NMSA 1978 § 10-16-7 (contracts involving public officials or employees), § 10-16-8 (contracts involving former public officers or employees; representation of clients after government service) and § 10-16-13 (prohibited bidding) of the Government Conduct Act. The same, or a financially related, professional services consulting firm cannot serve as city engineer/city street superintendent/county highway superintendent of record and also provide professional services (preliminary engineering or construction management) for a transportation project (23 CFR § 1.33).
  - The T/LPA must comply with all these and any other provisions of law or risk the project being determined to be ineligible for federal funding, in addition to all other state law sanctions, penalties, or remedies. It is the responsibility of the T/LPA, its public employees and their contracted consultants to be familiar with federal and state conflict of interest laws that apply to federally-funded projects. The laws and statutes identified above serve only as a guide. The T/LPA must adhere to any local laws and policies, and any new or revised federal laws or state statutes.
  - **Consultant services in management support roles:**
    - Use of consultants in management support roles does not relieve the T/LPA of providing a full-time employee as a Person in Responsible Charge. See Chapter 3, Section D for more information.

## 3.D. Contracts and Administration

### 3.D.1. Types of Contracts

- **Project-specific:** A contract between the T/LPA and the consultant for the performance of services and defined scope of work related to a specific project or projects.
- **Multi-phase:** A project-specific contract where the solicited services are divided into phases and where the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.
- **On-call or Indefinite Delivery/Indefinite Quantity (IDIQ):** A standard on-call contract requires consulting firm to provide work and services for a number of projects, under task or work orders issued on an as-needed or on-call basis. The procurement of an on-call or IDIQ contract must comply with the competitive negotiation procurement procedures as outlined above. The T/LPA should consult with its Regional Coordinator and obtain approval prior to using an on-call or service agreement.

### 3.D.2. Payment Methods

The method of payment to the consultant shall be as outlined in the original RFP. The methods of payment may be one or a combination of the following:

- **Specific rates of compensation:** This payment method provides for reimbursement on the basis of direct labor hours at specified fixed hourly rates, including direct labor costs, indirect costs, and fee or profit, plus any other direct expenses or costs, subject to an agreement maximum amount. This payment method shall only be used when it is not possible at the time of procurement to estimate the extent or duration of the work or to estimate costs with any reasonable degree of accuracy. This payment method should be limited to contracts or components of contracts for specialized or support type services where the consultant is not in direct control of the number of hours worked, such as construction engineering and inspection. When using this payment method, the T/LPA should manage and monitor the consultant's level of effort (LOE) and classification of employees used to perform the contracted services.
- **Cost plus fixed fee:** A cost-plus-fixed-fee contract is a cost-reimbursement contract that provides for payment to the consultant of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost but may be adjusted as a result of changes in the work to be performed under the contract. This method can be used when the LOE is unknown or uncertainties

involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract (i.e. engineering services plus fixed fee for any sub consultant(s)).

- **Cost per unit of work:** A cost per unit of work contract (also called a time and materials contract) provides for supplies or services on the basis of direct labor hours at specified fixed hourly rates and actual cost for materials. A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. A time-and-materials contract provides no positive profit incentive to the consultant for cost control or labor efficiency; therefore, appropriate supervision of consultant performance is required to ensure that efficient methods and effective cost controls are being used. A time-and-materials contract or order may be used only if the T/LPA prepares a determination and finds that no other contract type is suitable.
- **Lump sum:** The lump sum payment method shall only be used when the T/LPA has established the extent, scope, complexity, type, and duration of the work to be required to a degree that fair and reasonable compensation, including a fixed fee, can be determined at the time of negotiation.

The following methods of payment *may not* be used between the T/LPA and the consultant:

- The cost plus a percentage
- The percentage of construction cost

A single contract may contain different payment methods as appropriate for compensation of different elements of work. When the method of payment is other than lump sum, the contract shall specify a maximum amount payable (i.e., "not to exceed") which shall not be exceeded unless adjusted by a contract modification.

### 3.D.3. Contract Modification

Contract modifications are required for any amendments to the terms of the existing contract that change the cost of the contract, character, scope, complexity, or duration of the work. A contract modification shall clearly define and document the changes made to the contract, establish the method of payment for any adjustments in contract costs, and be in compliance with the terms and conditions of the contract and original procurement. The T/LPA shall negotiate contract modifications following the same procedures as the negotiation of the original contract and shall receive concurrence from the Region Coordinator prior to approving any contract changes.

The T/LPA may add to a contract only the type of services and work included within the scope of services of the original solicitation from which a qualifications-based selection was made. For any additional engineering and design-related services outside of the scope of work established in the original RFP, the T/LPA shall:

- Procure the services under a new solicitation
- Perform the work itself using T/LPA staff, or
- Use a different, existing contract under which the services would be within the scope of work

Overruns in the costs of the work shall not automatically warrant an increase in the consultant's fee and/or the Cooperative Agreement for design.

### **3.E. Design Contract Reimbursements**

Proper documentation as identified in the Cooperative Project Agreement for Design and this chapter is required before NMDOT will process a reimbursement payment. Only those expenses that are properly documented and deemed eligible will be reimbursed, and any incomplete submittals will be returned to the T/LPA for corrections. Invoiced work will not qualify for reimbursement and will not be processed. If work is performed under any of the following circumstances:

- Prior to obligation of project federal funds for the preliminary engineering phase
- Prior to execution of the Cooperative Project Agreement for Design
- Prior to date on NMDOT Purchase Order
- Prior to the NTP date
- After the expiration of the Cooperative Project Agreement for Design or in excess of the maximum dollar amount of the Cooperative Project Agreement for Design

Requests for reimbursement for all work completed during the preliminary engineering phase shall be submitted to the Region Coordinator for approval quarterly (requests will also be accepted monthly). Once the Region Coordinator has reviewed and approved the reimbursement request, they will forward to the District Coordinator for processing and reimbursement. Payments will be processed and approved within fourteen days of receiving a complete request for reimbursement from the T/LPA.

A complete request for reimbursement will include the following:

- Invoice Cover Page on T/LPA letter head including (contact the Region Coordinator for example cover page):
  - Project Control Number and Project Contract Number (can be found on the first page of the Cooperative Project Agreement for design)

- Invoice billing period
- Total federal funds awarded
- Federal funds previously reimbursed
- Federal funds remaining prior to this reimbursement request
- Total completed for the current billing period (per attached invoice(s))
- Less project match (generally 14.56%)
- Federal funding requested with this reimbursement
- Certification by T/LPA Person in Responsible Charge that the work or services have been performed and the T/LPA has not been previously reimbursed for the same work.
- Original Detailed Invoice from the consultant clearly describing the work or services performed.
- Cancelled checks or direct deposit verification of payment by the T/LPA to the consultant.

To ensure payments are processed and approved within thirty days of receiving a complete request for reimbursement from the T/LPA, the T/LPA shall:

- Sequentially number reimbursement requests and submit to the Region Coordinator in order (by invoice dates).
  - Reimbursement requests with overlapping and/or missing invoice dates will not be accepted.
- Maintain accurate record keeping of federal funds awarded, federal funds reimbursed prior to attached invoice, federal funds remaining prior to the attached invoice, total completed for this period, percentage of the local match and percentage of the federal reimbursement.

Preliminary engineering costs are generally incurred through the date of PS&E approval. The final request for reimbursement for preliminary engineering shall be submitted to the Region Coordinator within thirty (30) calendar days of submittal of the Production Package and prior to the termination date identified in the Cooperative Project Agreement for Design. Costs incurred during bidding and award process are charged to construction management. See Chapter 13, Section E for information on the reimbursement process during construction.

## 3.F. Recordkeeping

### 3.F.1. General Requirements

For all methods of procurement, the T/LPA shall retain supporting documentation of the solicitation, proposal, evaluation, and selection of the consultant in accordance with this section.

Financial records, supporting documents, statistical records, and all other non-federal entity records pertinent to a federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the federal awarding agency or pass-through entity in the case of a sub recipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-federal entities.

### 3.F.2 Exceptions

The only exceptions are as follows:

- If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- When the non-federal entity is notified in writing by the federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
- Records for real property and equipment acquired with federal funds must be retained for six (6) years after final disposition.
- When records are transferred to or maintained by the federal awarding agency or pass-through entity, the 6-year retention requirement is not applicable to the non-federal entity.
- Records for program income transactions after the Termination Date. In some cases, recipients must report program income after the Termination Date. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-federal entity's fiscal year in which the program income is earned.
- For indirect cost rate proposals and cost allocations plans, the following types of documents and their supporting records are required:
  - Indirect cost rate computations or proposals

- Cost allocation plans
- Any similar accounting computations of the rate at which a particular group of costs is chargeable, such as computer usage chargeback rates or composite fringe benefit rates
- If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the federal government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 6-year retention period for its supporting records starts from the date of such submission.
  - If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the federal government (or to the pass-through entity) for negotiation purposes, then the 6-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

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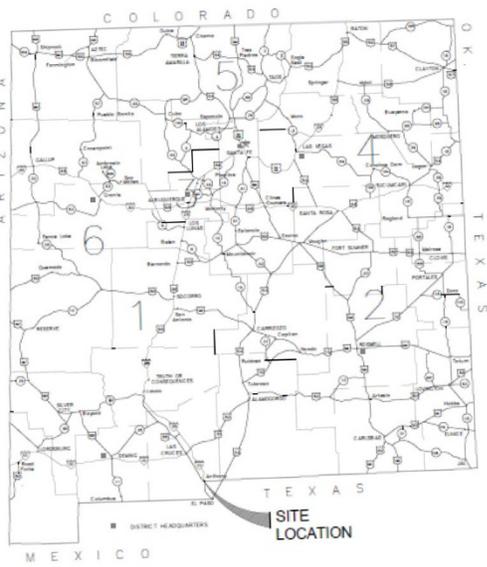
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APPENDIX

# CHAPTER 4 PROJECT DEVELOPMENT

PHASE 2  
JUNE 2016



CN: NMDOT E100220

SPEC. NO.	ITEM DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE
<b>ROADWAY</b>				
203000	UNCLASSIFIED EXCAVATION	CY	285.0	\$14.50
203000	BORROW	CY	250.0	\$25.00
208000	LINEAR GRADING	MILE	0.4	\$6,500.00
414000	COLD MILLING (ASPHALT)	SY-IN	14055	\$0.90
608004	CONCRETE SIDEWALK 4"	SY	1190	\$58.00
608106	DRIVEPAD 6"	SY	110	\$63.00
609462	CONCRETE CURB & GUTTER TYPE "C" 8" X 32"	LF	4125	\$23.00
609650	CONCRETE VALLEY GUTTER 6" X 72"	LF	125	\$60.00
632000	CLASS A SEEDING	AC	1.0	\$6,000.00
			<b>SUBTOTAL</b>	
<b>UTILITY</b>				
663000	UTILITY ITEMS	LS	1	\$8,700.00
			<b>SUBTOTAL</b>	
<b>PERMANENT SIGNING</b>				
701000	PANEL SIGNS	SQ FT	140	\$22.00
701100	STEEL POST AND BASE POST FOR ALUMINUM PANEL SIGNS	LF	180	\$15.00
			<b>SUBTOTAL</b>	
<b>MISCELLANEOUS ITEMS</b>				
603000	STORM WATER	LS	1	\$3.50
603281	SWPPP PLAN PREPARATION AND MAINTENANCE	LS	1	\$5.30
618000	TRAFFIC CONTROL MANAGEMENT	LS	1	\$4.48
621000	MOBILIZATION	LS	1	\$22.43
702810	TRAFFIC CONTROL DEVICES FOR CONSTRUCTION	LS	1	\$6.72
801000	CONSTRUCTION STAKING BY THE CONTRACTOR	LS	1	\$6.72
802000	POST CONSTRUCTION PLANS	LS	1	\$2.40
			<b>SUBTOTAL</b>	
<b>CONSTRUCTION TOTAL</b>				
<b>TESTING</b>				
901100	AGENCY TESTING	LS	1	\$10.80
901300	INDEPENDENT ASSURANCE TESTING	LS	1	\$9.20
			<b>SUBTOTAL</b>	
<b>CONSTRUCTION MANAGEMENT</b>				
22	PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES	LS	1	\$28.00
			<b>SUBTOTAL</b>	
<b>TOTAL OF BID ITEMS</b>				
ENGINEERING & CONTINGENCY @ 6%				
NMGRT @ 7.875%				
<b>TOTAL</b>				

SPECIFICATIONS AND CONTRACT DOCUMENTS  
FOR  
CONSTRUCTION OF

## Street Phase II (O'Hara Road to e) Congestion Mitigation & Air Improvement Program



June 2016

Every T/LPA project requires a final set of construction plans (stamped by a Licensed NM Professional Engineer), contract book, and engineer's estimate. These documents are shown in the images above.

## 4.A. Introduction

This chapter provides an overview of the project development process, including project scoping and what must be included on design plans at various stages of the process. Tribal/Local Public Agencies (T/LPAs) are required to coordinate all project development activities through the Region Coordinator. It is the T/LPA's responsibility to ensure that all construction plans, and specifications used in bid letting and construction of a T/LPA project are sufficient for doing so in accordance with the provisions of the cooperative agreement and must meet standards as set forth in the current New Mexico Department of Transportation (NMDOT) Standard Specifications, including the Supplemental Specifications. NMDOT staff will comment on possible problems, potential

conflicts, or inconsistencies during the design review process, but this does not relieve the T/LPA of full responsibility for the adequacy, accuracy, and completeness of the plans and specifications prepared by or for them. The T/LPA is responsible for determining the appropriate design parameters for the project while using good engineering judgment.

T/LPAs may use their specifications, special provisions or supplemental specifications on a project; however, the T/LPA must have these documents reviewed and approved by the Region Coordinator prior to the start of design. The T/LPA must assure, and the Region Coordinator must certify, that all project documents and process followed meet federal regulations and requirements. For program consistency, it is recommended that the T/LPA use NMDOT's processes, plans, specifications, special provisions, or supplemental specifications on a project.

## 4.B. Project Development Milestones

Understanding the project development sequence of milestones helps to ensure successful project delivery, and helps avoid expensive modifications, rework, and/or loss of funds. **Figure 5** depicts the project development milestones.

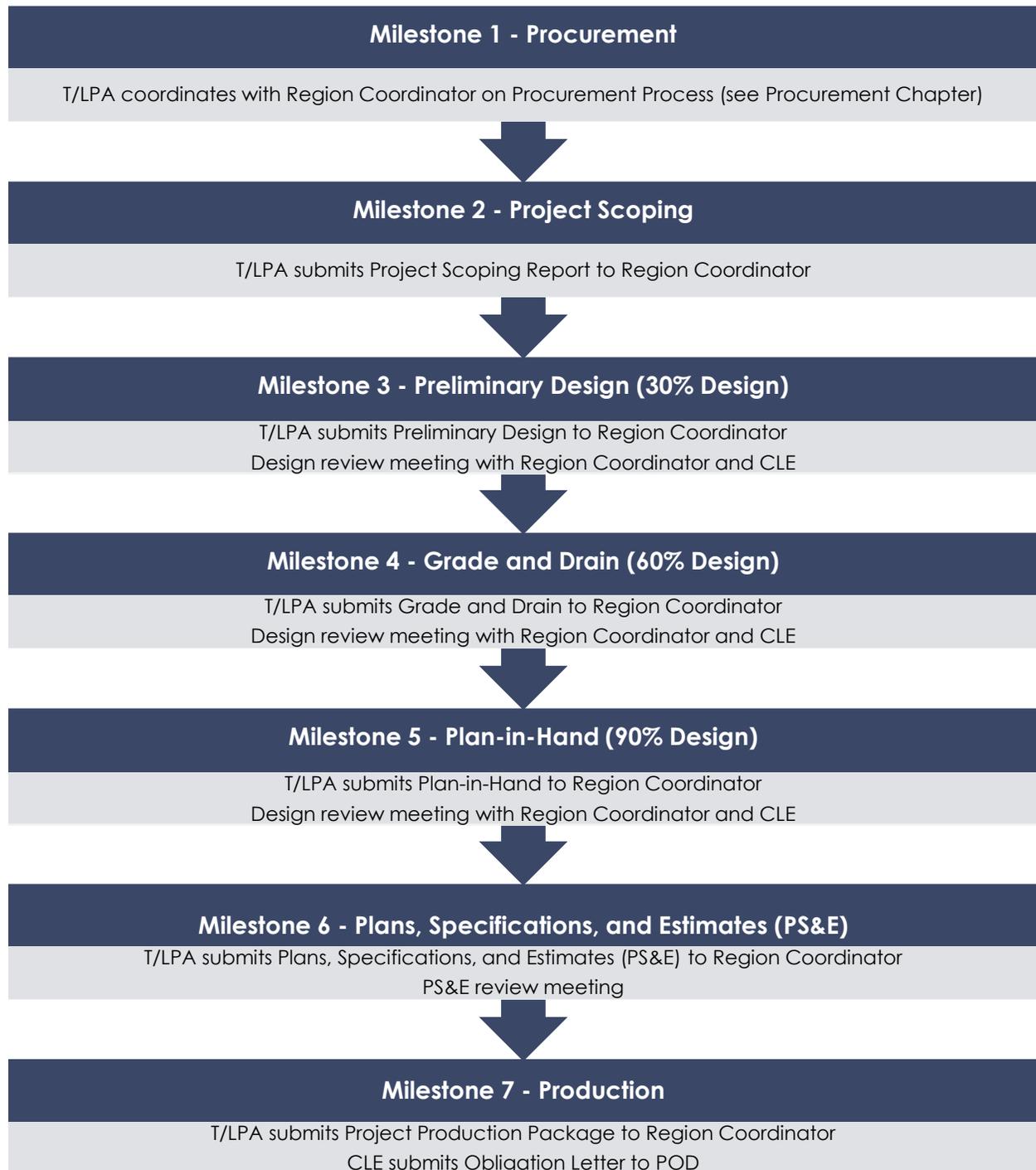
### What T/LPAs Need to Know

The contents of this chapter apply after funding is awarded to the T/LPA.

T/LPAs are required to coordinate all project development activities through the Region Coordinator.

The T/LPA will be required to pay all costs up front and will be reimbursed, minus local match, for work completed in accordance with this Handbook and the Cooperative Agreement outlined in Chapter 2 - Agreements.

**Figure 5: Project Development Milestones**



## 4.C. Project Scoping

### 4.C.1. Project Definition & Feasibility Phase

The project definition begins in the planning process with the Project Prospectus Form (PFF) and the Feasibility Meeting, as described in Chapter 1 – Planning. Through this process T/LPAs will identify needs and major elements of the project scope that meet those needs, such as drainage, roadway reconstruction, and pavement preservation. Metropolitan Planning Organization (MPO)/Regional Transportation Planning Organization (RTPO) and NMDOT staff will assist T/LPAs with the project definition. The PFF and project definition phase are preliminary scoping activities completed prior to funding award. A more detailed Scoping Report is also required if a project receives funding, though major project elements cannot be changed without concurrence from NMDOT.

### 4.C.2. Project Scoping Report

The Project Scoping Report further defines the project once the feasibility phase is complete and funding has been awarded. T/LPAs may have previously completed some work (such as environmental studies or planning) that can be used to develop the scoping report, but T/LPAs will need to develop a scoping report as outlined in this section. The Scoping Report includes greater detail than the project definition phase and will identify the appropriate level of effort for right-of-way certifications and environmental clearances. The Project Scoping Report involves:

- Understanding and documenting existing conditions, environmental, and right-of-way needs
- Identifying design parameters for the project
- Documenting safety considerations
- Describing proposed improvements
- Identifying factors that could affect project development
- Conducting a preliminary field review meeting

#### Critical Forms in the Project Scoping Phase

##### Project Feasibility Form

Determines project feasibility and funding sources. The PFF is prepared with support from MPO/RTPO staff and reviewed by NMDOT Planning staff prior to award of funding

##### Project Scoping Report

Details the general scope of the project after funding has been awarded. The Scoping Report is reviewed by the Region Coordinator.

- Developing a preliminary engineer's estimate

The Scoping Report clearly defines the proposed improvements and must be prepared by a licensed engineer. The completed Scoping Report will be reviewed by the Region Coordinator who may provide feedback and require changes to the document based on federal and state requirements, engineering judgement, and the engineer's estimate. The Region Coordinator review may also indicate whether public meetings or additional outreach are necessary. The preliminary engineer's estimate should be compared to the construction award amount as listed in the Statewide Transportation Improvement Program (STIP).

If additional funding is needed the Region Coordinator should be notified as soon as possible, but prior to 90% design, so the scope can be adjusted, or the T/LPA can find additional funding to complete the entire scope. The T/LPA should not move forward with design until the Scoping Report has been reviewed and a concurrence letter has been received from the Region Coordinator.

### 4.C.3. Scoping Report Contents

The following defines the required contents of the Scoping Report. T/LPAs should evaluate all items listed below but some elements may not apply based on the project type.

- Project Summary/General Description
  - Project data
    - Control number
    - Type of work
    - Project purpose and need
    - Location description
    - Posted route
    - Milepost (coordinates and/or intersections)
    - Project length
    - NMDOT district
    - County
    - Roadway functional classification
    - Terrain type
    - Fiscal year (study, design, construction) and project Termination Date
    - Program (funding category)

- Site description (beginning of project to end of project)
- Survey requirements (location and/or property survey)
- Right-of-way requirements (See Chapter 7 - Right-of-Way for a list of requirements)
- Environmental Level of Effort (ELOE)
- Estimated project development time (from scoping to letting) all within agreement contract time
- Estimated project construction schedule and budget
- Existing Conditions (where applicable)
  - Typical roadway section
    - Driving lanes per direction
    - Auxiliary lanes (acceleration, deceleration, and turning lanes) and medians
    - Shoulders (including rumble strips/stripes) and/or curb and gutter
    - Surfacing tapers
    - Multi-modal facilities (including transit, pedestrian and bicycle facilities)
  - Roadside slopes
  - Geotechnical conditions
  - Surfacing type and condition
  - Horizontal alignment
  - Vertical alignment
  - Major and minor roadway intersections
  - Right-of-way width
  - Major structures (> 20-foot span)
  - Other structures (< 20-foot span, may include fencing, retaining walls, cattle guards, concrete box culverts, safety barriers, etc.)
  - Roadway lighting
  - Traffic control and management devices (traffic signals, intelligent transportation system (ITS) equipment, special traffic signs, etc.)
  - Utilities (inventory and owners)
  - Environmental factors
  - Posted speed limit and design speed

- Driveway and entrances (inventory)
- Level of service (traffic volume and fleet characteristics)
- Facilities and compliance with the Americans with Disabilities Act (ADA)
- Railroad facilities (identify, should include railroad right-of-way, crossings, etc.)
- Erosion control and landscaping installations
- School crossings
- Safety considerations
- Proposed Improvements
  - Typical section (including surfacing type and thickness)
  - Major structures
  - Other structures
  - Horizontal alignment
  - Vertical alignment
  - Intersections
  - Turnouts
  - Safety
  - Drainage and erosion control
  - Design exceptions/ variances
  - Detours and traffic control
  - Warrants and signalization
  - Landscaping and irrigation
  - ADA/ pedestrian/ bicycle
  - Special issues or unique project elements
- Factors Affecting Project Development and Schedule
  - Survey requirements
  - Environmental requirements and certification (Chapter 6 – Environmental)
    - Archaeological requirements
    - Historic preservation requirements (include the State Historic Preservation Officer [SHPO] or Tribal Historic Preservation Officer [THPO])
    - Hazardous materials investigations (Chapter 5 – Hazardous Materials)

- Right-of-way ROW considerations and certification (Chapter 7 – Right-of Way)
- Utility relocations and/or hookups and utility certification (Chapter 8 - Utilities)
- Outside agency involvement and coordination
- Railroad facilities and certification (Chapter 9 - Railroads)
- ITS facilities and certification (Chapter 10 – Intelligent Transportation System)

## **4.D. Design Milestone Plan Reviews (30%, 60%, 90%, PS&E)**

Design reviews take place at various stages of the project development process and address survey, general constructability, bid items and quantities, a global review of pricing, federal and state requirements, and general format and content. The T/LPA or consultant licensed project engineer will address findings and comments received from the Region Coordinator, District Coordinator and Construction Liaison Engineer (CLE) and are responsible for formally documenting actions and addressing plan revisions prior to the next design review submittal.

The T/LPA shall coordinate and submit all design plans to the Region Coordinator a minimum of two weeks prior to the design review meeting. Plans should be submitted to the Region Coordinator by the T/LPA along with the [Plan Submittal Form](#). The Plan Submittal Form, which is signed by the Person in Responsible Charge, acknowledges that the T/LPA has reviewed the design plans, prior to submitting to the Region Coordinator, for completeness. The Region Coordinator and CLE will provide written and/or verbal comments at the design review meeting.

All design plans will undergo a design quality assurance review performed by the T/LPA and their consultants prior to each design review meeting. The design quality assurance review is intended to address major items and quantities, as well as general format and content of the design plans. The design review is not intended to serve as a formal verification of the entire plan submittal. Complex design projects may require a more in-depth quality assurance review; contact the Region Coordinator and/or see [NMDOT Design Manual](#) for information on this review process.

### **4.D.1. Preliminary Design (30% Design)**

The Preliminary Design phase begins with addressing the needs and issues identified in the Scoping Report and determining the steps toward environmental clearance (see Chapter 4, Section C.2 for information on Scoping Reports and Chapter 6- Environmental, for more details on the environmental clearance process). In general, preliminary design

establishes roadway alignment, grade, initial slope limits, and identifies existing drainage structures.

The following activities should be initiated, if applicable, or required by the Scoping Report:

- Hold public information meetings
- Continue documentation for environmental, cultural resource, and hazardous materials investigations, and obtain approvals
- Complete drainage report
- Begin pavement design
- Complete preliminary bridge/structure plans
- Coordinate railroad impacts
- Coordinate ITS impacts and improvements
- Identify utility owners, records research, and begin utility coordination for Subsurface Utility Engineering (SUE)

Following completion of the 30% Preliminary Design phase, a design review meeting will be held either in person or electronically. Plans should be submitted by the T/LPA at least two weeks prior to the design review meeting.

#### **Additional Actions if Right-of-Way is Needed**

The following additional activities need to occur in order during Preliminary Design

1. Complete property survey
2. Based on the project footprint, cultural and biological resource impacts are identified and plans for avoidance or mitigation are prepared.
3. If there are right-of-way impacts, Region Coordinator will schedule meeting with the ROW Bureau and the T/LPA
4. Begin Title Search and Title Reports; coordinate with Region Coordinator

### **4.D.2. Grade and Drain (60% Design)**

The NMDOT comments from the 30% Preliminary Design review meeting are addressed during 60% Design phase. All of the components in the 30% Preliminary Design phase are further developed and designed to a greater level of detail. Activities during the 60% Design phase include:

- Design drainage improvements

- Finalize project footprint
- Complete quantity schedules (if not included in the preliminary plans) and ensure they reflect computed design quantities
- Prepare and submit design variance and/or exceptions (if applicable)
- Continue with environmental approvals
- Continue right-of-way process
- Develop preliminary traffic control plans including a suggested sequence of construction.
- Submit engineer's estimate
- Prepare and submit draft contract book, including specifications, special provisions and Notice to Contractor (NTC)
- Incorporate ITS sheets, if necessary
- Incorporate rail design or mitigation and coordinate rail agreements and special provisions, as required
- Submit all Public Interest Findings (PIF) requests, if applicable
- Coordinate the Storm Water Pollution Prevention Plan (SWPPP) sheets and Temporary Erosion and Sediment Control Plan (TESCP) sheets with the Region Coordinator (if the project's disturbed area is greater than one acre)
- "Public Involvement" Work with the Region Coordinator to begin Utility Relocation documentation (if applicable) for utility certification

Following completion of the 60% Design phase, a second design review meeting will be held either in-person or electronically. Plans should be submitted by the T/LPA at least two weeks prior to the design review meeting.

### 4.D.3. Plan-in-Hand (90% Design)

Comments from the 60% Design review meeting and Constructability Review, when applicable, are incorporated during the 90% Design phase. At 90% Design, the plans, quantities, and engineer's estimate should be nearly complete. Only minor design changes should be occurring at (or after) this design phase. During the 90% Design phase, construction phasing layouts and construction signing, and striping plans are finalized, and project certification requests are completed and requested from the Region Coordinator. Activities during the 90% Design phase include:

- Finalize plans
- Finalize right-of-way coordination/certification
- Finalize utilities coordination/certification
- Finalize ITS coordination/certification
- Finalize railroad coordination/certification
- Finalize environmental certification
- Complete work zone checklist
- Start plans, specifications, and estimates (PS&E) checklist
- Finalize project cost estimate, including testing, construction management, and utility relocation when applicable
- Request Disadvantaged Business Enterprise Program (DBE) goal from the Region Coordinator, if applicable
- Finalize project specifications and contract book, including all federal requirements
- If project-specific special provisions are required, those must be submitted to the Region Coordinator for review and approval
- If project-specific NTCs are required, those must be submitted to the Region Coordinator for review and approval

#### Deadline for Requesting Additional Construction Funds

The 90% Design phase is the deadline for the T/LPA to request additional construction funds based on the current engineer's estimate. See Chapter 1, Section 9 "Changes to an Awarded Project" for specific details on the process for requesting additional funding. Addition of funds is based on the engineer's estimate and the availability of funding at the NMDOT, and funding requests may not be awarded. After the 90% design review meeting is held, no additional construction funds will be awarded.

Following completion of the 90% Design phase, a design review meeting will be held either in-person or electronically. Plans should be submitted by the T/LPA at least two weeks prior to the design review meeting.

#### 4.D.4. Plans, Specifications, and Estimate

The PS&E review phase incorporates the comments from the 90% Design review meeting and finalizes the plans, quantities, and engineer's estimate. The contract book and specifications are complete, and all certifications are obtained prior to holding the PS&E review.

NMDOT's process for PS&E reviews follow requirements set forth in the controlling regulation (23 CFR § 630 Subpart B). PS&E reviews are required for all federally-funded projects.

T/LPAs must submit the PS&E package a minimum of two weeks prior to the PS&E review meeting. The T/LPA shall invite, at a minimum, the Region Coordinator, the District Coordinator, and the CLE to participate in the PS&E review meeting. The PS&E review meeting shall be held in-person, or via a virtual meeting format, and well documented.

The special provisions that are developed in the 90% Design phase are an integral element of plan development. The PS&E review meeting is the last opportunity for the design team to discuss the impacts of the special provisions to the plans used for advertising (see Chapter 11 - Advertising and Award for more information). The meeting will not count as a formal PS&E if all of the above requirements are not met, and a follow-up meeting will need to be held prior to the Production Package submittal. Innovative contracting methods such as bidding alternates and bidding options shall be finalized at the PS&E review and shall be coordinated with the Region Coordinator. Meeting minutes are required for the PS&E review.

#### PS&E Package Submittal (on or before June 1)

- 100% construction plans
- Engineer's opinion of probable cost
- Contract book
- Environmental clearance and certification documentation
- SHPO's concurrence
- Right-of-way certification documentation
- Utility certification documentation
- ITS certification documentation
- Railroad certification documentation
- Work zone checklist
- All other applicable maintenance agreements,
- PS&E checklist
- Approved PIFs and/or variances if applicable (see section E of this chapter)

## 4.D.5. Project Production Package

T/LPAs must submit the **Project Production Package on or before June 15**. The documents required are:

- Stamped and sealed construction plans
- Engineer's opinion of probable cost (including Construction Management if using federal funding to cover these expenses and utility relocation when applicable)
- Contract book (may leave out wage decisions until ready to bid because they can change over time)
- Environmental clearance and certification documentation, including signed environmental commitments sheet in the construction plans
- SHPO's or THPO's concurrence
- Right-of-way certification documentation
- Utility certification documentation
- ITS certification documentation
- Railroad certification documentation
- Work zone checklist
- All other applicable maintenance agreements
- Signed PS&E checklist
- Approved PIFs and/or variances if applicable (see Chapter 4, Section E)
- Obligation Letter signed by T/LPA Person in Responsible Charge (the Region Coordinator will route the Obligation Letter for NMDOT signatures)

## 4.E. Design Exceptions, Design Variances, and ADA Design Variances

Design policies and standards generally represent minimum values. Higher standards should be used within reasonable economic limits. If minimum design standards and the ADA standards are not met, a design exception must be requested. The following procedures and guidelines are the NMDOT's policy for requesting design exceptions, design variances, and ADA design variances. NMDOT's policy conforms to the minimum requirements set forth by Federal Highway Administration (FHWA) regulations for design exceptions. T/LPAs requesting exceptions and variances must follow this policy; however, the Region Coordinator is available to provide guidance.

T/LPAs should use the [Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way](#) (PROWAG) from the United States Accessibility Board to identify and mitigate ADA design variances for the NMDOT.

### 4.E.1. Evaluating and Analyzing Project Criteria

Design exceptions, design variances, and ADA design variances should be requested as soon as possible; preferably as a part of the Scoping Report. Inclusion in the Scoping Report will minimize the likelihood of an extensive redesign effort should any part of the request be denied. Late requests for design exceptions, design variances, and ADA design variances received by the Region Coordinator will result in substantial delay to project advertising and award.

It is important to consider the impact of the design exception, design variance, or ADA design variance to the safety and operations of the facility, as well as its consistency and compatibility to adjacent sections of roadway. The following are some of the factors that should be considered and documented:

- Functional classification of the road

#### Key Definitions

##### Design Exception

The documentation process required when the project's design deviates from any of the controlling criteria listed in section 2 below.

##### Design Variance

The documentation process required when the project's design will deviate from any state statute, NMDOT Design Standard, NMDOT Design Manual, NMDOT policy, MUTCD, Roadside Design Guide criteria, etc. However, if the project is entirely on a locally owned and maintained road, is not an NHS route, and local design criteria are being met, a design variance will not be required.

##### ADA Design Variance

The documentation process required when existing physical constraints make it impracticable to construct pedestrian facilities to fully meet current NMDOT standards.

- Amount and character of traffic (e.g. average annual daily traffic, percent heavy commercial, bicycles and pedestrians)
- Multi-modal considerations
- Type of project (e.g. reconstruction, rehabilitation, new construction)
- Prevalent crash types and how they relate to the existing conditions and proposed design features
- Cost effectiveness of the exception compared to minimum standards. T/LPAs should estimate the cost of the exception or variance and the cost of meeting minimum design requirements (For ADA design variances, cost is not a factor).
- Project constraints and justification for the exception, variance, or ADA design variance

## 4.E.2. Design Exceptions

A design exception requires FHWA approval through the Region Coordinator and is broken into two categories described below. Check the [NMDOT online map gallery](#) to determine the functional classification of the roadway in question and to inquire if it is located on the National Highway (NHS) system.

Design exceptions for design speed should be extremely rare. Exception documentation shall provide the following information:

- Length of the section with reduced design speed compared to the overall project length
- Measures used in transitions to adjacent sections with higher or lower design or operating speeds

Design exceptions for design loading structural capacity should be rare and exception documentation shall include:

- Verification of safe load-carrying capacity (load rating) for all state unrestricted legal load or routine permit loads
- In the case of bridges and tunnels on the interstate, verification of safe load-carrying capacity (load rating) of all federal legal loads. Only under the most extreme circumstances will a design exception be approved on Interstate Highways.

### 4.E.2.a. High-Speed NHS Facilities

A design exception shall be required if any of the following controlling criteria are not met for Non-Interstate NHS Highways with a design speed greater than 50 miles per hour (mph) and/or Interstate facility:

- Design speed
- Lane width
- Shoulder width
- Horizontal curve radius
- Super elevation rate
- Stopping sight distance
- Maximum grade
- Cross slopes
- Vertical clearance
- Design loading structural capacity

#### 4.E.2.b. Low-Speed NHS Facilities

A design exception shall be required on low speed NHS facilities (less than 50 miles per hour) only if the design speed or the design loading structural capacity controlling criteria are not met.

### 4.E.3. Design Variance Criteria

#### 4.E.3.a. High-Speed NHS Facilities

A design variance on a high-speed NHS facility (design speed greater than 50 mph) is a variation of a design parameter other than the ten (10) controlling criteria discussed above, or any deviation from the following regulations or guidelines:

- New Mexico State Statute
- [NMDOT Design Manual](#)
- NMDOT policy
- [Manual on Uniform Traffic Control Devices for Streets and Highways \(MUTCD\)](#)
- Roadside Design Guide criteria

#### 4.E.3.b. Low-Speed NHS and Non-NHS Facilities

A design variance on a low-speed NHS (design speed less than 50 mph) or non-NHS facility is a variation from a New Mexico State Statute, a NMDOT design standard or manual, NMDOT policy, the Manual on Traffic Control Devices for Streets and Highways (MUTCD), Roadside Design Guide criteria, or a deviation from any of the eight (8) controlling criteria listed below:

- Lane width
- Shoulder width
- Horizontal curve radius
- Super elevation rate
- Stopping sight distance
- Maximum grade
- Cross slopes
- Vertical clearance

### 4.E.3.c. Locally Owned and Maintained Facilities

A design variance will not be required when the project is on a locally owned and maintained road, is not an NHS route, and local design criteria are being met.

## 4.E.4. ADA Design Variances

An ADA design variance may be used where existing physical constraints make it impracticable to construct pedestrian facilities to fully meet PROWAG standards, as determined by using sound engineering. The ADA design variance must be submitted and approved prior to PS&E in order to document that access has been designed to the maximum extent practicable within the scope of the project.

Current ADA/PROWAG standards must be followed and features updated as part of the scope of work or documented and added to the T/LPA's ADA Transition Plan that addresses upgrading to current standards at a later date. See Chapter 1, Section A.7.a for more information on ADA Transition Plans. Any substandard features created, ADA non-compliance, or existing features made worse must be covered by an ADA design variance.

The following activities are considered modifications and will *require* ADA compliance for curb ramps:

- Addition of a new layer of asphalt
- Cape seals
- Hot in-place recycling
- Micro surfacing/ thin-lift overlay
- Mill and fill/mill and overlay
- New construction
- Open-graded surface course
- Rehabilitation
- Reconstruction

The following activities are considered maintenance and *do not require* ADA compliance for curb ramps:

- Chip seals
- Crack filling and sealing
- Diamond grinding
- Dowel bar retrofit
- Fog seals
- Joint crack seals
- Joint repairs
- Pavement patching
- Scrub sealing
- Slurry seals
- Spot high-friction treatments
- Surface sealing
- Guardrail installation
- Spot drainage structure extension
- Curb and gutter repair

#### 4.E.5. Documentation of Design Exceptions, Variances, and ADA Design Variances

All design exceptions, design variances, and ADA design variances require submittal to the Region Coordinator for approval and shall include sufficient details and/or drawings to describe the project. Templates used to request design exceptions, variances, and ADA design variances can be found on the NMDOT [website](#).

#### 4.E.6. Strategic Highway Network

The Strategic Highway Network (STRAHNET) is a system of highways that provides defense access, continuity, and emergency capabilities for movements of personnel and equipment in both peacetime and wartime.

For projects on the STRAHNET System, exceptions to the minimum 16-foot vertical clearance for interstate overpasses must be coordinated with the Surface Distribution and Deployment Command Transportation Engineering Agency (SDDCTEA) prior to approval of a design exception. The office approving the design exception, whether it is the FHWA-NM or NMDOT under 23 USC 106(b), should notify the SDDCTEA directly. Prior coordination is not required for projects on the Interstate Highway System but not on the STRAHNET System, though FHWA policy provides that SDDCTEA be notified of vertical clearance exceptions. The contact information is:

Director, SDDCTEA  
Attn: SDTE-SA  
720 Thimble Shoals Blvd., Suite 130  
Newport News, VA 23606-4537  
Telephone: 757.599.1117 or 1.800.722.0727

## **4.F. Buy America**

All steel and iron products incorporated into the project shall meet the Buy America Requirements (23 CFR § 635.410). If steel or iron materials are to be used, all manufacturing processes, including application of a coating, smelting, and any process that alters the material's physical form, for these materials must occur in the United States and be certified as domestic. See Chapter 13 - Construction for additional information. This may need to be considered during design when specifying a proprietary product that has iron or steel components.

## **4.G. Public Interest Findings**

On September 27, 2019, FHWA issued a final rule in the Federal Register rescinding the long-standing regulatory provisions for patented or proprietary products in 23 CFR 635.411 (a)-(e). The rule, which became effective as of October 28, 2019, provides greater flexibility and encourages innovation in the selection of proprietary or patented materials. It also eliminates the requirements limiting the use of federal funds in paying for patented or proprietary materials, specifications, or processes. As a result of this change, Public Interest Findings (PIFs) and certifications for proprietary products are no longer required.

### **4.G.1. Public Interest Findings**

A PIF is warranted when a contracting agency is unable, or it is not prudent, to comply with a specific federal requirement and a request to deviate can be justified. As part of the request for the PIF, a contracting agency is required to gather and analyze all pertinent data and develop supporting documentation to justify why it is in the public's best interest to deviate from federal regulations. These instances should be rare, and they must be adequately justified and documented.

The most commonly requested areas include:

- Use of publicly-owned equipment (23 CFR § 635.106)
- Use of materials provided by the T/LPA or NMDOT (23 CFR § 635.407)
- Contract award based on a method other than competitive bidding (23 CFR § 635.204, see agency force account below). This condition must not be retroactive.

A PIF requires the following:

- A description of why it is in the public's best interest
- Engineering/economic analysis (cost-benefit) supporting the requested action

- Description of need, including limitations and conditions (types of roadways, traffic volumes, and other critical factors)

## 4.G.2. Agency Force Account

In certain situations, the competitive bidding requirement for federal-aid contracts can be waived and, with prior approval, projects can be completed using agency force account procedures. This means that the construction work is performed using the labor, equipment, materials, and supplies that are under the T/LPA's control, without the use of a private contractor. This should have been discussed at the Project Feasibility meeting (See Chapter 1 - Planning for more information). This is not the same as contract force account (normally referred to as "force account") which is the method of paying a contractor based on the cost of labor, equipment, and materials furnished, with consideration for overhead and profit. The use of public agency forces to construct the project is acceptable in emergency situations or in cases where the T/LPA can demonstrate its cost-effectiveness. Agency force account PIFs are due to the Region Coordinator by the 60% design stage.

If the T/LPA wants to use agency force account, they must submit documentation to the Region Coordinator that supports the T/LPA's ability to satisfactorily complete the proposed construction work for approval by the FHWA New Mexico Division Director. The purpose of the documentation is to show:

- Evidence of satisfactory completion of similar work
- The personnel or other resources are available to do the work
- The personnel can achieve the acceptable quality that is normally expected within the Federal-aid Highway Program
- The work can be completed within a reasonable time frame
- The cost effectiveness of using agency forces

Evaluation of such a request will consider a cost-effectiveness finding and any special circumstances noted by the T/LPA. It is also possible to request a portion of the project to be completed using agency force account and the remainder to be competitively bid. All agency force account work is still expected to meet the standards of quality and workmanship of normal contracting methods and must comply with all state and federal requirements including, but not limited to, materials certifications (i.e. Buy America requirements) and minimum testing requirements.

FHWA approval of agency force account will be required prior to the PS&E meeting. In some instances, this method also might be used when there is a lack of bids or the bids received are unreasonable. In that case, FHWA approval of agency force account will be required after the bid rejection process has been completed and prior to start of construction.

# CHAPTER 5

## HAZARDOUS MATERIALS



If considered early in the project development process, there is sufficient time for T/LPAs to determine the appropriate level of hazardous material (hazmat) effort and to complete the work long before construction begins. If property will be acquired, deep soil disturbed, or structures modified, then the T/LPA must research past and present land uses to identify potential sources of contamination. Once potential sources are located, targeted invasive investigations may be necessary to confirm its presence or define its limits. After the hazmat investigations are complete, sufficient information should exist for the T/LPAs to consider and develop the steps most appropriate for their project to minimize or eliminate the adverse effects of all contamination identified.

## 5.A Introduction

Since the late 1980s, the Federal Highway Administration (FHWA) has required that Departments of Transportation (DOTs) incorporate hazardous material investigations into their design processes for projects receiving federal funds. In response, the New Mexico Department of Transportation (NMDOT) adopted policy 90-124 (Safety and Loss Control Programs), which called for every NMDOT Division and Bureau to develop their own internal processes when hazardous material affects their areas of responsibility. The responsibility for performing hazardous materials investigations for NMDOT-led projects rests with the Hazardous Material Investigation Bureau (HMIB), formerly known as the Environmental Geology Bureau (EGB). The HMIB distributes project-related details on hazardous materials to the appropriate functional groups within the Office of Programs & Infrastructure.

Just as with NMDOT, projects led by Tribal/Local Public Agencies (T/LPAs) that receive federal funds must comply with the same FHWA's hazardous material investigations requirements.

Specific guidance for T/LPAs is provided in this chapter, beginning with an overview of why it is important to know if contamination is or is not present, and followed by discussion of the decision-making process which helps determine the level of effort for investigations. See **Figure 6**: Hazardous Material Investigation Decision Tree. The decision tree takes the T/LPA through five levels of investigation efforts, each of which is increasingly focused, but not all of which necessarily apply to each project. The five types of investigation efforts are described in Chapter 5, Section B.2.

## 5.B Hazardous Materials Investigation

### 5.B.1 Purpose

The purpose of hazardous material investigations is to inform the T/LPA and allow the time to develop and consider options to either reduce or eliminate the risk contamination

#### What T/LPAs Need to Know

The hazardous material investigation process should begin as soon as the cooperative agreement has been executed and the project scope has been established.

The T/LPA should coordinate with the HMIB and consider the variables shown in the decision tree (**Figure 6**) to determine the appropriate level of effort.

If level of effort is beyond an ISA Determination, T/LPAs need to ensure they have qualified staff or hire a consultant to comply with hazardous materials investigations for federal projects as defined by 40 CFR § 312.10(b).

Modifications to project scope, land area of influence, or passage of time may require new or updated investigations.

poses. The risk can come in the form of time delays and cost overruns, contaminant exposure to staff and the public, and long-term responsibility for contamination it did not cause. The importance of identifying hazardous materials that might affect a construction project cannot be understated. T/LPAs are encouraged to start their review as early in the project development process as possible to ensure that they have sufficient time to investigate, and, if warranted, consider, develop, and implement the most appropriate and cost effective remedies to address contamination.

The Hazardous Material Investigation Decision Tree is a useful tool to help the T/LPA reveal the appropriate level of effort for hazardous material investigation. The project scope and the surrounding development serve as the basis for the answers to the three questions listed in the upper left-hand corner of the decision tree. An answer of “yes” to any of the questions triggers an Initial Site Assessment (ISA). An answer of “no” to all the questions, common for T/LPA projects, prompts the most basic level of investigation, the Initial Site Assessment (ISA) Determination.

It is important to note that if the T/LPA must produce more than an ISA Determination, they will need to ensure they have qualified staff or hire a consultant to comply with the environmental professional requirements for performing hazardous materials investigations for federal projects as defined by 40 CFR § 312.10(b). If T/LPA's have any questions or concerns surrounding hazardous material investigations, T/LPAs should discuss their concerns with the HMIB's T/LPA Coordinator prior to starting any investigations.

There are five types of hazardous material investigations, each of which, in succession, becomes increasingly focused and detailed. Except for the ISA Determination, further detail of each type may be found in the HMIB (previously EGB) [Hazardous Material Assessment Handbook](#). To determine which type of investigation is required, refer to the decision tree shown in **Figure 6**, and follow up with HMIB's T/LPA Coordinator to confirm.

## 5.B.2 Types of Investigations

The five types of hazardous materials investigations are described below and listed in order of increasing focus. Further detail, except for the ISA Determination, may be found in the [Hazardous Material Assessment Handbook](#).

If the answers to the first three questions of the decision tree (**Figure 6**) are “no,” an ISA Determination letter may be appropriate. A template of an ISA Determination letter can be found on the T/LPA website [here](#). Based on this letter, the HMIB will confirm that the letter meets the US Environmental Protection Agency

### Five Types of Hazardous Materials Investigations

1. ISA Determination
2. Initial Site Assessment (ISA)
3. Preliminary Site Investigation
4. Detailed Site Investigation
5. Building Material Survey

(EPA)'s All Appropriate Inquiry standard. Under most circumstances, the T/LPA may submit an ISA Determination without the aid of an environmental professional.

If the project scope requires further steps in the decision tree, then an ISA may be required. An ISA is the broadest level of hazardous materials investigation. Through the research of historical and regulatory records, site reconnaissance, and interviews, the T/LPA attempts to identify both contamination and its sources. If identified and the T/LPA concludes they will affect construction, then the T/LPA identifies action items to address them, which may include further investigation.

If contamination is identified during the ISA, the T/LPA may confirm its presence during a Preliminary Site Investigation (PSI) or may define its limits during a Detailed Site Investigation (DSI). Both the PSI and the DSI involve invasive investigation methods. Laboratory analysis of soil and groundwater is common. If contamination is identified and it will affect construction, detailed recommendations to address it during construction are presented in the respective reports.

If structures (i.e. buildings, bridges, utilities, etc.) are present that will be disturbed during construction, Building Material Surveys are warranted. Common surveys include sampling and analysis for lead in paint and asbestos in building components and utilities. These surveys may be performed either as stand-alone investigations or in concert with an ISA, PSI, or DSI.

A terminal hazardous material investigation report may be considered viable for up to 180 days from its date of publication. Because of the potential for new contaminant releases in commercial and industrial areas, projects in these settings are more susceptible to the 180-day continued viability time frame than those surrounded by non-commercial or rural development.

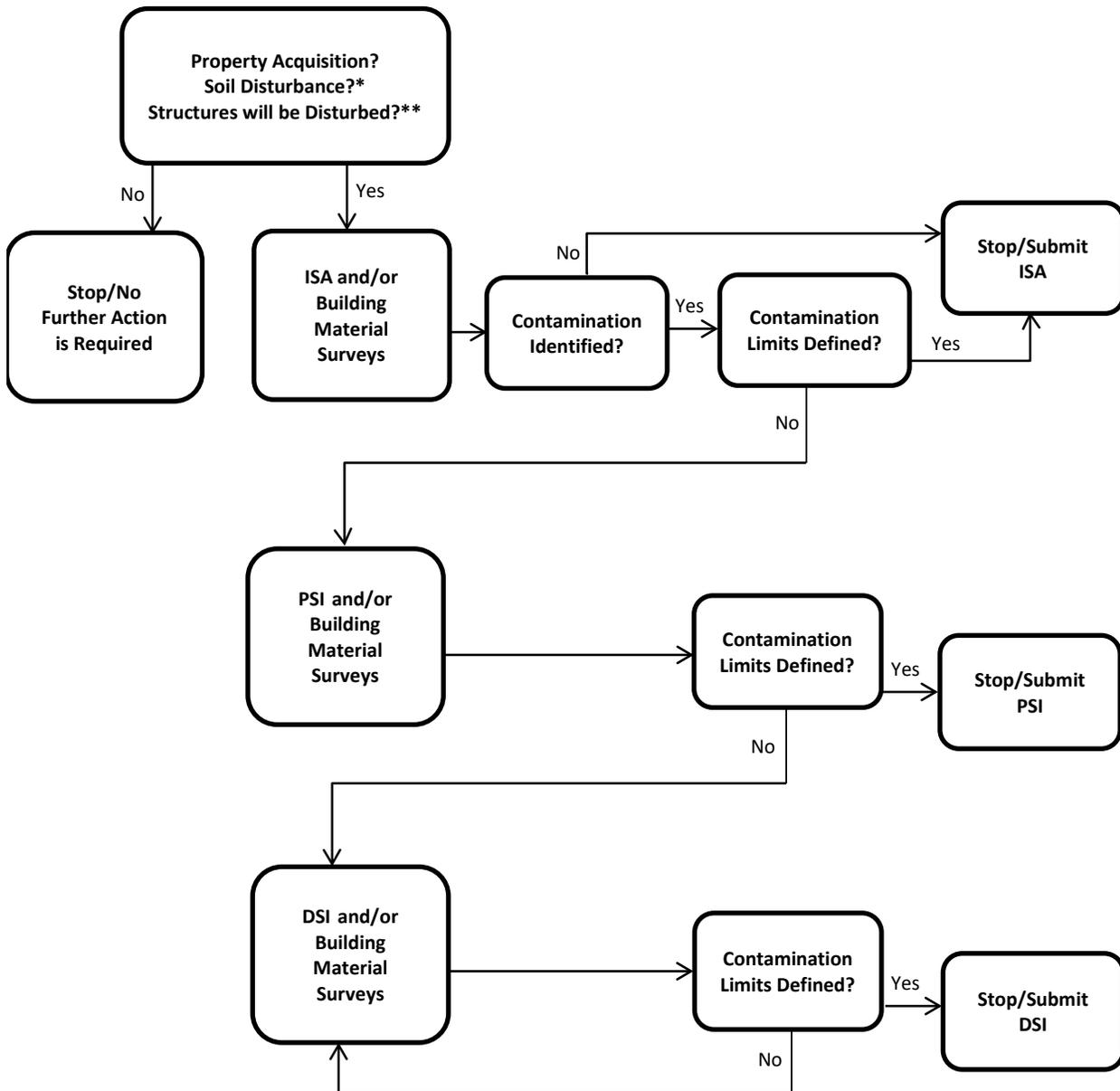
### 5.B.3 Roles and Responsibilities

The T/LPA and/or its consultants are responsible for preparing the required hazardous materials investigation documentation. The HMIB reviews the documentation, and if it contains no recommendations for future actions, an acceptance letter is issued by the HMIB. This acceptance letter is sent directly to the T/LPA and also forwarded to the NMDOT's T/LPA Coordinators in the appropriate District, Utility Section, Environmental Bureau, and Right-of-Way (ROW) Bureau.

If the documentation contains recommendations for future actions, a "conditional" acceptance letter is issued in which the means to remove the condition is described. The T/LPA must notify the HMIB in writing that the recommendations are addressed or that a plan is in place to address them. With that assurance, the HMIB will then issue a non-conditional acceptance letter for distribution to the NMDOT's T/LPA Coordinators.

Figure 6: Hazardous Material Investigation Decision Tree

### Hazardous Material Investigation Decision Tree



\* Soil disturbance >2 feet in most settings; or any depth when surrounded by industrial development.

\*\* Structures includes building, bridges, utilities, etc.

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# CHAPTER 6

## ENVIRONMENTAL



**T/LPA:** Isleta Pueblo

**Project:** Irrigation, landscaping, and artwork project in Isleta Pueblo

The landscaping includes native plants and the use of xeriscape, both of which require very little water usage. The art project incorporates symbols and plants from the Pueblo and is an example of context sensitive design.

## 6.A. Introduction

Tribal/Local Public Agencies (T/LPA) are responsible for obtaining all of the approvals or concurrences necessary to fulfill the New Mexico Department of Transportation (NMDOT)'s environmental certification requirements. The guidance in this chapter will help T/LPAs comply with the applicable federal and state environmental laws and regulations. Adhering to the following procedures will result in environmental certification in a timely manner. The three environmental certification processes include:

- Hazardous materials
- Cultural resources
- National Environmental Policy Act

The T/LPA, or its consultant, initiates the environmental process by completing the Environmental Level of Effort (ELOE or LOE) Form, provided online [here](#). The LOE Form identifies all proposed project activities, land ownership, funding sources, agencies involved, and details on the potential area of impact. For all federally-funded projects, T/LPAs are required to send the LOE Form to the Region Coordinator in the relevant Regional Design Bureau and the Environmental Bureau's T/LPA Coordinator.

Based on the information presented in the ELOE, the Environmental Bureau's T/LPA Coordinator should identify the appropriate LOE for hazardous materials, cultural resources, and the National Environmental Policy Act of 1969 (NEPA). T/LPAs which propose new roadways, major changes to existing roadways, or other major transit investments may need to follow the NMDOT's Location Study Procedures in order to properly develop and analyze project alternatives consistent with NEPA and the Federal Highway Administration (FHWA) Planning and Environment Linkages (PEL) policy. This clarification will be made through the evaluation of the LOE Form. All coordination on environmental certification should be conducted through the Region Coordinator.

### What T/LPAs Need to Know

The environmental process begins with the PFF and the review by the NMDOT Environmental Bureau to determine the appropriate LOE.

For every project, the T/LPA must seek three distinct NMDOT approvals or concurrences in order to complete the environmental certifications process. These include:

- Hazardous materials investigations and acceptance
- Cultural resources concurrence for archaeological and historic properties
- General environmental approval pursuant to the National Environmental Policy Act

The environmental document is valid only as long as the project area conditions and activities have not changed. Changes in scope will require a new or amended document.

The Region Coordinator will assist T/LPAs throughout the Environmental process. T/LPAs are encouraged to start the environmental review process as early as possible.

Specific guidance on cultural resources the NEPA process, and their associated documentation is provided in subsections below. Specific guidance on hazardous materials is provided in Chapter 5 but is referenced here as a component of the overall environmental certification process and NEPA compliance requirements. Although the evaluations, documentation, and approvals associated with hazardous materials and cultural resources require additional independent approvals, the results of the compliance process for hazardous materials and cultural resources are integrated into the NEPA process and clearance documentation.

T/LPAs are encouraged to start the environmental review process as early as possible to ensure sufficient time in the project development schedule for satisfactory completion.

## **6.B. Cultural Resources**

### **6.B.1. Purpose**

The National Historic Preservation Act of 1966 and its regulations guide historic and archaeological preservation efforts on federal projects. New Mexico State laws provide comparable protection for significant historic resources on state-funded projects. Both state- and federally-funded projects may require consultation with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) during project development.

### **6.B.2. Process**

The NMDOT Environmental Bureau will identify the need for cultural resources surveys as part of the determination of NEPA LOE. Cultural resources field surveys include identification of archaeological sites and historic buildings. These surveys must be conducted by qualified individuals who have obtained the appropriate permits for the relevant resource identification effort and land jurisdiction(s). The cultural resources investigations shall be described in reports that meet the standards established by New Mexico Administrative Code, the NMDOT Environmental Bureau, and any applicable land managing agency.

FHWA is the lead agency on federally-funded projects and has designated NMDOT to act on its behalf for projects funded through the NMDOT. NMDOT will conduct SHPO/THPO consultation under Section 106 of the National Historic Preservation Act on federal projects. T/LPAs should allow up to 30 days for SHPO consultation when developing a project timeline.

Regardless of funding source or land ownership, projects may require consultation with Native American tribes regarding project effects to traditional cultural places and

activities. The Environmental Bureau will identify the need to consult with tribes as part of the LOE provided in response to the Project Feasibility Form (PFF). Tribal consultation, if necessary, will be conducted by Environmental Bureau staff.

## **6.C. National Environmental Policy Act**

### **6.C.1. Purpose of NEPA**

The NEPA and its regulations require an open, collaborative decision process and documentation. Consideration of the social, economic, and environmental factors during project development and proper environmental documentation leads to better decisions and an accurate, complete administrative record.

While the environmental clearance process is underway, the T/LPA shall not take actions which could restrict consideration of alternatives for this project or other reasonably foreseeable projects. T/LPAs shall not finalize design, acquire property, or initiate construction prior to environmental certification. If a project is proposed for construction in phases, the entire project shall be analyzed and certified before any phase may be advanced into final design, property acquisition, or construction.

### **6.C.2. NEPA Process and Documentation**

There are four levels of environmental analysis, with increasing complexity and effort:

- Programmatic Categorical Exclusion (PCE)
- Categorical Exclusion (CE)
- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

The majority of T/LPA projects will be certified at the two lower levels. For all proposed projects, the Environmental Bureau will confirm that the project:

- Has a clearly stated purpose and need
- Has independent utility or significance (i.e., it will be usable and is a reasonable expenditure even if no additional transportation improvements in the area are made)
- Connects logical termini and is of sufficient length to address environmental matters on a broad scope
- Does not restrict consideration of alternatives for other reasonably foreseeable transportation improvements

## Key Definitions

### **Categorical Exclusion**

An environmental certification for a project which has a documented low potential for significant environmental impacts. This environmental clearance will incorporate interdisciplinary investigations.

### **Programmatic Categorical Exclusion**

A sub-type of Categorical Exclusion which certifies that a project is known by its very nature to not have significant environmental impacts or involve unusual circumstances.

For a CE, interdisciplinary investigations of environmental issues and/or permitting from federal or state agencies may be required. These may include:

- Consistency with land use plans
- Farmland
- Social issues
- Economic issues
- Right-of-way, land transfer, and relocation
- Pedestrians, equestrians, and bicyclists
- Air quality
- Noise
- Water quality and stream modifications
- Permit applications and requirements
- Wetlands
- Storm Water Pollution Prevention Plan (SWPPP)
- Floodplains
- Wildlife resources and vegetation
- Threatened and endangered species (T&E)
- Cultural resources
- Section 4(f) and Section 6(f) Properties
- Hazardous Materials
- Natural, scenic, and visual resources

- Construction activities
- Cumulative and secondary impacts
- Public involvement
- Agency coordination
- Mitigation measures and commitment

### 6.C.3. Roles and Responsibilities

The T/LPA and its consultants will be responsible for preparation of the required documents. The findings from the separate documentation on hazardous materials and cultural resources will be integrated into the overall NEPA documentation. The Environmental Bureau will work with both the T/LPA and its consultants, in coordination with the Region Coordinator, to ensure timely and accurate review of these documents. The Environmental Bureau will certify the project after documentation of the environmental review process is satisfactory.

### 6.D. After NMDOT Environmental Certification

Final design, acquisition, and construction activities may proceed upon approval of the final NEPA document and completion of environmental certification. The T/LPA shall submit an environmental commitment plan sheet to the Region Coordinator for approval by the Environmental Bureau. The approved environmental commitment plan sheet shall be included with all construction plans. Environmental commitments will be monitored as a part of the construction management process established by the T/LPA to assure that they are implemented during all project phases and checked by NMDOT. The environmental document is valid only as long as the project area conditions and activities have not changed. Changes in scope will require a new or amended document. If a project has been shelved, recertification is required after two years from the date of signatures on the CE or PCE per NMDOT requirements.

# CHAPTER 7

## RIGHT-OF-WAY



**T/LPA:** City of Rio Rancho

**Project:** Southern Boulevard from Golf Course Road to NM 528

This reconstruction included a new signalized intersection, consistent street lighting, ADA compliant sidewalk and multiuse trail, new auxiliary lanes, a new storm drain system, and new water and sewer infrastructure. The City claimed the use of a roadway easement that existed along the north edge of the roadway, and acquired twenty-four temporary construction permits (TCPs). These permits were required to provide slope stabilization as well as to transition the intersecting residential roads and business turnouts within the project area. Though TCPs are a temporary permit, they still require compliance with the Uniform Act and close coordination with the NMDOT's Regional Coordinator and Right-of-Way Bureau is required. Because right-of-way needs are critical and time consuming, they should be considered early in the project development.

## 7.A. Purpose

This chapter of the Handbook provides general information on the right-of-way acquisition and certification process, but the most current version of the [ROW Handbook](#) should be referenced for further details and specific requirements. The purpose of the [ROW Handbook](#) is to present the legal authority and the administrative procedures governing the functions of the New Mexico Department of Transportation (NMDOT) Right of Way (ROW) Bureau. Tribal/Local Public Agencies (T/LPAs) should check with the Region Coordinator to ensure they are using the most current version of the [ROW Handbook](#) as the T/LPA is responsible for full compliance with Federal Highway Administration (FHWA) requirements whether or not the current requirements are reflected in this chapter. Failure to follow these requirements could result in the project becoming ineligible for federal funding.

The primary federal legislation that regulates the right-of-way process is the “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” as amended (Uniform Act). One of its main purposes is to assure that property owners, from whom property is acquired for projects using federal funds in any phase, are treated fairly, consistently, and equitably. If federal funding is used or if the T/LPA plans to use federal funds for any phase of the project (i.e. preliminary engineering and construction) the Uniform Act requirements must be met, regardless of the funding type used for the right-of-way process.

### What T/LPAs Need to Know

All federally-funded projects are required to obtain a right-of-way certification - whether acquiring right-of-way or not. The T/LPA should coordinate with the Region Coordinator for assistance and to ensure the use of the most current version of the [ROW Handbook](#).

The primary federal legislation that regulates the right-of-way process is the “Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970” as amended (Uniform Act). One of its main purposes is to assure that property owners, from whom property is acquired for projects using federal funds in any phase, are treated fairly, consistently, and equitably.

T/LPAs using federal funding must follow the requirements in the Uniform Act, even if they are paying for right-of-way activities with non-federal funds.

The T/LPA is responsible for full compliance with FHWA requirements. Failure to follow these requirements could result in the project becoming ineligible for federal funding.

## **7.B. Right-of-Way Activities and Environmental Documentation**

It is important to recognize the interrelationship during project development between environmental documentation and various right-of-way activities. The Environmental Document, whether it is a Programmatic Categorical Exclusion (PCE) or a Categorical Exclusion (CE), must be approved by FHWA prior to obtaining federal authorization to proceed for right-of-way activities. See Chapter 6 – Environmental Process for more information.

Once FHWA has approved the Environmental Document and federal authorization to proceed for ROW activities has been obtained, the Region Coordinator will notify the T/LPA that right-of-way acquisition may commence.

## **7.C. Roles and Responsibilities**

### **7.C.1. NMDOT**

The T/LPA ROW Agent is located in the ROW Bureau and assists the T/LPA by providing direction with the right-of-way process; however, all contact with the ROW Bureau should be initiated through the Region Coordinator. Oversight and guidance in complying with Uniform Act requirements on T/LPA projects will be provided by the Region Coordinator in coordination with the NMDOT ROW Bureau. Oversight, guidance, and interpretation are provided to the NMDOT by the FHWA New Mexico Division Office, ROW Officer.

In conjunction with the T/LPA, the ROW Bureau will assist the Region Coordinator / Technical Support Engineer (TSE) with oversight, guidance, and approval of any required forms through various milestones in the process of acquiring right-of-way for federally-funded projects. The ROW Bureau Chief authorizes right-of-way certification and no funding for construction will be authorized without this certification. The NMDOT is responsible for informing the T/LPA of the specific right-of-way requirements based on the scope of work. While the T/LPA is responsible for training of T/LPA personnel, the NMDOT also has an obligation to assist and educate the T/LPA in the proper procedures that must be followed during the entire right-of-way process. The ROW Bureau can provide information on any laws and regulations that must be complied with. The ROW Bureau may also provide sample forms for guidance and possible use of the T/LPAs.

#### **7.C.1.a. NMDOT On-Line Certification Course**

The ROW Bureau will provide an **online certification course** covering the NMDOT right-of-way process and procedures. This certification course will need to be taken by at least

one staff member for all T/LPAs who will be overseeing and administering federal funding for any of their scheduled projects. At the completion of the course, a test must be successfully completed by at least one T/LPA staff member in order to receive a **certification acknowledgment** for the T/LPA by the NMDOT. This process is to ensure that all T/LPAs have a minimum of one staff member who is knowledgeable in the procedures required for a federally-funded project which includes right-of-way acquisition.

Note: More than one staff member can be certified; however, if the one certified T/LPA staff departs the agency, then a new staff member will need to complete the online certification process and the T/LPA will need to receive an updated certification acknowledgement. Certification acknowledgement for the T/LPA must be in place prior to approval of federal funding.

## 7.C.2. T/LPA

### 7.C.2.a. General Duties

The right-of-way process is complex and one that should not be entered into without the availability of an experienced and knowledgeable right-of-way professional. This role can be delegated to consultants; however, it is the responsibility of the T/LPA Person in Responsible Charge to know, understand, and adhere to the provisions and regulations of the [ROW Handbook](#) through each phase of the right-of-way process (i.e. appraisal, negotiation, and acquisition of property). Only qualified personnel or contractors can be assigned right-of-way work and one point of contact should be established to work directly with the Region Coordinator. It is the responsibility of the T/LPA Person in Responsible Charge to coordinate with the Region Coordinator early in the project development process and respond to all requests for Information in a timely manner.

### 7.C.2.b. Conflicts of Interest

Federal conflict of interest provisions has been interpreted by FHWA to prohibit both consultants and local officials, employees or agents from having interests in real property acquired for a project, unless certain conditions are met. The third sentence of 23 CFR § 1.33 states: "No officer or employee of such person retained by a ... governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the state highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State."

The T/LPA shall have the duty to notify the Region Coordinator if a real or potential conflict is identified on a T/LPA federally-funded project.

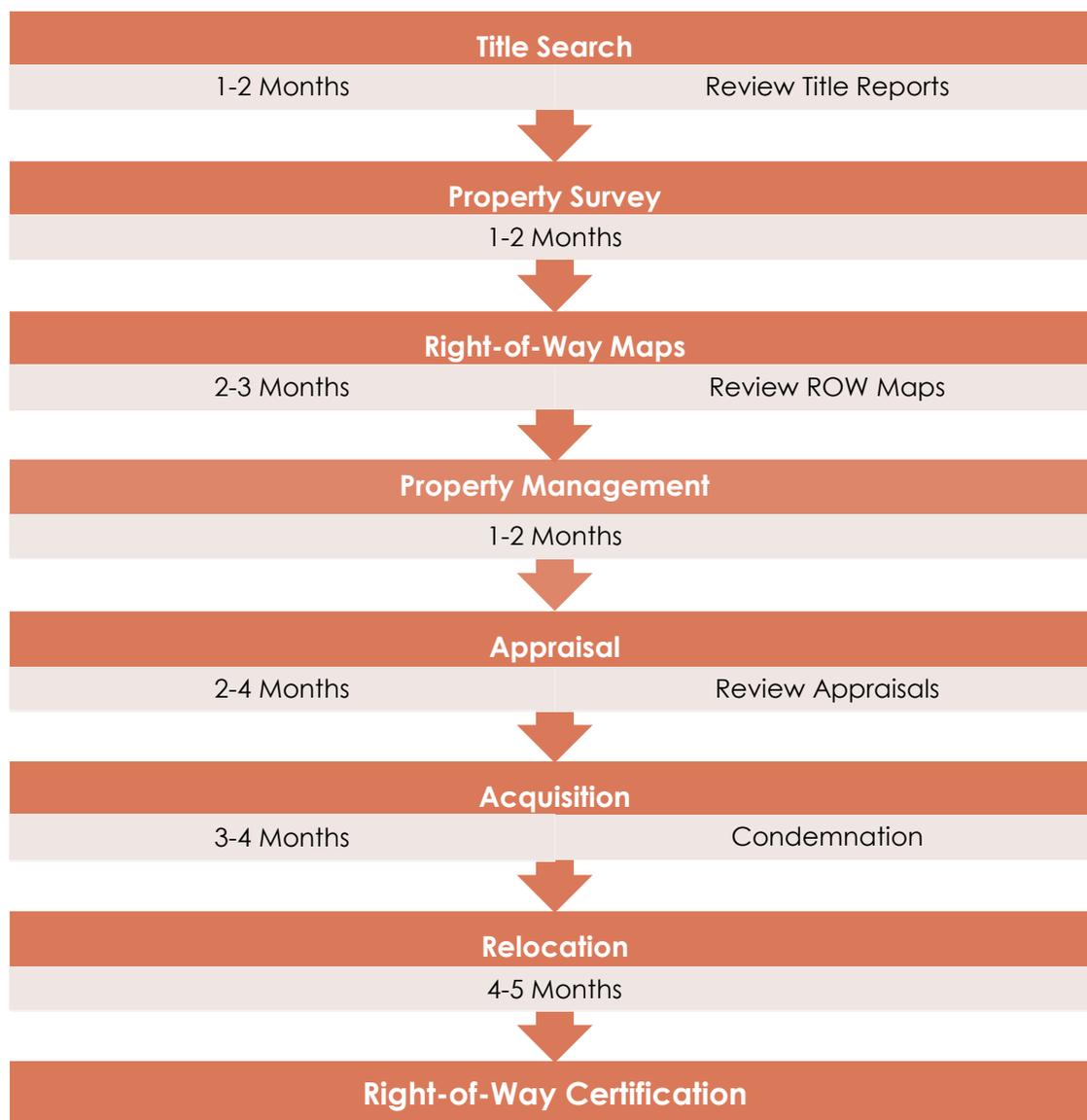
## **7.D. Procedures**

### **7.D.1. General**

This section of the Handbook will outline the general timelines for completing various right-of-way activities, the qualifications required for T/LPAs to complete these activities, and the monitoring process used by NMDOT to ensure compliance with state and federal regulations.

### **7.D.2. Timeline**

The following timeline can be used as an example of a typical T/LPA project with Construction Maintenance Easement (CME)s or Temporary Construction Permit (TCP)s. If the scope of work is very complex and/or there are numerous owners or condemnation, the general timeframes should be increased by two to three months per step. Note that some of these activities happen concurrently so the timeframes can overlap. It is common for the title search, property survey, and right-of-way maps phases to take place simultaneously or with some overlap. Contact the Region Coordinator or consult the specific volume of the [ROW Handbook](#) as outlined in the sections below for more details on timelines.

**Figure 7: Right-of-Way Process – Minimum Times**

### 7.D.3. Qualifications to Perform Right-of-Way Activities

Qualification is the process whereby the ROW Bureau reviews the T/LPA's staff (or consultants), policies and procedures to perform right-of-way activities. The NMDOT online certification course will need to be successfully completed by at least one member of the T/LPA's staff and /or their consultants in order to obtain certification acknowledgement (in written form) from NMDOT. Qualification of the T/LPA will begin when it has become apparent during the project scoping phase that right-of-way might be required on the project (see Chapter 4 - Project Development for more information). Should the T/LPA perform right-of-way activities without authorized or qualified personnel,

project funding could be jeopardized. FHWA requirements concerning NMDOT and T/LPA qualifications are based on the following regulations:

- The NMDOT has overall responsibility for the acquisition of right-of-way on all Federal-aid highway systems, even if a T/LPA is the lead agency [23 CFR 710.201 (b)].
- The NMDOT shall have a right-of-way organization adequately staffed, equipped, and organized to conduct its right-of-way responsibilities to assist the Region Coordinator / Technical Support Engineer / T/LPA through the right-of-way process [23 CFR 710.201 (a)].
- The NMDOT may, by means of a written agreement, use the services of land acquisition organizations of counties, municipalities, or other state or local governmental agencies for acquiring rights-of-way for federally-funded projects. Any such organization may be used only if it is adequately staffed, equipped, and organized to provide such services and if its practices are in conformity with the NMDOT's accepted procedures.

Due to possible personnel changes within T/LPAs and various changes in federal and state laws and requirements, the T/LPA will be responsible for ensuring staff involved in right-of-way activities meet all federal and state requirements and are certified through the NMDOT online certification course. The NMDOT ROW Bureau will make T/LPA aware of any changes in state and federal policies or procedures during the project design phase. Review of qualified T/LPA personnel may be conducted per the following:

- A T/LPA that has not used its right-of-way procedures for an extended period will be reviewed by the Region Coordinator prior to starting any new projects. An updated certification for qualification may be necessary.
- All T/LPAs are required to notify the ROW Bureau of any policy or procedure changes that might affect their qualification status.
- A T/LPA could lose its status as a qualified agency if discrepancies are brought to its attention but are not immediately corrected. Upon identification of the discrepancy by the NMDOT, an appropriate notice shall be sent to the T/LPA informing the agency it may lose its status. Subsequent to the notification, if a T/LPA is still unable or unwilling to correct its procedures, a notice shall be sent to the T/LPA informing it that it is no longer qualified to perform right-of-way activities for federally-funded projects. The T/LPA will be notified that failure to comply will jeopardize funding for projects.

#### **7.D.4. Monitoring Process**

Monitoring of T/LPA right-of-way work is the process whereby the NMDOT assures that T/LPA right-of-way practices are in accordance with applicable state and federal laws

and regulations and provides the necessary documentation for right-of-way certification. Monitoring allows corrective action, if necessary, to be performed in a timely manner. If a right-of-way certification is prepared on the basis of an authorization to enter or right-of-entry, monitoring will continue until all the property rights have been acquired.

The T/LPA should contact the Region Coordinator for more information on the monitoring process. Monitoring will be carried out by the NMDOT ROW Bureau. Following the initial contact, the T/LPA shall notify the Region Coordinator at each stage of right-of-way activity. If the T/LPA has established a good record, and monitoring reveals compliance with federal/state regulations, then only minimal monitoring may be required. If monitoring reveals noncompliance or repeated errors, then project funding may be jeopardized.

The T/LPA ROW Compliance Checklist for each right-of-way function being monitored will be completed by the T/LPA for each parcel that has been selected for review and shall be retained in the project file. If any work needs to be corrected, the Region Coordinator will communicate the proposed corrections to the T/LPA in writing. A follow-up inspection will be performed to ensure that the corrections have been performed.

Monitoring procedures will cover the following right-of-way elements:

- Project Scoping Report (or combined Project Prospectus Form (PPF) / Scoping Report)
- Title Search and Title Reports
- Property Survey and Right-of-Way Mapping
- Legal Descriptions
- Valuation & Review
- Acquisition
- Correspondence
- Negotiators Log / Contact Log

## **7.E. Right-of-Way Activities**

The types of acquisitions of right-of-way property, for which real property appraisals are prepared, fall into four basic categories:

- Total or complete acquisition of a fee interest in the subject property, including all improvements
- Partial acquisition of a fee interest in the subject property
- Acquisition of a permanent easement interest in the subject property (CME)

- Acquisition of a temporary easement interest in the subject property (TCP)

### **7.E.1. Temporary Construction Permits**

TCPs are acquired when the T/LPA finds it necessary to provide for temporary construction and/or maintenance activities outside of the right-of-way for a defined length of time. TCPs are temporary in nature and shall be employed when there are no continuing maintenance activities anticipated after completion of construction. Upon termination of the TCP, the subject property must be restored to a condition at least equivalent to that prior to the construction, and therefore, a TCP may be acquired for a determinate period of time after completion of construction (not more than five years) in order to meet this requirement.

### **7.E.2. Construction Maintenance Easements**

CMEs are acquired when the T/LPA finds it necessary to provide for construction and maintenance activities outside of the right-of-way. CMEs are considered to be permanent in nature and shall be employed when on-going maintenance activities for the benefit of the T/LPA, are anticipated to continue for an indefinite period of time.

## **7.F. Right-of-Way Process**

This section includes excerpts from the [ROW Handbook](#), which is available on the ROW Bureau page of the NMDOT website. Each section is a specific volume of the [ROW Handbook](#) and has been referenced in the text below. The T/LPA should reference the appropriate volume of the [ROW Handbook](#) prior to proceeding with any of the activities briefly described below.

### **7.F.1. Title Search**

The acquiring agency must obtain title information for each parcel prior to initiating property survey and right-of-way mapping necessary for right-of-way acquisition. This is to ensure that all interest holders on a project are identified. See the [ROW Handbook Volume II, Lands Abstracting Procedures](#) for required elements. Federal regulations provide that eligible expenses incidental to transfer of real property to the agency are reimbursable on federally-funded projects.

The Lands Abstracting Unit is the oversight for T/LPA consultant projects to ensure the title work completed adheres to the ROW Handbook and CFR guidelines. The T/LPA consultant will select a bonded and licensed title company in the County of subject project to complete the title report research.

Prior to commencement of any title work, a mandatory meeting is required and must include the T/LPA consultant, the contracted title company and the NMDOT Lands Abstracting Unit Staff.

Procedures, requirements and forms will be discussed item by item, and a copy of the requirements and NMDOT forms will be supplied to the title company research staff at the meeting.

Prior to completion, finalization and submission of the project, example title reports shall be submitted to the NMDOT Lands Abstracting Unit for review. NMDOT review will pertain to the format and information supplied, not to the title reports content. Content of the work product is the full responsibility of the contracted title company. Lands Abstracting Unit will then advise the Lands Engineering Verification Unit that signed and original bound title reports, along with right-of-way maps, will be submitted by the T/LPA.

Note: The timeframe for projects vary, and it is required that the title reports be updated and current within 6 months, with the submittal of final right-of-way maps updated within 60 days of the property owner signature. It is the responsibility of the T/LPA to comply with updating the current title.

#### Mandatory Meetings for Title Work

"Prior to commencement of any title work, a mandatory meeting is required and must include the T/LPA consultant, the contracted title company and the NMDOT Lands Abstracting Unit Staff."

## 7.F.2. Title Report Preparation Requirements

Title reports submitted by T/LPA shall be prepared by a licensed and bonded title company and prepared in accordance with the ROW Handbook Volume II, Lands Abstracting Procedures.

The T/LPA consultant shall be fully responsible for ensuring that the title company be accountable for the accuracy of work product, including but not limited to format, errors, omissions, deficiencies and shall ensure and advise the contracted title company that the title reports must be updated by the title company within six (6) months prior submittal of final version of right-of-way maps to the Lands Engineering Verification Unit. An itemized transmittal letter of each title report shall be submitted to the requesting consultant firm. The T/LPA consultant will in turn submit a transmittal letter to the Lands Engineering Unit, with the Lands Abstracting Unit copied on each transmittal.

#### Lands Engineering Verification

"T/LPAs should note that the Lands Abstracting Unit will submit a clearance letter notifying Lands Engineering Verification Unit that the requirements have been fulfilled by the title company."

T/LPAs should note that the Lands Abstracting Unit will submit a clearance letter notifying Lands Engineering Verification Unit that the requirements have been fulfilled by the title company

### 7.F.3. Title Report

- Caption sheet shall include Control Number, Project Number, Parcel Number, and Record Owner of property being abstracted.
- A thirty-three year certified title search shall be prepared for every parcel affected in the right-of-way acquisition, including construction maintenance easements. A title insurance owner's policy or title commitment may be used to streamline research and must be included in the body of the title report along with copies of exceptions, easements, outstanding liens etc.
- Temporary Construction Permits (TCP) shall require current ownership indicating current owner and address of record, description of property together with the document creating ownership.
- A property tax search computer printout reflecting the current assessed owner, address, description of property and the amount of taxes for the current assessed year reflecting current tax balances.
- A location map on each title report identifying each parcel abstract along with a project work map of the entire project area that corresponds with each title report.
- No abbreviations shall be used if title was conveyed using full language. (i.e., Inc., for Incorporated-Corp., for Corporation – Co., for Company – Ptn. For Partnership).
- All documents must be legible letter size copies. Surveys and maps must be full size, legible and folded to fit in each title report; all title reports must be hardbound.
- Title Reports shall reflect ownership precisely as conveyed on recorded document. Not acceptable are: et ux, et vir, and et al.

### 7.F.4. Special instructions on 33-year searches

- Include a chain of title, an index reflecting ALL transactions affecting said parcel.
- Copies of all pertinent documents described in chain of title, with numbered pages and a page-number index.
- Mortgages, liens, judgments that have been released of record can be eliminated from the Title Report.
- All easements as well as those easements created by a recorded plat affecting subject parcel shall be researched and included in subject Title Report and noted in ITEM #7 of Form A-634.
- Probates or district court proceedings shall include only pertinent documents. Do not include the entire case file.

### 7.F.5. Property Survey and Mapping

The property survey must be done by a licensed surveyor who shall certify (and stamp) the right-of-way map(s) and legal descriptions. The current version of the [NMDOT ROW](#)

[Mapping Development Procedures](#) explains in detail all right-of-way mapping requirements. A copy of this document may also be obtained from the Region Coordinator.

Right-of-way maps shall be submitted by the T/LPA to the appropriate Region Coordinator, who will transmit the maps to the NMDOT Lands Engineering Bureau for review. Lands Engineering will not accept direct submittals from T/LPAs. See the [ROW Mapping Development Procedures](#) for additional requirement, including the review process.

### 7.F.6. Appraisal

Before the initiation of the acquisition process, the fair market value of parcels to be acquired must be determined by a qualified appraiser. T/LPAs (or fee appraisers) must be properly qualified in accordance with the New Mexico Real Estate Appraisers Act and should verify this with the Region Coordinator. See Volume III of the [ROW Handbook](#) for qualifications, means of establishing just compensation, including formally identifying the person responsible for establishing what is believed to be just compensation, documentation, review of appraisals, and requirements related to donated properties.

### 7.F.7. Acquisition

The T/LPA's primary goal during the acquisition process is to acquire any property rights required to construct, operate and maintain the project. The acquisition agent should be a person on the T/LPA staff (or their fee negotiator) that is qualified to perform acquisition. In cases where the T/LPA has untrained or insufficient staff to perform the acquisitions, fee negotiators hired under contract may be used, with certain stipulations. The T/LPA will be required to furnish a summary, such as a resume, of the individual(s) being proposed for use by the T/LPA to the Region Coordinator. The Region Coordinator will consult with the ROW Bureau to review the person's qualifications for approval.

Fee negotiators must be employed through written contract, a copy of the proposed contract with selected bidder must be supplied to the Region Coordinator for concurrence with the ROW Bureau. The amount of the compensation (fees) should be established on a parcel or owner basis and shall not be determined as a percentage of fair market value. See [Volume IV of the ROW Handbook](#) for additional requirements and details on the acquisition process.

### 7.F.8. Relocation

Federal and state laws and regulations mandate specific rights and entitlement of individuals, families, and businesses displaced by projects and required to relocate due to the public acquisition of right-of-way. A list of T/LPA staff or fee relocation agents must

be submitted to the ROW Bureau via the Region Coordinator for review prior to the initiation of relocation activities. Relocation actions are subject to NMDOT right-of-way oversight and approval. See [Volume V of the ROW Handbook for Relocation Assistance Procedures](#).

### **7.F.9. Encroachments**

An illegal encroachment is the unauthorized use of public right-of-way for any purpose other than that of public travel and/or the placing of any type of structure or personal property into public rights of way without the expressed written consent of the T/LPA. Rule 88-5 (L), (18 NMAC 20.5), defines encroachments as "An intrusion into, under, upon, or over highway right-of-way by a permanent structure or fixture. This term shall include, but not be limited to, fences, billboards, permanent signs, buildings, awnings, marquees, storage tanks, pipes, ditches, utilities, concession booths, roadside stands, Christmas displays, parking areas and banners." All encroachments should be noted on project plans so that appropriate action can be taken to remove them. If encroachments were not handled through the NMDOT property management procedures, the T/LPA is responsible for certifying that all encroachments have been addressed.

### **7.F.10. Property Management**

If federal funds are used for any portion of property acquisition or project construction, the T/LPA is required to adhere to the NMDOT's procedures regarding property management. Whenever right-of-way is acquired in the name of the T/LPA, the T/LPA is responsible for control of the right-of-way and all property management functions. See [Volume VI of the ROW Handbook](#) for more information.

## **7.G. Right-of-Way Certification Process**

Every federally-funded project must obtain a right-of-way certification prior to the PS&E meeting. No funding will be authorized for the project without a right-of-way certification signed by the NMDOT ROW Bureau. The complexity of the project and the scope of right-of-way activities will dictate the time necessary to complete the process and obtain a certification. Projects that are completely within T/LPA right-of-way and can be constructed and maintained without going outside that right-of-way will take the least amount of time. Projects that require right-of-way acquisition, Temporary Construction Permits (TCP) or Construction Maintenance Easements (CME) take considerably more time. The exact time to correctly go through the process is driven by the number of owners; see **Figure 7** for general expectations. It is important that the T/LPA discusses any right-of-way impacts with the Region Coordinator as soon as possible to avoid delays to project delivery and construction.

Following completion of all right-of-way activities (e.g. title search, property survey, right-of-way mapping, appraisals and review, acquisition, and relocation (described earlier in this chapter) and prior to receiving authorization to advertise the physical construction for bids, the T/LPA shall complete a request for right-of-way certification on their official letterhead and submit it to the Region Coordinator at least thirty (30) calendar days prior to the anticipated PS&E review date for the Region Coordinator's concurrence on said T/LPA request letter. The request for certification should state that the T/LPA, separately or combined with the information required by 23 CFR 635.309(c), has either completed all right-of-way clearance work or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Samples of all required documents can be obtained from the Region Coordinator.

The ROW Bureau will review and determine if the request for certification is acceptable. If the certification letter from the T/LPA is not acceptable, the ROW Bureau will inform the Region Coordinator, who will inform the T/LPA what steps are required for compliance. After review of the certification, the ROW Bureau will prepare an appropriate certification and submit it to FHWA, so project funding may be authorized.

## **7.H. Reimbursement for Right-of-Way Activities**

Reimbursement for any of the costs of right-of-way activities must be specifically addressed in Chapter 2 - Agreements. Reimbursements will be made by NMDOT as costs are incurred and the T/LPA is invoiced for eligible work, including title research and review, ROW mapping, appraisals and review, acquisitions and ROW staking as needed for offers.

For processing of reimbursements, copies of the following documents shall be submitted to the Region Coordinator for review:

- A formal request prepared on the requesting T/LPA letterhead.
- Any contracts between the T/LPA and fee appraisers, fee title examiners, or fee negotiators.
- Title reports and updates
- All invoices showing specific charges and proof that payment has been made for the actual parcels.
- Copies of all appraisals
- Any settlements above the reviewed and approved amount of the original appraisals will need to be reviewed and approved by the ROW Bureau Chief with supporting documents justifying the settlement before any reimbursements are completed.
- All correspondence, offer letters, agent's contact report/negotiator's log.

All submittals will be reviewed by the Region Coordinator for accuracy, forwarded to the T/LPA ROW agent to review as well. The payment will then be returned to Region Coordinator so they may assign it to the proper District office for reimbursement of that payment. The T/LPA ROW agent may provide guidance regarding any questions or issues concerning the reimbursement process.

All submittals will be reviewed for accuracy and duplication by the Region Coordinator before payment is made according to ROW Monitoring Procedures as stated in the [ROW Handbook, Chapter 7, Section 1.3](#). The reimbursement must be approved by the Region Coordinator based on the recommendation of the ROW Bureau prior to payment being made.

## **7.1. Records and Reports**

All plats, appraisals, options, purchase agreements, title evidence, negotiation records, deeds, relocation assistance, payment records, and any other data or documents relative to any right-of-way activities shall be available for inspection by authorized representatives of the NMDOT, FHWA, and other authorized federal representatives. These records shall be kept and maintained for a minimum of six (6) years after the final voucher of the project; the date the State receives federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property; or the date a credit toward the federal share of a project is approved based on early acquisition activities of the State.

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# CHAPTER 8

## UTILITIES



**T/LPA:** Eddy County

**Project:** Roadway reconstruction project, including installation of a traffic signal at the intersection of Lea St (NM 524) and Standpipe Road

Two of the challenges this project faced were right-of-way acquisition and utility relocations. As shown in the before and after pictures, utilities on each corner and overhead had to be relocated to accommodate the new signal and comply with ADA requirements. On the southwest corner, there were two existing business signs that were relocated as part of the right-of-way acquisition.

## 8.A. Purpose and Background

### 8.A.1. Purpose

Utility lines are often under or adjacent to roadways and can be impacted by construction. The New Mexico Department of Transportation (NMDOT) requires a utility certification for all federally-funded projects, regardless if there are impacts or not. The utility certification describes each affected utility with location(s) and proposed relocation description(s), if necessary, to ensure conflicts have been identified and relocated prior to construction. This documentation will be gathered by the Tribal/Local Public Agencies (T/LPA) or their consultants. Once all utility coordination has taken place, the request for utility certification must be sent to the Region Coordinator on T/LPA letterhead at least thirty (30) calendar days prior to the anticipated Plans, Specification, and Estimates (PS&E) review date.

There are two types of utility relocations: reimbursable and non-reimbursable. Federal funds may be applied for utility relocations only if the cost is determined to be reimbursable and only if a utility phase has been created in the Statewide Transportation Improvement Program (STIP). The T/LPA can work with the Region Coordinator to set up the STIP utility phase and determine the correct funding amount. Both types will need to be thoroughly documented in the utility certification and identified on the design plans. Specific documentation requirements for each type are described in Chapter 8, Section C.

#### What T/LPAs Need to Know

T/LPAs must recognize that utility certifications are a critical and required component in the process of preparing a project for construction bids in accordance with NMAC 174.2 and 23 CFR 635.

Per the certification process, T/LPAs must ensure all utility relocation coordination and arrangements have been made prior to 90% design.

T/LPAs must identify all conflicts caused by the proposed construction and certify that negotiations to resolve these conflicts have been completed.

T/LPAs must verify any conflict letters received from utility companies.

#### Types of Utility Relocations

##### Reimbursable

The T/LPA is responsible for costs incurred by the utility owner to relocate the utility. The T/LPA will verify the cost estimate and relocation plan submitted by the utility company prior to start of project construction.

##### Non-reimbursable

The utility owner is responsible for design and construction costs incurred to relocate the utility.

## **8.B. Roles and Responsibilities**

### **8.B.1. Utility Owner Responsibilities**

The utility owner is responsible for compliance with industry code, the conditions and/or special provisions specified in applicable permits or agreements, and applicable statutes and regulations of the State of New Mexico and the CFRs. The utility owner is responsible for the design, construction, and maintenance of all facilities to be installed within T/LPA right-of-way. The utility owner is responsible for and will provide all measures as required to preserve the safe and free-flow of traffic, structural integrity of the roadway or facility structure, ease of roadway maintenance, and appearance of the facility resulting from the utility installation.

### **8.B.2. T/LPA Responsibilities**

All elements of the utility relocation are subject to review and approval by the T/LPA, particularly the materials, location, and method of installation. Temporary traffic control plans and signage for relocation of utilities shall be in compliance with the current Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) and approved by the T/LPA prior to any utility work within T/LPA right-of-way. In some cases, a utility owner may provide a no-conflict letter stating their utility will not be impacted by the proposed construction project. The T/LPA is required to verify any no-conflict letters received from the utility companies and include them in the certification documentation. Where laws or orders of public authority or industry codes prescribe a higher degree of protection or construction than provided by this utility accommodation policy, such laws, orders, or codes shall prevail. Refer to rule 17.4.2 NMAC for more detailed information on utility considerations, impacts, and guidance,

## **8.C. Procedures and Documentation**

### **8.C.1. Reimbursable Relocation Costs**

Documentation is required when reimbursement for relocation of utilities is requested by the utility owner from the T/LPA. Though utility owners must request reimbursement, the T/LPA must submit complete relocation documentation to the Region Coordinator for review and concurrence. The T/LPA will not reimburse a utility owner for any utility relocation caused by the construction of the project unless the utility owner can prove their right to be paid. If the utility owner can provide the following, then the utility relocation may be reimbursable:

- Copies of the utility owner's land use documentation are required to substantiate their right to occupy the public and private land affected by the proposed construction. If a utility owner is seeking reimbursement, the right to compensation must be justified and substantiated by documented proof of the utilities existing compensable property rights. The documentation may include copies of any land use conveyances, including deeds, easements, permits, land use agreements, and any other documentation acceptable under the laws of the State of New Mexico.
- Copies or proof of compensable property interest, such as a private easement, warranty deed, or other property interest documentation.
- A relocation plan on the facility construction plan and profile sheets showing the existing and proposed roadway features and utility relocation plan. The plan shall be drafted so that the utility relocation plans become a part of the original construction plan assembly, if possible.
- A detailed estimate of the proposed relocation costs. An estimate and billing guide example are available from the NMDOT Region Coordinator.
- Any utility receiving reimbursement with federal funding must submit a signed certification that the utility company is in compliance with Buy America requirements and must declare any steel and/or iron products that are non-compliant per 23 CFR § 635.410. The local entity/utility must also provide material certification (see the Chapter 13 – Construction for more information). All materials must be documented for compliance or justification provided for non-compliant materials. If the T/LPA awards utility work to the same contractor awarded a federal project, the contractor must meet Buy America requirements.
- A contractual agreement with prior approval from the NMDOT Utility Section between the utility owners and the T/LPA addressing the relocations (Form A-366).
- Permit application and plans, if required, to install the utility or relocate the utilities within the public right-of-way.
- Stamped as-built plans of the relocated/installed utilities submitted to the T/LPA.

The T/LPA must send a draft of the proposed utility agreement to the Region Coordinator, who will review and approve before forwarding to the NMDOT Utilities Section. The Utilities Section will review the agreement or discuss any necessary changes with the T/LPA before granting final approval.

All records pertaining to utility relocation on federally-funded or state projects must be retained by the utility and the T/LPA for three (3) full years from the date of the final reimbursement. NMDOT and Federal Highway Administration (FHWA) personnel shall be provided access to project records upon reasonable notice. Utility relocation record drawings must convey an accurate location and depth for all activities completed.

## 8.C.2. Non-Reimbursable Relocations

Non-reimbursable relocations require that the utility owner pay for the relocations. The T/LPA is responsible for coordinating relocation with the utility companies prior to the start of construction and documenting how this will take place. Documentation required for non-reimbursable relocation is:

- A relocation plan on the facility construction plan and profile sheets showing the existing and proposed roadway features and utility relocation plan. The plan shall be drafted so that the utility relocation plans become a part of the original construction plan assembly, if possible.
- Permit application and plans, if required, to install the utility or relocate the utilities within the public right-of-way.
- Stamped as-built plans of the relocated/installed utilities submitted to the T/LPA, conveying an accurate location and depth for all activities completed.

## 8.D. Certification Process

A utility certification must be requested by the T/LPA to the Region Coordinator. This action requires a written letter with a concurrence line for the Region Coordinator's signature. The T/LPA must certify to the NMDOT that all utility relocation coordination and arrangements have been made or that there will be no utility impacts. The T/LPA must identify all conflicts caused by the proposed construction and certify that negotiations to resolve these conflicts have been completed. If relocations are not required, the T/LPA must clearly state that determination in the utility certification request and include correspondence from each utility within the construction limits stating they are aware of the project and there will be no impacts to their facility as a result of construction. Correspondence from utilities must be dated within six months. After six months the utility must submit a revised correspondence to verify there have been no changes in field conditions impact statements, or scope of work. The following is required in the certification letter:

- Identification of the utility owner.
- Scope of relocation work on utility company letterhead, including the type and size of the facility and the extent of the relocation, as well as locations of relocations.
- Who will perform the relocation and when the work will begin and end. If the exact dates are not known, the utility owner shall provide an estimate of relocation time.
- Who will be financially responsible for the relocation and whether the costs are reimbursable or non-reimbursable.

- If the cost for relocation is reimbursable, the utility company must provide documentation that all materials are compliant with Buy America requirements (23 CFR § 635). The utility company must declare any materials that are non-compliant including a description, a quantity, a unit cost, and a total cost.

### 8.D.1. Utility Notice to Contractor for Inclusion in Facility Contracts

On projects that will involve concurrent utility and facility work, the T/LPA must develop and submit a Notice to Contractor (NTC) that details which utility will perform concurrent utility work, the location(s) where the work will occur, who will perform the work, when it will start and end, a contact person and phone number, and any other details that may impact facility construction and operation. The NTC must be submitted in final form along with the certification letter and included in the final contract book (see Chapter 4 - Project Development). If no utility relocation is anticipated, the T/LPA should include an NTC informing the contractor of such. The format for NTC for both impacts and no impacts are available from the Region Coordinator.

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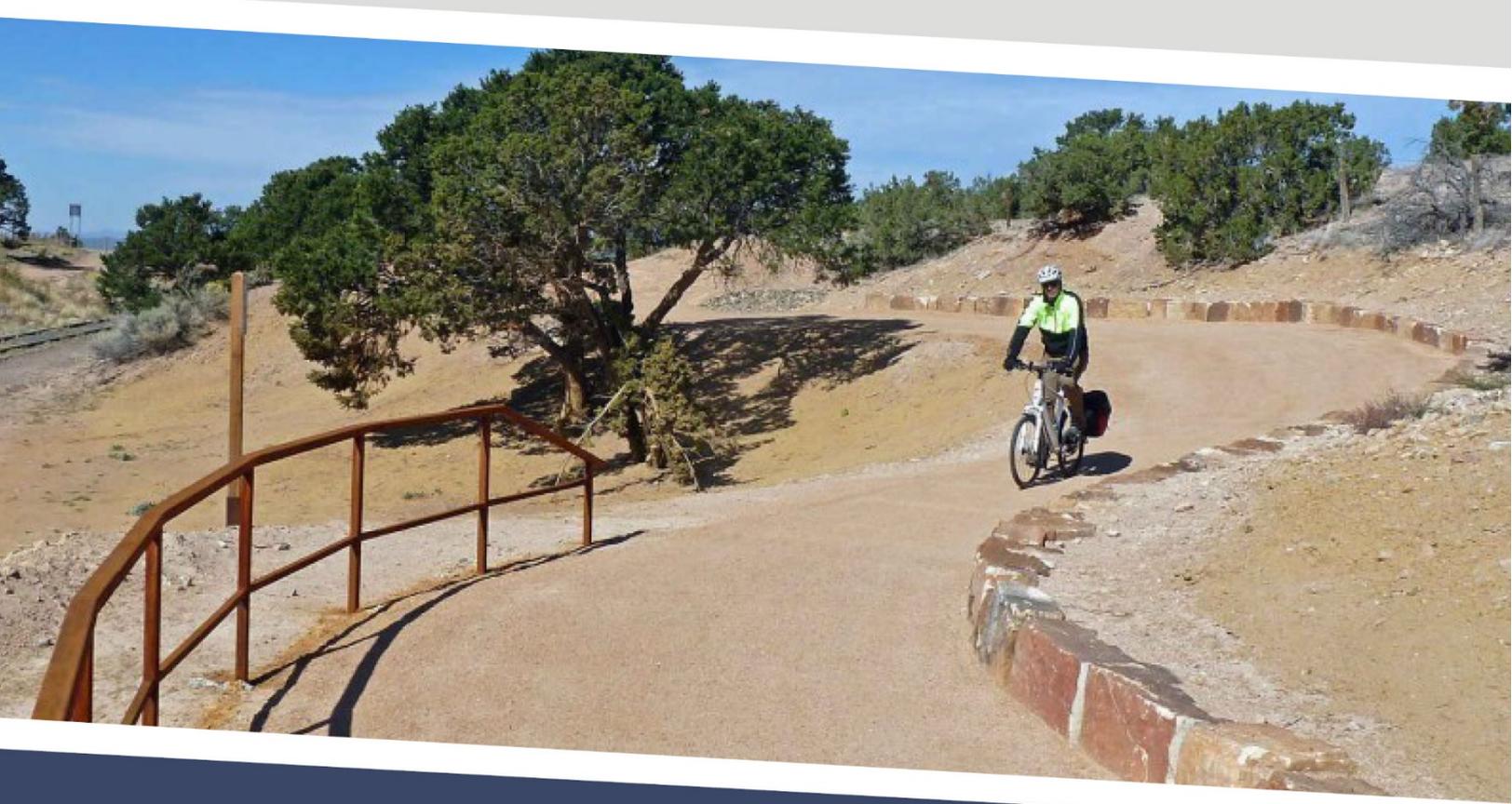
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APPENDIX

# CHAPTER 9

## RAILROAD



**T/LPA:** City of Santa Fe

**Project:** Natural material multiuse path located parallel to the tracks for the Rail Runner

An example of the rails-trails partnership, extensive coordination was required with the NMDOT Rail Bureau (railroad owner) and with Santa Fe Southern Railway (railroad operator).

## 9.A. Purpose and Introduction

This chapter is intended to provide guidance for instances where railroad property falls within or near the work limits of a Tribal/Local Public Agencies (T/LPA) transportation project. Railroads have their own unique set of design, operational, maintenance, and safety considerations that differ from roadway considerations. Coordination is necessary where railroads and roadways interact to ensure both transportation systems can coexist in a safe manner. Safety issues can arise if this coordination is minimized or ignored.

Familiarization with the concepts and procedures described in this chapter can eliminate or minimize potential issues to T/LPA project schedules and budgets when involving railroads.

## 9.B. Railroad Impacts

As roadway systems grow, so does the need to update, reconstruct, and improve existing railroad crossings and to construct new railroad crossings. T/LPA projects may contain a railroad crossing or a parallel railroad within or adjacent to its work limits. Projects within or near railroad property can be considered to have an impact to the railroad company, the extent of which will vary depending upon the project's scope of work. Communication with the railroad company early in the project development process is important for efficient planning, scheduling, and budgeting. T/LPAs should not assume that a proposed use of a railroad right-of-way will automatically be granted by a railroad company.

### 9.B.1. Types of Projects with Railroad Involvement

Types of projects that typically involve railroad coordination include the following:

- Construction of a new roadway overpass across railroad tracks
- Removal/replacement or repair/modification of an existing roadway overpass for railroad facilities
- Upgrade or widening of an existing at-grade crossing surface

#### What T/LPAs Need to Know

T/LPAs should evaluate whether there are railroad crossings or railroad activity within or near the project area.

T/LPAs should direct any railroad coordination questions to the Region Coordinator, who will assist T/LPAs in contacting railroad company representatives and navigating the railroad coordination process.

T/LPAs are required to complete a certification for NMDOT and agreements directly with the railroad company.

Early communication is key since it may take up to a year or more for a railroad company to grant approval for work to occur within its property.

- New installation, relocation, or upgrade of automatic crossing flasher lights and/or gate arms
- Reconstruction of roadway approaches to a railroad crossing
- Installation of drainage swales or culverts along parallel roads and railroads
- Railroad right-of-way encroachment needed to accommodate new parallel roadways/trails or widening along an existing roadway
- Temporary access for surveying, geotechnical core sampling, or construction access
- Material or equipment staging close to railroad right-of-way
- Crane or excavator swing radius activity close to or within railroad right-of-way

## **9.C. Coordination with Railroad Companies**

The following is a typical process guideline for railroad coordination. However, practices can vary with each individual railroad company.

### **9.C.1. Preliminary Design and Initial Coordination**

Once a T/LPA has determined that railroad property will be near or within a project's work limits – typically very early in the project development process, such as during the planning or conceptual design stage – the T/LPA should reach out to the affected railroad company to hold a preliminary design meeting. The preliminary design meeting may also, depending on project scope, include a preliminary field meeting, or diagnostic review, to ensure the T/LPA fully understands the railroad company's operations, design requirements, and expectations, and to convey the project concept the T/LPA is proposing. A conceptual plan should be ready to share with the railroad company at this point.

The preliminary field meeting/ diagnostic review will typically identify the following:

- Identification of number of trains per 24 hours
- Number of tracks (including need for future tracks)
- Roadway data such as vehicle counts, pedestrian use, school bus, and heavy truck use (including hazardous materials)
- Proximity of schools, hospitals, and fire stations
- Potential of future land development

- Degree of sight distance for motorists at or approaching a railroad crossing. See the [FHWA Highway-Railway Crossing Handbook](#), (2019 or current edition) for guidance.

### Considerations for Railroad Crossing Projects

For grade-separation projects, a manual has been jointly prepared by BNSF and Union Pacific Railroads – the two largest railroads that traverse New Mexico – and should be consulted by T/LPA designers. This manual is available through the Region Coordinator.

For at-grade crossing projects, FHWA's [Highway-Railroad Crossing Handbook](#) (July 2019) is a useful resource for design considerations and concepts.

**Figure 8: Railroad Coordination Process**



Note: **Figure 8** depicts the sequence of events required as part of the railroad coordination process. See Chapter 9, Section C.2 and Chapter 4, Section D for detailed information on design reviews.

### 9.C.2. Design Reviews

If the railroad company agrees to the conceptual plan, the next step is typically for the T/LPA to submit a 30% design to the railroad company for its review. The design will need to incorporate railroad standards and avoid relocation or adjustment of railroad facilities where possible. Designs should also account for any future tracks as well as railroad maintenance access needs.

Subsequent design submittals to the appropriate railroad company should also occur at the 60%, 90% and 100% levels. Each design submittal review may take up to 90 days. Railroad companies typically will not provide final approval to designs until the 99% to 100% design level. T/LPAs should note that while some railroad companies may conduct their reviews of the T/LPA design submittals in-house with no charge, other railroad companies may require a preliminary engineering (PE) agreement to be fully executed with the T/LPA prior to the railroad company accepting design submittals for the railroad's review. Upon the T/LPA's request, the railroad company will develop a PE estimate based upon the T/LPA's description and scope of the project. The T/LPA must account for this cost in their project design budget. Typically, the PE agreements take approximately two to three months to complete including the estimate, developing the agreement, and obtaining appropriate signatures. See Chapter 4, Section D for additional information on design review stages.

## **9.D. Agreements**

Once the project design is reviewed and approved by the railroad company, written agreements are typically required by – and prepared by – the railroad company. These include a construction and maintenance agreement and a right-of-entry agreement.

### **9.D.1. Construction and Maintenance Agreement**

A construction and maintenance agreement between the T/LPA and the railroad company is typically required for new construction or for modifying an existing T/LPA facility within railroad property. This agreement serves as the railroad company's authorization and documentation for the T/LPA to allow the proposed structure or facility to be constructed or modified within the railroad company's property. Depending on the project, the agreement may also define the scope and cost of work the railroad company will need to perform itself to accommodate the project. The effort by the railroad will usually include the railroad company's estimated cost to provide railroad flagging protection for the T/LPA or its contractor.

#### **Railroad Flagging Protection**

Railroad flagging protection refers to an on-site railroad employee coordinating with trains and a central rail traffic controller to provide protection to its trains and employees and to the T/LPA contractor's employees and equipment from being struck by a train or striking a train or damaging the track.

In some cases, the railroad may not use its own employees but rather require the T/LPA's contractor to contract with an independent firm - approved by the railroad company and qualified under the railroad company's operating and safety rules - to provide flagging protection. Generally, all costs associated with railroad flagging protection will be included under the T/LPA project cost. Most if not all costs incurred by the railroad company for project-related work will be reimbursed to the railroad company under the T/LPA's project, unless otherwise agreed upon. In most cases, the railroad company has no obligation by federal law to share in these costs, although this can vary depending on the project. The federal share of railroad/roadway crossing projects is defined in 23 CFR § 646; eligible reimbursement cost categories for railroad work are defined in 23 CFR § 140 Subpart I. See Chapter 9, Section E for more information.

### 9.D.2. Right-of-Entry Agreement

A "contractor right-of-entry" agreement is typically required between the railroad company and the T/LPA's contractor. The purpose of this agreement is to ensure that the contractor understands and will adhere to railroad safety rules, regulations, and engineering standards while working within railroad right-of-way. This agreement usually requires that the contractor provide the following submittals for the railroad company's review and approval:

- **Demolition plans / crane erection / lifting plans:** These plans, mainly applicable to highway overpass bridge work, demonstrate how workers, trains, track, and other railroad infrastructure and property will be protected from falling debris, material, or equipment. This will require the T/LPA contractor to submit a track shield design to be used during demolition. Under no circumstance, will a railroad company allow any debris or dust to be dropped onto their track during demolition work. The railroad company may also require that these plans be stamped by a professional engineer.
- **Shoring or falsework designs:** These plans, applicable to temporary support structures especially where excavation is in close proximity to railroad tracks, shall demonstrate proper structural integrity to withstand loading forces expelled by moving trains and to prevent collapse. The railroad company may require that these plans be stamped by a professional engineer.
- **General safety, work and emergency response plans:** This should include the contractor's plan to schedule railroad personnel (e.g. flaggers) to provide worker protection for the contractor's construction activities and identify the contractor's safety procedures and enforcement plan among its own employees.
- **Railroad safety orientation and certification:** T/LPA contractor employees will need to engage in a railroad safety course to receive a certificate, or "safety card." The

course covers federal laws regarding railroad worker safety and methods of protection, as well as other general railroad safety rules and principles.

- **Insurance policies and minimum limits:** T/LPA contractors will need to obtain and submit proof of commercial general liability, automobile, and in some cases railroad protective liability. The insurance provided by the T/LPA's contractor shall conform to the most recent Code of Federal Regulations relating to Railroad-Highway Insurance Protection and the NMDOT's current Standard Specifications for Highway and Bridge Construction, Section 107.25, Insurance Requirements.
- **e-Railsafe Program:** For large scale and lengthy projects, such as construction of a new highway overpass over the railroad, the railroad company may require background checks and security screenings of all T/LPA contractor and sub-contractor employees under the railroad e-Railsafe security program.

### 9.D.3. Other Considerations for Railroad Agreements

In some situations, such as a preventative maintenance project, a T/LPA – owned facility within railroad right-of-way may already be covered under an existing license agreement between the railroad company and the T/LPA. In this case, a contractor right-of-entry agreement alone may be required between the railroad company and the T/LPA's contractor. An example may be a project to resurface an existing roadway that is within railroad property under license.

If there is no existing license agreement between the railroad company and the T/LPA that covers the facility within the railroad right-of-way that is subject to the planned work, it is likely a new fully-executed license agreement would be required before a contractor railroad right-of-entry agreement would be considered. In addition, if the planned work would possibly change the footprint or overall nature of the existing facility within the railroad property, the railroad company may require a new license agreement be executed. It is important that the T/LPA determine the status of the licensing agreement with the railroad at the onset of the project, as this could add additional months to the project schedule.

The process for executing agreements with railroads and agreeing upon the share of costs borne by the railroad for the T/LPA project, if any, shall conform to the most current federal regulations relating to highway-railroad projects (23 CFR § 646). Agreements, at a minimum, shall contain the following, where applicable:

- A reference to the provisions of 23 CFR § 646.101 through § 646.220 and 23 CFR §140.900 through § 140.922
- A detailed statement of the work to be performed, including the obligations of both parties
- The method of payment – lump sum or unit cost – of the work performed

- On projects which are not for the elimination of hazards at highway/railroad crossings, the extent to which the railroad company is obligated to move or adjust its facilities at its own expense shall be outlined
- An itemized estimate of the project cost
- Company's share of the project cost, if any
- An itemized estimate of the cost, and description of the work to be performed by the railroad company
- Provisions regarding reimbursement record keeping and audits
- Method to be used for performing the work, either by the forces of the railroad company or the T/LPA's contractor
- Maintenance responsibilities
- Form, duration, and the face amount of the insurance policy(s) required, or certificates of insurance attesting to the adequacy of coverage required for contractor work on railroad property
- Appropriate reference to or identification of plans and specifications
- Conditions under which the railroad company will provide or require protective services during the performance of the work, the type of protective services and the method of reimbursement to the railroad company
- Provisions regarding inspection of any reimbursable work performed

Once received from the railroad company, the T/LPA must send a copy of the railroad agreement to the New Mexico Department of Transportation (NMDOT) Region Coordinator for review of federal and state funding compliance.

## 9.E. Railroad Coordination Costs

Construction or other related work activity within or adjacent to railroad right-of-way will involve costs related to railroad coordination. It is important that the T/LPA identifies these cost estimates up front from the railroad company and includes them in the project budget. These costs are generally covered by the T/LPA, though such costs are reimbursable. It is also important to note that railroad coordination costs and expenses incurred during the T/LPA project will only be reimbursable to the T/LPA or its contractor if these costs are included in the STIP and identified in the project funding agreements between the T/LPA and NMDOT.

### Coordination Costs

Most if not all costs incurred by the railroad for project-related work shall be reimbursed to the railroad company, unless otherwise agreed upon.

The following are example categories of costs incurred by the railroad companies that may need to be budgeted for by the T/LPA:

- **Preliminary Engineering Costs:** The railroad company may require reimbursement for their time in reviewing project plans, preparing agreements, and site visits. In some cases, the railroad company may need to perform design work such as grade crossing signal or surface layouts, grade crossing signal preemption interconnection with an adjacent roadway intersection traffic signal, or the relocation or adjustment of railroad infrastructure.
- **Agreement Fees:** The railroad company may charge an application fee for agreements and a one-time or annual fee for use of railroad property.
- **Railroad Flagging (Worker Protection):** Railroads are required by federal law to establish protection for workers and equipment near railroad tracks to prevent accidents between workers, construction equipment, and trains. Railroads will apply these rules and regulations to the T/LPA's contractor. Varying methods exist for worker protection, but typically involve railroad personnel on site providing worker protection through coordination with trains and the railroad traffic control center (i.e. railroad flagging). Flagging costs can potentially accumulate to a substantial amount over the course of a project; daily costs can be anywhere from \$1000-1600 per working day.
- **Construction Safety and Engineering Inspection:** For large-scale projects, railroad companies may assign specific personnel to inspect the safety behavior of the T/LPA contractors to ensure compliance with railroad safety regulations and engineering standards, and to be the coordinator between the T/LPA contractor and the railroad company with respect to safety meetings and submittals. T/LPAs should ensure that contractors take safety seriously and are capable of performing work according to railroad safety requirements. If safety concerns arise of the contractor's methods and behavior, railroad inspectors have the ability to shut down the T/LPA project within or affecting railroad property or operations.
- **Railroad Safety Certification and e-Railsafe:** Railroads will typically require the T/LPA contractor to take either a classroom or internet-based railroad safety course. Fees for this are typically around \$25 per employee. For large-scale projects, background checks of all T/LPA contractor employees may be required; background checks are usually at more substantial costs than the railroad safety certification alone.
- **Insurance:** Railroads may require higher minimum insurance monetary limits than what contractors normally carry for auto and commercial general liability. In addition, a railroad protective liability policy may be required.

## 9.F. Railroad Certification

Railroad certifications are a necessary component in the process of securing the funding for the T/LPA project. This certification, as provided by the NMDOT Rail Bureau, is a condition for authorizing project funding and must be requested in writing from NMDOT by the T/LPA.

Where a railroad impact or conflict exists, the T/LPA must identify the impacts caused by the proposed construction and provide documentation, including railroad design/plan approvals and fully executed railroad agreements, to the Region Coordinator showing these impacts have been addressed. If the T/LPA believes no railroad coordination is required or no railroad impact is identified, the certification request letter must state so clearly, along with the items identified below.

The following are required in the railroad certification request letter (see the [Project Oversight Division website](#) for an example):

- Description and scope of work, including project limits, type, and size of the facility
- Location of work in relation to the nearest railroad track, whether or not work will occur adjacent or within railroad right-of-way, and whether or not work will occur within 25 feet of the nearest track. Railroad right-of-way is typically 100 feet to 200 feet in total width but may be wider in railroad station or rail yard areas. Vehicles, equipment, and materials shall not be staged or stored within railroad right-of-way unless permission is granted by the railroad to do so. In no case shall materials, vehicles, or equipment be staged or stored within 25 feet of the nearest track.
- A map in PDF format displaying the project limits
- KMZ file link (for location on Google Earth)

A railroad certification request letter must be received by the Region Coordinator at least thirty (30) calendar days prior to the anticipated PS&E review meeting. This is to allow sufficient time to evaluate the request and to coordinate with Federal Highway Administration (FHWA). A railroad certification will not be granted to projects with rail impacts until the T/LPA's final design has been approved and accepted by the railroad company and all agreements required by the railroad company have been fully executed with the T/LPA. This requirement does not apply to a contractor right-of-entry agreement required by the railroad company, as this cannot occur until the T/LPA project has been obligated and the T/LPA awards a contractor. This will instead be a condition of the railroad certification, if so required.

## **9.G. Railroad Notice to Contractor**

When the railroad certification indicates there will be an impact to a railroad facility, a railroad Notice to Contractor (NTC) must be included with the bid packages to highlight critical information regarding railroad requirements and associated costs that potential contractors need to be aware to reflect in their proposed bids. Typically, this NTC document will include a sample railroad right-of-entry agreement that will be executed between the railroad company and the contractor awarded the project. This sample agreement provides detailed railroad requirements.

Details on construction bidder requirements can be found in Chapter 11, Section A.2. Direct any railroad coordination questions to the Region Coordinator.

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# CHAPTER 10

## INTELLIGENT TRANSPORTATION SYSTEMS



**T/LPA:** City of Albuquerque

**Project:** Zuni Road Improvements

The pictures above show a contractor installing ITS equipment for the new signals installed as part of the project.

## 10.A. Intelligent Transportation Systems and the Systems Engineering Process

If the project will deploy devices that can generate, receive, and share information or data, it is likely to include Intelligent Transportation Systems (ITS) elements. Examples include, but are not limited to, signal installations that are tied into a larger signalized system, dynamic message signs, CCTVs, road weather information systems, and traffic monitoring devices. Even if it is only a part of the project, in order for an entity to access funds for the project as a whole, the systems engineering process must be followed for those ITS elements.

### 10.B. ITS Architecture

An ITS architecture is a planning tool that identifies and maps the various transportation issues and needs of multiple stakeholders within a region, including local public agencies to select what ITS solutions can be used to provide remedy. The regional stakeholders establish and prioritize their respective needs as near term (0-5 years), mid-term (5-10 years) and long term (10-20 years). The typical maintenance cycle for an ITS architecture is five (5) years. There are five (5) ITS architectures in New Mexico, four (4) of which correlate to each Metropolitan Planning Organization (MPO) within the State (Albuquerque, Farmington, Las Cruces and Santa Fe) and one (1) designated as the Statewide ITS Architecture that deals with needs outside of the MPO boundaries. To account for changes such as ITS elements that have been deployed in a region, the shifting needs of that area, as well as updates to the National ITS Architecture, each ITS architecture goes through a maintenance update approximately every five (5) years. During this update, each stakeholder has the opportunity to address any ITS-related issues specific to their needs.

The intent of the ITS architecture is to ensure that ITS systems within a region can be interoperable and easily integrated across stakeholder environments when addressing shared needs and issues. Reviewing the ITS architecture and tying an ITS project back to issues and needs within the architecture is the first step in the systems engineering process. Links to the various ITS architectures in New Mexico can be found at <https://dot.state.nm.us/en/ITS.html>.

#### What T/LPAs Need to Know

ITS certification is required for all federally-funded projects, though requirements for projects without ITS elements are minimal.

T/LPAs are encouraged to follow a SE approach and should refer to the regional or statewide ITS Architecture for guidance on integrating ITS elements of a project with other techniques.

If there are minimal ITS elements the project may be considered a non-systems engineering (NSE) project.

## 10.C. Systems Engineering Process

The systems engineering (SE) process is a method of project development, design and implementation that ensures a system “will do what you want it to do” and “that what you want it to do is needed.” In addition to ensuring system functionality, its intent is to facilitate ITS projects (or ITS components within projects) that are completed both within schedule and budget. The Federal Highway Administration (FHWA) has a specific methodology that ensures the systems engineering process is correctly implemented. This methodology is defined in 23 C.F.R § 940.11 (2001) and must contain the following elements:

- Identification of the portions of the regional ITS architectures being implemented
- Identification of the participating agencies' roles and responsibilities
- Requirements definitions
  - What the system is expected to do
  - Constraints within the environment the system will be operating
- Analysis of alternative system configurations and technology options to meet the defined requirements
- Procurement options
- Identification of applicable ITS standards and testing procedures
- Procedures and resources necessary for operations and management of the system

It is likely that portions of the SE process are already in place when the project development process is initiated; however, the existing SE conditions must still be documented.

The local FHWA office, with input from the New Mexico Department of Transportation (NMDOT) staff, has created a presentation that will provide assistance on how to comply with the SE process as defined by 23 C.F.R. § 940.11 Certification Process (presentation available online [here](#)). Contact the Region Coordinator for additional information on the SE process and documentation requirements.

## 10.D. Systems Engineering Checklist

To initiate the ITS Certification process, users will need to complete the ITS Project Checklist – Systems Engineering Compliance Form for Tribal/Local Public Agency (T/LPA) Type Projects, the editable PDF is provided online [here](#). This checklist can also be found on the NMDOT Intelligent Transportation Programs webpage under the Systems Engineering/Management section. Coordination with the Region Coordinator will be

required to complete and submit the checklist. The Region Coordinator will review, confirm and log the checklist information before sending it to the ITS Bureau for approval. Upon completion, the checklist will provide all of the information needed by the ITS Bureau of the NMDOT to issue an ITS Certification. A signed ITS Project Checklist will serve as the ITS Certification.

Once received by the ITS Bureau, an ITS certification is usually issued within one to two weeks and remains valid for one-year. If a project is delayed beyond the one-year timeframe, the initial ITS checklist will need to be resubmitted. If there are changes to the project, updated project information will be required.

#### Consultant Checklist Submission

If the T/LPA is working with a consultant to complete and/or submit the checklist, the consultant's email and contact information must be included in the submittal. This is essential so the ITS Bureau can notify all of the necessary individuals on the progress of the project's ITS Certification process.

If there are no ITS elements included in the project scope, only Section 1 – *Project Information* of the checklist needs to be completed and submitted to the Region Coordinator. Section 1 information (project location, project type, and project contact) allows for a review of the project within the regional ITS architecture to determine if any ITS needs have been established within the project limits. The identification of ITS needs within the project limits does not commit the project to include ITS, but does create an opportunity for discussion on available options.

Additionally, the project location can be cross-checked against any mapped inventories where ITS infrastructure does exist. This will help ensure no conflicts occur that could potentially impact any existing system's functionality. If a potential conflict exists, the project must take proactive measures to ensure the ITS infrastructure remains undamaged and operable both during and after project activities.

# CHAPTER 11

## ADVERTISING AND AWARD

www.lcsun-news.com

### LAS CRUCES SUN-NEWS

#### PROOF OF PUBLICATION

**I, being duly sworn, Maria Del Villar deposes and says that she is the Legal Coordinator of the Las Cruces Sun-News, a newspaper published daily in the county of Dona Ana, State of New Mexico; that the 1186822 is an exact duplicate of the notice that was published once a week/day in regular and entire issue of said newspaper and not in any supplement thereof for 3 consecutive week(s)/day(s), the first publication was in the 11/20/2017, the last publication**

#### NOTICE OF INVITATION FOR BID

Sealed bid proposal on forms prepared by Wilson and Company, Inc., E&A (hereinafter called Consultant) will be received by City of Anthony, Projects Coordinator, Ms. Esther Motongo (hereinafter called "City" and "Owner"), at the City of Anthony, 820 Highway 478 Anthony, NM 88021, until 10 a.m. (local time) on Tuesday May 23rd, 2017 and will be publicly opened and read aloud immediately thereafter, for the 4th Street Phase II-Rebid (O'Hara Road to Duffer Lane) Congestion Mitigation & Air Quality Improvement Program Project, NMDOT CN: E100220.

Project consists of pedestrian access enhancements and multi-modal improvements including the installation of new 5 foot wide concrete sidewalk, concrete barrier curb, concrete driveway, valley gutter, permanent

Each project must be advertised for bids for a minimum of 21 calendar days. Proof of advertisement should be submitted to the Region Coordinator for their files.

## 11.A. Introduction

This chapter describes the process and procedures for the advertising, letting, and awarding a project. No federally-funded project may be advertised for construction bids until each of the following occurs:

1. The obligation letter has been signed by all parties. See obligation letter template [here](#).
2. The New Mexico Department of Transportation (NMDOT) has provided the Tribal/Local Public Agencies (T/LPA) the executed agreement letter with the approved Purchase Order and executed Construction Agreement. See the Chapter 2 - Agreements for additional information.
3. Region Coordinator reviews contract documents and provides updated versions of Notice to Contractors (NTCs) or Special Provisions (SPs).

All advertising and award of construction projects shall be completed in accordance with the NMDOT T/LPA Section 102 of the T/LPA Section 100's 2019 Edition, Bidding Requirements and Conditions, and T/LPA Section 103 of the T/LPA Section 100's 2019 Edition, Award and Execution of Contract. Deviation from these processes must be granted and documented with the project Production Package during the design phase as described in Chapter 4 – Project Development.

### What T/LPAs Need to Know

The bid process described below applies to all projects utilizing federal funding.

Negotiation with contractors during the period following the opening of bids and before the award of the contract shall not be permitted.

Bidding opportunities on a non-discriminatory basis shall be afforded to all qualified bidders regardless of state boundaries, race, color, religion, sex, sexual orientation, gender identity, or national origin.

No in-state resident preference, Indian preference, or veterans' preference is allowed for bidding.

## 11.B. Advertisement

### 11.B.1. General Considerations

The project shall be advertised for a minimum of 21 calendar days prior to opening of bids. The advertising period begins on the date of publication for the first advertisement. The project advertisement shall achieve the widest possible coverage commensurate with the size of the project. Copies of the advertisement(s) shall be given to the Region Coordinator for archival in the project files.

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

### **11.B.2. Construction Bidder Requirements**

The T/LPA shall advise construction bidders that use of the B2Gnow and LCPtracker software programs is required and shall be considered incidental to the contract, and that failure of a contractor, subcontractor, or other recipient to use the software program will result in a determination of non-conformance per the T/LPA Section 100's 2019 Edition. Non-conformances are subject to a withholding of 25% of the Progress Payment until compliance with these requirements are achieved. See Chapter 13 - Construction for more information on the software programs.

The T/LPA shall require all construction bidders to include the NMDOT Bidders List of Quoters form BL-DBE in their bid package at the time of bid submittal. The T/LPA shall advise bidders that failure to submit this form accurately and completely will render the bid non-responsive. The required document list can be found [here](#).

### **11.B.3. Disadvantaged Business Enterprises**

For the past several years the NMDOT has met the state's Disadvantage Business Enterprise (DBE) goals, and most of the contractors included on the NMDOT approved contractor's list are DBE certified. This means that T/LPAs may not be required to set a project specific DBE goal. If the project has a DBE goal, the Region Coordinator will contact the Civil Rights/Equal Employment Opportunity (EEO) Compliance Officer prior to advertisement. For more information about DBE goals see Chapter 12 – Civil Rights.

### **11.B.4. Addendums**

Should an addendum be necessary during the advertising period to change the approved production package, contact the Region Coordinator for concurrence; after concurrence, addenda shall be transmitted to all individual contractors holding the plans, specifications, and bid document data. Each bidder shall present, with its bid, written notice of receipt of each addendum. Failure to present receipt of addenda shall deem the bid non-responsive. NOTE: Addendums must not be released prior to Region Coordinator concurrence.

## 11.C. Bid Process

### 11.C.1. General Requirements

No public agency shall be permitted to bid in competition with or enter into subcontracts with, private contractors. The T/LPA is prohibited from establishing any procedures or requirements for qualification or licensing of contractors that might restrict competition, prevent the submission of bids, or prohibit consideration of bids submitted by any responsible contractor, whether resident or nonresident of the State.

Negotiation with contractors during the period following the opening of bids and before the award of the contract shall not be permitted.

#### Use of NMDOT-Approved Contractors

The T/LPA shall ensure that the bidder has the required licenses and are on the NMDOT's approved contractor list before bid opening. If they are not on this list their bid will be rejected.

A list of NMDOT's approved contractors can be obtained from the NMDOT's Office of Inspector General (OIG) by calling 505-476-0900 or on the following web site [here](#).

Please note: this list is provided for informational purposes only and is not a guarantee that the bidder has the required license appropriate for the scope of work.

### 11.C.2. Licensing and Prequalification

#### 11.C.2.a. Licensing

Any contractor can bid on a project involving the expenditure of federal and/or state funds; however, the contractor must be licensed in New Mexico by the Construction Industries Division of the Regulation and Licensing Department prior to bid award.

An out-of-state contractor who does not have the appropriate state contractor's license may bid on a T/LPA project; however, they will need to get the appropriate in-state license prior to the execution of the contract

It is the responsibility of the T/LPA to ensure that prospective bidders meet the proper licensing requirements for their project

### 11.C.2.b. Prequalification

The T/LPA shall ensure that the bidder is on the NMDOT's Prequalified Contractors and Subcontractors List at the time of bid opening (unlike the licensing requirement above, there is no grace period), or their bid will be considered non-responsive and rejected.

Note: The prequalification requirement applies to the bidder/Prime Contractor only and does not apply to subcontractors.

A copy of the NMDOT's Prequalified Contractors and Subcontractors List can be obtained from the NMDOT's OIG and is available on its [website](#). The NMDOT's Prequalified Contractors and Subcontractors List contains a contractor's prequalification factor rolling average or PQFRA score; however, this score does not apply to T/LPA projects and shall not be applied to the bids. Inclusion on the NMDOT's Prequalified Contractors and Subcontractors List does not guarantee that the bidder has the required license appropriate for the scope of work.

### 11.C.3. Bid Opening & T/LPA Engineer Review

All bids received in accordance with the terms of the advertisement shall be publicly opened and announced, either item by item or by total amount. If any bid received is not read, the name of the bidder and the reason for not reading the bid shall be publicly announced at the bid opening. After the bid opening, the T/LPA's engineer checks to verify that all required bid documents have been properly submitted and executed by all bidders. The T/LPA's engineer shall prepare a tabulation of bids showing the bid item details for at least the three lowest acceptable bids and the total amount of all other acceptable bids and shall certify that these tabulations are correct. If the project includes more than one bid lot, or a base bid plus alternate bid(s), the Lowest Responsive Bidder shall be determined based on the total of all bid lots/additive alternates. This approach applies even when all bid lots/additive alternates are not being awarded.

#### Bid Packet Components Required for Submittal to Region Coordinator

1. Concurrence request letter from the T/LPA
2. Bid Tabs
3. Bid packet with the following items:
  - Cover Sheet
  - Index of Required Documents for Bid Submittal
  - Affidavit of Bidder
  - Bid Form
  - Bid Guaranty
  - List of Quoters for the DBE Program
  - DBE Goal Form A585 (if applicable)
  - Non-Debarment Certification
  - Pay Equity Acknowledgement
  - Subcontractors Fair Practice Act
  - Compliance (if applicable)
  - Any other documents the entity lists/identifies as required

## 11.C.4. NMDOT Review

A letter of recommendation to award, or a request to reject bids, shall be sent to the Region Coordinator on the T/LPA's letterhead. See the guide provided [here](#) for the process for rejecting any or all bids. Additionally, the T/LPA shall submit all bid packets, including all (DBE) related forms, to the Region Coordinator. The Region Coordinator will review the bid packets and make a determination of whether the packet as submitted is compliant with federal requirements for eligibility of federal funds. If there is a DBE goal for the project, the Region Coordinator will contact the CR/EEO compliance officer for review.

The Region Coordinator will review the T/LPA's approved responsive low bid for the project, including any approved alternates if applicable, and compare it to the construction agreement amount. The following conditions will apply:

- If the low bid amount is over the agreement amount, the T/LPA will be responsible for the overage. If the T/LPA cannot pay for the overage, they need to work with the Region Coordinator with options on how to proceed. At no time will NMDOT provide additional funding to cover the overage.
- If the low bid amount is under the agreement amount by over 15%, but less than \$250,000, there will be no change to the funding amount. However, the T/LPA shall not modify and/or add to the scope of work solely to take advantage of this funding.
- If the low bid amount is under the agreement amount by over 15% and \$250,000, the difference will be rescinded from the project in order to make the funding available for other federal aid projects.

## 11.C.5. Changes to Scope of Work

For projects that are bid for less than the amount programmed in the Statewide Transportation Improvement Program (STIP), the T/LPA shall not include additional scope of work which was not originally identified in the bidding documents unless the additional work is justified. Justification includes, but is not limited to, an unforeseen site condition or unanticipated safety condition.

If the T/LPA identifies and justifies additional work, this work shall be reviewed and approved by the Region Coordinator in coordination with the Multi-Modal Planning and Programs Bureau (MPPB) Program Manager and must receive a prior approval from the Construction Liaison Engineer (CLE) prior to commencing with the additional work (see Chapter 13 - Construction for more information). Unless prior approval has been granted, award and execution of the project shall be completed following the procedures and timelines in Section 103 of the T/LPA Section 100's 2019 Edition, Award and Execution of Contract.

## 11.D. Contract Award

Once the Region Coordinator has reviewed the submitted bid documentation as outlined above, he/she will send a concurrence letter to the T/LPA and copy the District Engineer (DE), District Coordinator, CR/EEO Compliance Officer and CLE concurring with the recommendation to award to the lowest responsible bidder. At this point, the NMDOT point of contact switches from the Region Coordinator to the District Coordinator.

### Key Definitions

#### District Coordinator

The NMDOT staff person who guides T/LPAs through the construction and construction management processes

The T/LPA will notify the Lowest Responsible Bidder in writing that its bid has been accepted and that it has received preliminary Award of the Contract. The T/LPA will provide the contract to be executed by the contractor and returned to the T/LPA.

## 11.E. Transition to Construction Meeting

After concurrence on the recommendation to award, the District T/LPA Coordinator shall coordinate a transition meeting with the T/LPA and the CLE (see Chapter 13 – Construction for additional information). The purpose of this meeting will be to discuss the required project documentation, format for submittals, and procedures to be used to ensure adequate management of a federally-funded construction project. If the T/LPA has hired a consultant for construction management, the consultant staff may assist the T/LPA with some of the requirements listed below; however, the T/LPA is ultimately responsible for ensuring each of these tasks and responsibilities is fulfilled. The Person in Responsible Charge is required to attend the meeting and be prepared to discuss the following list of items:

- Project staffing
  - Person in Responsible Charge (must be an employee of the T/LPA)
  - Project manager
  - Inspector – someone must be on-site full time with the contractor
  - B2Gnow and LCPtracker software programs
  - Certified Traffic Control Supervisor
- Final Plan Set and contract documents
  - Public Interest Finding (PIF)s, design exceptions, and/or design variances, if applicable
- PM Diaries and Inspector Daily Work Reports
- Source book format (item installation tracking)

- Electronic or hard copy
- Environmental commitments
- Material testing requirements
  - Quality Control/Quality Assurance (QC/QA) and Independent Assurance (IA)
  - Technician Training Certification Program (TTCP) Certified Technicians
- Certificates of Compliance
  - All steel and iron materials shall meet the “Buy America” requirement
- Material guarantees and warranties
- Progress payment methods
- Change orders
- Prior approvals
- Audits
  - NMDOT
  - OIG
  - FHWA
- Project final acceptance and close out
- Project Termination Date

# CHAPTER 12

## CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITIES



All projects must have a bulletin board displaying various civil rights/EEO requirements posted at the project site throughout construction. The NMDOT has a checklist to assist T/LPAs in ensuring a compliant Bulletin Board is displayed.

## 12.A. Purpose/Background

This chapter outlines the oversight responsibilities of the Tribal/Local Public Agencies (T/LPA) with respect to the primary contractor during construction and consultants during design.

New Mexico Department of Transportation (NMDOT) has established a Civil Rights and Equal Employment Opportunity (EEO) Program that includes the following:

- External EEO Program
- Labor Compliance Program
- On-the-Job Training Program (OJT)
- Disadvantaged Business Enterprise (DBE)
- Title VI Program
- Americans with Disabilities Act (ADA)

These programs are in accordance with applicable federal law and the requirements and regulations of the United States Department of Transportation (USDOT). The NMDOT administers these programs through the Construction Civil Rights Bureau (CCRB); however, the T/LPA should direct all questions to the District Coordinator.

As a recipient of federal funds, T/LPAs and their contractors and subcontractors have the responsibility to comply with all pertinent civil rights requirements. Failure to do so by the T/LPA or its contractors may result in refusal to obligate funding, withholding of project funding, or withholding of reimbursement. This section contains civil rights and EEO requirements that shall be applicable to recipients of federally-funded projects.

## 12.B. Civil Rights/EEO Field Procedures Manual

The NMDOT CCRB developed a [Civil Rights/EEO Field Procedures Manual](#) to assist T/LPAs in administration and oversight of the required civil rights programs by providing guidance, procedures, forms, and checklists related to the various responsibilities associated with each program.

## 12.C. Title VI Program

As a recipient of federal funds through the NMDOT, the T/LPA must have submitted a Title VI Plan to NMDOT reflecting implementation of the T/LPA's Title VI Program. The submitted

### What T/LPAs Need to Know

All T/LPAs must comply with their approved Title VI and ADA Transition Plans.

T/LPAs must play an active role in monitoring contractors' adherence to civil rights requirements. T/LPAs should consult the [Civil Rights/EEO Field Procedures Manual](#) for guidance.

Contact the NMDOT District Coordinator for assistance related to the EEO Program, including questions on contractor conformance on wage rates.

Title VI Plan must contain the necessary elements of the T/LPA's nondiscrimination program, including a Nondiscrimination Statement of Policy signed by the T/LPA's chief executive, the designation of a Title VI Coordinator, Title VI complaint procedures, Limited English Proficiency procedures, Title VI training, and data collection initiatives. Failure to have a submitted Title VI Plan will result in refusal to obligate funding, withholding of project funding, or withholding of reimbursement. See Chapter 1, Section A.7.b for additional information on Title VI Plans. Tribes are exempt from the Title VI requirements but are still encouraged to have a Title VI Plan.

## **12.D. Disadvantaged Business Enterprise Program**

### **12.D.1. Program Background**

The objective of the NMDOT DBE program is to ensure that small businesses owned and controlled by minorities, women, and other socially and economically-disadvantaged persons have the opportunity to grow and become self-sufficient, so they are able to compete, on an equal basis, with non-disadvantaged businesses for contracts and subcontracts in the transportation industry. See Chapter 3 – Procurement for discussion on the use of DBE subconsultants as a nominal evaluation criterion in the procurement process.

### **12.D.2. Prompt Payment**

Prompt payment provisions are viewed as an important race-neutral mechanism that can benefit DBEs and all other small businesses. As a result, under 49 CFR § 26.29(a) the T/LPA is required to include a prompt payment clause in Department of Transportation (DOT)-assisted contracts. In accordance with state law, the T/LPA shall require prime contractors to pay subcontractors and suppliers, at all tiers, for satisfactory performance of their contracts no later than thirty (30) days after receipt of a progress payment from the T/LPA. Monitoring of prompt payment is done through the B2Gnow payment reporting and confirmation function (see Chapter 13, Section B.6, for more information on the B2GNow software program).

The T/LPA shall ensure prompt and full payment by the prime contractor and subcontractors to their subcontractors and suppliers for satisfactory performance of their contracts within thirty (30) days after receipt of payment from the prime contractor or subcontractor. If the contractor or subcontractor fails to pay subcontractors and suppliers by first-class mailing, electronic funds transfer or by hand delivery within thirty (30) days of receipt of payment, the contractor or subcontractor shall pay interest to the subcontractors and suppliers beginning on the thirty-first (31) day after payment was due, computed at one and one-half (1½) percent of the undisputed amount per month or

fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers.

For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the T/LPA. When the T/LPA has made an incremental acceptance of a portion of the contract, the work of a subcontractor covered by that is accepted.

Any delay or postponement of payment among the parties may take place only for good cause, with the prior written approval of the T/LPA. The T/LPA is responsible for monitoring prompt payment through the B2Gnow system. More detailed information and procedures are located in the [Civil Rights/EEO Field Procedures Manual](#). The NMDOT may provide assistance to the T/LPA concerning prompt payment on a case by case basis.

In addition to requiring the payment of interest, the T/LPA can use other use legal and contract remedies available under state and local law, such as suspension or debarment of a prime contractor or subcontractor who exhibits an inability or unwillingness to faithfully comply with the prompt payment requirement.

### 12.D.3. Changes in DBE Firms

Where the project has a DBE goal, the prime contractor shall not terminate for convenience or reduce the amount of work committed to a DBE subcontractor listed on Form A-585A (or an approved substitute DBE firm) without the written concurrence of the T/LPA. Form A-585A is included in the contract and the T/LPA's advertisement or invitation for bids should state the project DBE goal. Form A-585A must list the DBE firms the prime contractor intends to utilize on the project to meet the DBE goal.

Prohibited forms of termination, substitution, reduction in the assigned work, or replacement of a DBE include, but are not limited to, instances in which the contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, or with a non-DBE firm, or with a substitute DBE firm.

In a limited number of circumstances, a DBE may be terminated, substituted, or replaced when there are "good cause" reasons for termination (see the NMDOT [Civil Rights/EEO Field Procedures Manual](#) in Chapter II, Section 6, Part F for "good cause" reasons for termination). The prime contractor must submit a written request to the T/LPA to terminate, substitute, or replace the DBE before the T/LPA may consent. The T/LPA must also request concurrence from the District Coordinator before it consents to the prime contractor's request.

## **12.D.4. Counting DBE Participation**

When a DBE participates in a contract, only the value of the work that is a Commercially Useful Function (CUF) performed by the DBE will be credited toward DBE goals. A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used in the contract, for negotiating the price, determining the quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. The intent of these requirements is to verify that the DBE subcontractor is actually performing, managing, and supervising the work it is subcontracted to perform.

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted only if the subcontractor or sub consultant is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward meeting the DBE goal.

The T/LPA is responsible for performing routine CUF reviews on every DBE subcontractor on its project using Form A-1239, DBE CUF Interview and Assessment.

## **12.E. Labor Compliance Requirements**

### **12.E.1. General Considerations**

Labor compliance issues can be complex, and non-compliance with labor requirements can put the T/LPA and its contractors at risk for significant penalties and other consequences from the US Department of Labor, the Office of Federal Contract Compliance Programs and the NM Department of Workforce Solutions

The T/LPA is responsible for ensuring that its contractors abide by all labor compliance requirements of the contract, including compliance with Davis-Bacon and its related Acts, as well as the labor-related state statutes and regulations promulgated by the NM Department of Workforce Solutions. The contract shall reference the applicable state and federal wage decisions, and the wage decision that contains the higher wage rates shall govern. No laborer or mechanic shall receive less than the prevailing wage rates, including fringe benefits as indicated in the wage decision, for the classification of work being performed.

On occasion, the wage determinations do not contain sufficient information to issue rates for a particular classification of worker needed in the performance of the contract. Because of this, the Davis-Bacon Act contains a conformance procedure for the purpose of establishing an enforceable wage and benefit rate for the missing classification. If a

classification considered necessary by the contractor for performance of the work is not listed on the applicable wage determination, the contractor must initiate a request for approval of an additional classification along with the proposed wage and benefit rates for that classification. The contractor initiates the request by preparing an SF1444, Request for Authorization of Additional Classification and Rate, at the time of employment of the unlisted classification. If such a situation arises, the T/LPA should consult with the District Coordinator.

The contractor and each subcontractor shall furnish certified payrolls to the T/LPA for each consecutive week starting from the second week it performs work on the project. Certified payrolls shall be submitted by uploading required payroll information into LCPtracker (see Chapter 13, Section B.7 for more information on the LCPtracker software program). The T/LPA shall verify the data contained on each certified payroll and, should errors or discrepancies be found, the T/LPA shall reject the payroll in LCPtracker and notify the contractor or subcontractor of the error. The contractor or subcontractor will be required to correct the error and submit a revised payroll. The T/LPA may utilize Form A-1102, NMDOT Contractors and Subcontractors Payroll Checklist on a weekly basis; however, as of November 2018 its use is no longer mandatory on federal-aid projects utilizing LCPtracker.

## 12.E.2. Equal Employment Opportunity Responsibilities of the T/LPA

The T/LPA is responsible for ensuring that its contractors are in compliance with all EEO requirements of the contract. The goal of EEO is increased participation of minorities and women in the work force, and extends to contractor practices in recruitment, hiring, pay, training, promotion, and retention. On federally-funded contracts, no person is to be subjected to discrimination because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability. These nondiscrimination provisions extend to the contractor's employment practices, solicitations for employment, selection of subcontractors and suppliers, and procurement of materials.

The T/LPA shall ensure the contractor has a compliant EEO Policy established and implemented before the start of the project. The T/LPA must also ensure the contractor submits a letter notifying the T/LPA of its designated company and/or Project EEO Officer. The T/LPA shall ensure the contractor properly disseminates the EEO Policy to employees by means of meetings, employee handbooks, or other appropriate mechanisms; holds periodic EEO meetings (at least every six months) for supervisory and office personnel; and properly instructs its recruitment personnel as well as monitors and documents its recruitment activities; all in accordance with Federal Highway Administration (FHWA)-1273, II, 3, a-e.

The T/LPA shall ensure the contractor erects and maintains a project bulletin board in a presentable manner for the life of the project. The bulletin board shall be placed in a conspicuous location readily accessible to employees, applicants for employment, or potential employees. All notices and posters as indicated on Form A-1245 Bulletin Board Checklist for federal-aid projects shall be placed on the bulletin board, and the T/LPA shall periodically inspect the bulletin board to ensure it remains accessible, readable, and compliant with Form A-1245 Bulletin Board Checklist for federal-aid projects.

### **12.E.3. Labor and EEO Compliance Interviews**

The T/LPA shall conduct Labor and EEO Compliance Interviews to verify contractor and subcontractor compliance with the labor and EEO requirements of the contract. The information gathered shall be reviewed and verified by the T/LPA to ensure employee statements and employer payroll information match, to ensure minimum wage rates are being complied with, and to ensure employees know about and are properly instructed about their employer's EEO Policy and procedures.

The T/LPA shall conduct the interviews on the job during normal working hours utilizing Form A-1077 Labor and EEO Compliance Interview (A-1265 Spanish). The T/LPA shall conduct at least two to four wage interviews each week during the course of the project and the T/LPA shall conduct interviews of at least 50% of employees in each covered classification before the project is completed. The Labor and EEO interviews are confidential so the T/LPA shall notify the contractor in writing to ask for payroll records for a period of time rather than an individual, and then notify the contractor in writing of any issue of non-compliance. If necessary, the T/LPA shall require corrective action to be taken by the contractor or its subcontractors to resolve the issue.

### **12.F. Use of B2Gnow and LCPtracker Software**

The B2Gnow and LCPtracker software programs shall be utilized for federal-aid projects to track EEO and/or civil rights requirements and considerations. See Chapter 13 – Construction, for additional information on these software programs.

The B2Gnow software program tracks DBE participation and prompt payment compliance information. LCPtracker tracks compliance with project prevailing wage requirements and collects certain EEO information on all prime contractors and all tier subcontractors for federal reporting purposes.

## **12.G. Americans with Disabilities Act Responsibilities**

As a recipient of federal and state funds through NMDOT, the T/LPA shall ensure its contractors construct the projects in compliance with the requirements of ADA standards and Public Right-of-Way Accessibility Guidelines (PROWAG). Failure of the T/LPA to build its project in compliance with ADA Standards or to adhere to PROWAG may result in the withholding of project funding or reimbursement. See Chapter 1, Section A.7 for information on ADA Transition Plans.

# CHAPTER 13

## CONSTRUCTION



**T/LPA:** Bernalillo County

**Project:** Sunport Boulevard Interchange Improvements

Bernalillo County used Large Urban funds to make improvements to Sunport Blvd., which included striping, signals, paving, street lighting, sidewalk, and fencing. The photo shows the active construction zone with proper signing and traffic control.

## 13.A. Introduction

The purpose of this chapter is to establish procedures and provide guidance and clarification to Tribal/Local Public Agencies (T/LPAs) on the inspection and management of construction projects utilizing federal funds. This chapter is a guide and is not inclusive of all details and responsibilities of the T/LPA project personnel.

It will be the T/LPA's responsibility to ensure that all work meets standards as set forth in the current [NMDOT Standard Specifications for Highway and Bridge Construction](#) (NMDOT Standard Specifications), including the Supplemental Specifications. For the purpose of this requirement, alternative standards to the New Mexico Department of Transportation (NMDOT) Standard Specifications and Supplemental Specifications will require prior approval by the respective District Engineer with concurrence from the Construction Civil Rights Bureau (CCRB) of the NMDOT.

The T/LPA project files shall remain open and are subject to inspection and audit by the NMDOT District, Office of Inspector General (OIG), CCRB, and/or Federal Highway Administration (FHWA) at any time during construction and for 5 years after completion.

## 13.B. Construction Requirements

### 13.B.1. Notice to Proceed

Once the construction contract has been executed by all parties, the Notice to Proceed (NTP) shall be issued by the T/LPA to the contractor in accordance with Section 108.2.1 of the T/LPA Division 100's 2019 Edition, NTP. The NTP shall be issued prior to the pre-construction conference. At this time, the T/LPA shall submit electronic copies of the executed contract, plans (including any approved revisions to the traffic control plan), and NTP to the District Coordinator and CCRB.

#### What T/LPAs Need to Know

T/LPAs are expected to play an active role in the construction process and are responsible for a range of oversight, project management, and documentation activities. Project management may be delegated to a consultant, but the T/LPA must still assign a Person in Responsible Charge.

A District Coordinator will be assigned as the point of contact for the T/LPA for each project. The District Coordinator is available to assist the T/LPA with questions regarding record keeping and paperwork and is responsible for processing reimbursement requests for construction projects. Other NMDOT representatives will participate in pre-construction meetings and inspections.

T/LPAs should reference the NMDOT Standard Specifications for definitions and additional information.

### 13.B.2. Pre-Construction Conference

A pre-construction conference (pre-con) shall be scheduled and coordinated by the T/LPA's construction project manager in accordance with Section 108.2.2 of the [T/LPA Section 100's 2019 Edition](#), Pre-Construction Conference. The T/LPA shall notify the contractor in writing to ensure the contractor's Project Superintendent and their Certified Traffic Control Supervisor (TCS) attend the pre-con. The T/LPA Person in Responsible Charge shall attend, and it is suggested that the T/LPA's project manager, T/LPA's inspector(s), T/LPA's office manager, T/LPA's designer, the District Coordinator, the Region Coordinator, and a representative from CCRB attend the pre-con. Additional subcontractors, suppliers, utility owners, and stakeholders may be invited to the pre-con.

Attendees should be given at least a three-week notice to schedule and prepare for the meeting and shall be notified in writing of the date, time, and location of the meeting by the T/LPA's Person in Responsible Charge. The T/LPA should ensure the contractor be notified in writing that all pre-con documents required per Section 108.2.2 of the [T/LPA Section 100's 2019 Edition](#) are required to be submitted 10 days prior to the pre-con date. All documentation pertaining to Equal Employment Opportunity (EEO) shall be uploaded to B2GNow prior to the pre-con, the list of required documents and timelines can be found on the [website](#). An example agenda for the pre-con is provided [here](#).

#### Role of the Contractor's Project Superintendent

The Project Superintendent is the contractor staff authorized in writing to be in charge of the project.

Their role is to be present on the project at all time, read and understand contract documents, possess substantial experience in the type of work being performed.

The Project Superintendent shall communicate with T/LPA Person in Responsible Charge for all project related questions and promptly submit all documentation required by the contract.

### 13.B.3. T/LPA Project Staffing Responsibilities

The T/LPA shall provide an employee as a qualified Person in Responsible Charge to ensure the administration of the project complies with all contract requirements, that all testing is performed — including Quality Control/Quality Assurance (QC/QA) and Independent Assurance (IA) — inspections are conducted, and all necessary documentation is prepared (23 CFR § 635.105). All projects with federal funding shall utilize Technician Training Certification Program (TTCP) certification or pre-approved alternative in the respective field of testing and/or inspection to comply with NMDOT specifications. Failure to comply with these requirements will be considered a violation of the terms and conditions of the agreement and may constitute non-participation of funding.

### 13.B.3.a. T/LPA's Construction Project Manager Responsibilities

Refer to Section 105.8 of the T/LPA Section 100's 2019 Edition, Authorities and Duties of the Project Manager, but at a minimum, the T/LPA's project manager shall perform the following duties:

- Daily documentation and maintain a project management diary
- Verify all construction activities and documentation meet NMDOT and CFR standards and policies
- Supervise activities for the inspectors and office personnel
- Administer change orders in compliance with the change order provisions stated in this chapter
- Coordinate all project activities
- Maintain public relations
- Address all problems and/or concerns on the project
- Approve all project documentation and submittals (including source books, certificates of compliance, National Pollutant Discharge Elimination System (NPDES), payrolls, subcontracts, traffic control diary, quality control plan, and testing reports)
- Enforce contractor's compliance with contract requirements (i.e., Buy America, Disadvantaged Business Enterprise (DBE), EEO, traffic control/safety, etc.)
- Administer monthly progress payments
- Reject defective and/or non-compliant material and workmanship, in accordance with the contract
- Interpret the plans and specifications
- Verify construction activities meet contractor schedule
- Designate a person familiar with Storm Water Pollution (SWPP) Plan Preparation and Maintenance to provide oversight of the contractor, when applicable. In order to be considered "familiar," that person would need to have attended the Associated Contractors of New Mexico (ACNM) class "Storm Water Qualified Person" or equivalent.
- Approve the contractor's Quality Control Plan per Section 902, Quality Control, of the NMDOT Standard Specifications. Ensure this documentation has been received two weeks prior to the start of any work being performed that requires QC testing for acceptance and the approved Quality Control Plan is on file.
- Review and approve any proposed changes to the traffic control plan at least two weeks prior to implementation. Ensure the revisions have been designed in

accordance with 23 CFR § 630 Subpart J – Work Zone Safety and Mobility and 23 CFR § 630 Subpart K – Temporary Traffic Control Devices and are stamped by a current New Mexico Licensed Professional Engineer. If any part of the revised traffic control will be located on an NMDOT roadway, concurrence from the District Traffic Engineer is required prior to approval by the T/LPA project manager. Unapproved changes shall not be allowed in the field.

#### 13.B.3.b. T/LPA's Inspector Responsibilities

Refer to Section 105.9 of the [T/LPA Section 100's 2019 Edition](#) for Duties of the Inspector, but at a minimum, the T/LPA's inspector shall perform the following duties:

- Must be onsite during all work activities and prepare a daily work report per Chapter 13, Section D
- Prepare and maintain source document books that show pay quantities and quantity computations per Chapter 13, Section D
- Maintain record of QA/QC and IA testing performed to ensure compliance with [NMDOT minimum testing requirements](#)
- Inspect on-going operations by measuring quantities, verifying traffic control, ensuring safety of the project, and informing the project manager of any possible change orders
- Maintain public relations
- Utility coordination
- Conduct EEO and Labor Compliance interviews
- Measure and verify quantities for paying monthly estimates and cross-reference to source document books, material tickets, and testing reports

#### 13.B.3.c. T/LPA's Office Personnel Responsibilities

At a minimum, the T/LPA's office personnel shall perform the following duties:

- Establish and maintain complete, neat, and accurate records related to construction contract documentation preparation and administration
- Preparation and timely submission of reports
- Calculation of Gross Receipts Tax (GRT)
- Originating change order documentation for the T/LPA project manager's review and approval
- Other assigned duties which are required to maintain an orderly, neat, and accurate flow of paperwork and information regarding the construction and completion of the project

## 13.B.4. T/LPA General Agency Responsibilities

The T/LPA will be required to perform any or all of the following duties under the ultimate responsibility of the Person in Responsible Charge. These responsibilities are divided into three categories: 1) Project Management; 2) Certification and Documentation; 3) Contracts and Payroll.

Any consultant construction personnel that fulfills the roles of project manager, inspector, and/or office personnel will ensure the same duties as stated in Chapter 13, Sections B.3.a – 1B.3.c are fulfilled. This does not alleviate the T/LPA Person in Responsible Charge from their project staffing and agency responsibilities.

All of the documentation described here constitutes the project file and should be maintained in the same place to allow for access and review by the NMDOT District, OIG, CCRB, and/or FHWA.

### 13.B.4.a. Project Management

The T/LPA shall perform the following project management duties:

- Set-up and maintain project files in accordance with the NMDOT filing system. Refer to the [Construction-Civil Rights Bureau page](#) on the NMDOT website for additional information.
- Coordinate and schedule the pre-con in accordance with Chapter 13, Section B.2. Ensure the meeting place is available prior to sending invitations. Prepare a pre-con agenda using the example provided [online](#). Attend the pre-con, take notes and prepare written minutes. Obtain approval of the minutes from the T/LPA's project manager and place approved minutes in project files and distribute to meeting attendees.
- Utilize Form A-1245, NMDOT Bulletin Board Checklist, to review the contractor's project bulletin board and monitor thru the duration of the project. Reviews need to be documented at the start of the project, at 30% completion and at 60% completion, at a minimum. Each report shall be uploaded to B2Gnow with a photo of the bulletin board. See Chapter 13, Section B.6, Software and Reporting Requirements for more information on B2Gnow.
- Initiate appropriate change orders in a timely fashion and ensure the contractor does not install work items prior to the approval of the prior approval (Form A-1090a) or change order (see Chapter 13, Section D.3 for more information).
- Coordinate a field inspection and project file audits with the contractor, T/LPA Person in Responsible Charge, T/LPA project manager, District Coordinator, and

#### Best Practice

Recording the pre-con meeting is suggested in order to document all information and decisions made during the meeting.

CCRB at 50% completion (based on money) and project completion (see Chapter 13, Section F) at a minimum. Additional inspections may be required at the NMDOT's discretion.

- When SWPPP management is an item, approve the contractor's SWPPP to ensure compliance with Section 603.1.1, Storm Water Pollution Preventive Plan, of the NMDOT Standard Specifications. Ensure the Notice of Intent (NOI) is filed with the Environmental Protection Agency (EPA) and approved 14 days prior to any groundbreaking on the project. Upon completion of the project, ensure that the SWPPP Notice of Termination (NOT) have been filed for both the contractor and the T/LPA.

#### 13.B.4.b. Certification and Documentation

The T/LPA shall perform the following documentation-related duties:

- Ensure that all testing equipment is calibrated, and documentation is on file.
- Ensure a copy of the scale calibration certification is on file and up to date. The Weighmaster and Deputy Weighmaster certifications must also be on file with signature samples for verification on haul tickets.
- Have on file all TTCP documentation for key personnel conducting any testing or inspections on the project. TTCP certifications or equivalent are required for all personnel conducting material testing for the contractor (QC) and T/LPA (QA and IA).
- Ensure the contractor's Certificate of Liability is current.
- Ensure the required Wage Rate Interviews (Form A-1077 English version or A-1265 Spanish version) have been completed and verified. Note: Forms A-1077 and A-1265 are NOT to be uploaded to B2Gnow. (Refer to the [Civil Rights/EEO Field Procedures Manual](#) for Wage Rate Interview guidelines.)
- Complete the Monthly Summary Report (Form A-1236) on the tenth of each month and upload the completed A-1236 form to LCP Tracker.
- For any DBE Subcontractors, Form A-1239 Commercially Useful Function (CUF) Interview and Assessment is required to be completed while the Subcontractor is performing work on the project. The interview and assessment should be completed when the Subcontractor is approximately 50% complete. The T/LPA will conduct CUF interviews on every DBE Subcontractor. This documentation is required to be uploaded to B2Gnow (see Chapter 13, Section B.6, Software and Reporting Requirements for additional information).
- Prepare and submit NMDOT Notice of Construction Status (Form A-1080). Each step (Start, Suspend, Partial Suspend, Resume, Substantial Complete, and Physical Complete) should be contained on the same form. Ensure that the "Comments"

section is populated with reason for suspensions. Send a copy to the District Coordinator and Construction Liaison Engineer (CLE).

- Prepare and distribute a statement of working days each week, per Section 108.6 of the T/LPA Section 100's 2019 Edition, Determination and Extension of Contract Time, for all Working Day projects (see Form C-109, Weekly Work Day Report, in Appendix A). In addition, a working day summary is required as a part of the final package (see Chapter 13, Section G) summarizing all weekly work day reports in one document.
- Ensure traffic control diaries are complete, signed, and up to date per the requirements of NMDOT spec 618, Traffic Control Management. Keep weekly copies of the traffic control diaries on file. TCS certifications for the contractor and the T/LPA shall be on file as well as Flagger certifications, when applicable.
- Ensure as-builts are being maintained throughout the duration of the project per Section 802.1.1 of the NMDOT specification book.
- Check all haul tickets for mathematical accuracy, completeness, and numerical sequence (where possible) prior to calculating the total daily quantity. The use of spreadsheets (identifying ticket number, material placement, and quantity) will be utilized. All tickets shall be accounted for and signed by the weighmaster and the T/LPA's inspector. "Voided" haul tickets shall have the reason for the void written on the ticket and must be signed by the inspector and the contractor. For all material wasted at a hot mix plant, a haul ticket should be issued and marked "plant waste". Daily material payable and voided quantities should be checked with the contractor's representative.
- An electronic format tracking system for voided quantities of surfacing materials (i.e., base course, borrow, hot mix asphalt (HMA), warm mix asphalt (WMA\_, open graded friction courses (OGFC), etc.) shall be kept on a separate spreadsheet and documented. These amounts are necessary in order to accurately compute quantities regarding royalty payments to landowners, and if appropriate, for required final extraction reports to the Bureau of Land Management (BLM). These quantities are also vital for the preparation of the asphalt daily production reports.
- Ensure legal load worksheets for all haul trucks have been received from the contractor.
- Ensure contracts with Americans with Disabilities Act (ADA) improvements have the approved ADA curb ramp documentation forms (found in the NTC – ADA Construction Inspection Procedures) for pre-pour inspection and constructed inspection completed for each ADA curb ramp constructed within the project limits. This documentation shall be on file and available upon request.

- Prepare documents for requesting partial and final reimbursement from the NMDOT using Form A-1320, Monthly Estimate Checklist.
- Ensure all original and final cross sections are on file.
- Ensure the revised Structure List (Form A-1072) is completed and on file, including pipe reports, prior to construction of any drainage structures per NMDOT spec 801.3.7.5.
- Assemble final documents for inclusion in the final package to be submitted to the District Coordinator. Utilize Form A-1177 (Final Transmittal Package Checklist for all projects) to ensure all required items are included. Note: The T/LPA project manager may request an audit from the District Coordinator to ensure project files, as-built plans, and related documents are ready for submittal.

#### 13.B.4.c. Contracts and Payroll

The T/LPA shall perform the following contract-related duties:

- Review subcontracts to ensure the current Forms A-1086 (NMDOT Permission to Subcontract Request) and A-1108 (NMDOT Subcontract Checklist) are used to ensure all pertinent information is received. Subcontractor must be on the NMDOT Prequalified Contractors and Subcontractors List prior to submitting the subcontract for approval. Subcontracts shall be approved by the contractor (all tiers) and District Coordinator before the subcontractor may begin any work. Subcontracts are required to be entered in the B2Gnow software program.
- Monitor contractor's and subcontractor's payrolls in LCP Tracker. Complete NMDOT Contractors and Subcontractors Payroll Checklist, Form A-1102, for each payroll submitted by the contractor and subcontractors and uploaded to LCP Tracker. If any employee has an "Other Deduction" listed on the payroll, documentation for this deduction will be required and will be uploaded to LCP Tracker. See Chapter 13, section B.6 for more information, Software and Reporting Requirements for more information on LCP Tracker.
- Monitor B2Gnow, including contractor and subcontractor payments and DBE compliance. See Chapter 13, Section B.6 for more information on B2Gnow.
- Set up and maintain source document books. See Chapter 13, Section D.2 for more information.

#### 13.B.5. NMDOT District and CCRB Responsibilities

The NMDOT District responsibilities include: performing and documenting periodic inspections of the construction project to determine that the applicable federal, state and local rules and regulations are being followed; approval of change order work;

performing and documenting the final inspection of the project; and making final acceptance of the project after the final estimate and documentation are submitted. The CLE will prepare a final inspection report and provide recommendation to close the project (see Chapter 13, Section F, Project Closure and Final Inspection).

A District Coordinator will be assigned as the point of contact for the T/LPA for each project. The District Coordinator is available to assist the T/LPA with questions regarding record keeping and paperwork that is required and will work with the T/LPA to ensure the proper documentation is provided. Required record keeping and documentation includes, but is not limited to, minimum sampling and testing requirements, TTCP Certificates, certificates of compliance, EEO reports, DBE reports, preparation of change orders, source document books, use of B2Gnow and LCP Tracker software programs, and ADA compliance. The District Coordinator will inspect the project and project documentation at random to determine that the project is being constructed in accordance with the contract, plans, and specifications.

The District Coordinator, in conjunction with the CLE, is responsible for ensuring compliance with the cooperative agreement and all federal laws, regulations, and policies for design and construction on any federal project. The District Coordinator is also responsible for processing reimbursement requests for construction projects.

### 13.B.6. Software and Reporting Requirements

As a recipient of federal funds through NMDOT, the T/LPA shall utilize and require that its contractors utilize B2Gnow and LCPtracker.

B2Gnow is a web-based software used to report and confirm all payments made by prime contractors to all tiers of subcontractors on federally-funded projects. This software program also tracks DBE participation and prompt payment compliance information. Refer to the [Civil Rights/EEO Field Procedures Manual](#) for B2Gnow Software procedures and guidelines. For additional information on B2GNow, contact the Civil Rights/EEO Compliance Officer.

LCPtracker is a web-based software used to report EEO and weekly payroll information. LCP Tracker is required for both contractor and subcontractor payroll and related information on all federally-funded projects. This software program tracks compliance with project prevailing wage requirements and collects certain EEO information on all prime contractors and all tier subcontractors for federal reporting purposes. The T/LPA will set the project up and make it ready for use in LCPtracker upon contract award; the contractor is responsible for setting up its subcontractors in LCPtracker.

While each of these software programs automates the data collection process, the T/LPA is required to review the data and verify compliance with specific requirements. More detailed information and procedures are located in the [Civil Rights/EEO Field Procedures](#)

[Manual](#). The T/LPA should review the manual and contact the NMDOT CCRB for further guidance, including obtaining software user IDs and log-on information, project set-up in the systems, administration and oversight responsibilities, and training opportunities.

## **13.C. Materials**

### **13.C.1. Materials Testing**

All testing of material will be done in accordance with the current edition of the NMDOT Standard Specs Section 900, Quality Criteria, including the T/LPA Special Provision for Section 906, [Minimum Testing Requirements \(MTRs\)](#), and the contract plans. Any deviation from these specifications must be granted and documented with the project Production Package during the design phase as described in Chapter 4, Section D.5.

The T/LPA will be responsible for providing both QA and IA testing for the project (performed by TTCP Certified Technicians). QA and IA shall not be included as contract bid items; however, they are eligible for federal reimbursement through construction management funds. Separate labs will be required to perform the QA testing (for acceptance) and the IA testing (for process control); neither lab can be used by the contractor for QC testing. All documentation of testing shall be on file, including copies of the TTCP certifications for all testers.

The T/LPA will sample and test in accordance with the T/LPA Special Provision for Section 906.1.2, Minimum Testing Requirements. IA testing will be waived only if the project quantity is less than the minimum QA Testing requirement and the QA Testing is certified by the Construction Engineer of Record. A sample certification is provided [here](#).

### **13.C.2. Certificates of Compliance**

The T/LPA will ensure the contractor submit Certificates of Compliance to the T/LPA's project manager before incorporating material in the work and shall ensure each Certificate of Compliance contains the information in Section 106.4 of the T/LPA Section 100's 2019 Edition, Certificates of Compliance. Submit all material certification documentation with the Materials Certification of Compliance Cover Letter, Form A-1088.

All steel and iron incorporated into the work shall meet the Buy America Requirements (23 CFR § 635.410).

### 13.C.3. Traffic Control Inspections

The T/LPA and contractor shall both provide a TTCP-certified TCS during the life of the project. TCS certification for both the contractor and the T/LPA shall be included in the project file.

Construction documentation and approval shall follow the current edition of the NMDOT Standard Specifications Section 618, Traffic Control Management, including any applicable Special Provisions and/or Supplemental Specifications.

## 13.D. Measurement and Documentation

### 13.D.1. Project Inspection Documentation

Project inspection documentation known as a Daily Work Report (DWR) is an information-gathering tool used by field inspectors to document daily activities. These activities shall include the inspector's observations, the contractor's use of personnel and equipment, the inspector's daily tasks, and pay quantities for the contractor. DWRs will directly affect the project outcome and processing of documentation for reimbursement of funds for federally-funded projects.

DWRs shall include documentation of all personnel by documenting the supervisors and the number of employees on the project, including names, job classifications, hours each employee worked, and what type of work the employee was conducting. The DWRs shall have a record of all equipment on the project by identifying type of equipment, make and model, and hours the equipment was in use versus hours on standby for each day. This information shall be obtained for the contractor and any subcontractors working on the project.

Work items completed or worked on shall be entered into the DWR noting the stations and locations with quantities installed. Quantities for accepted work shall be entered into the source document book.

Documentation of the weather is required. One assigned inspector shall document the weather conditions and temperatures each day in the DWR.

The T/LPA may hire a consultant to perform the inspection activities; however, this will not relieve the T/LPA from its responsibility for ensuring proper and adequate inspection of the project during the entire time the contractor is working. The T/LPA should consider any potential organizational conflict of interests associated with the hiring of a consultant to perform inspection activities.

## 13.D.2. Source Document Books

Source document books are required to keep record of all work installed on the project, during the progress of work, and upon completion of the work. The source document books need to be set up with each item in the contract prior to the start of work. Use the bid schedule from the contract book as a guide when entering the items into the source document books. The format for each item shall include the description, the unit of measurement (including calculations), and the planned quantity. If additional items are established through an approved change order during the contract, those items shall be added to the source document book. Quantity tracking sheets for items paid by the ton shall be kept for backup documentation to the haul tickets and for entries in the source book. Document the reason for overruns/underruns in the source document book for each pay item if applicable and state when the item is complete.

The source document may be permanent bound books or electronic format (i.e., Excel spreadsheets). When using permanent bound books, file book numbers shall be assigned for each source document book and used as a cross reference to the DWRs and other supporting documentation.

## 13.D.3. Change Orders

A change order is the only method authorized for changing the contract. A change order should be a self-supporting document, written clearly and concisely with enough information that it can be easily understood. All change orders are routed through the T/LPA District Coordinator for processing and approval from the District and CCRB, regardless of federal participation.

### Types of Change Order Documentation

- Supplemental agreement
- Field sheet

This section outlines the appropriate process for completing change orders on all T/LPA administered construction projects. All change orders are issued by the T/LPA to the District Coordinator. These procedures detail the lines of authority and delegation in the review and approval of change orders and shall be strictly enforced to ensure uniformity in the change order approval process statewide. There are two types of change order documentation: a supplemental agreement or field sheet.

Once the change order has been approved at all approval levels and the work has been completed and accepted, the change order quantity may be submitted for payment or reimbursement as applicable. Use [Change Order Form](#) for all change orders.

### 13.D.3.a. Field Sheet

A type of change order to increase or decrease quantities to the plans and contract without affecting the length or scope of the project. A field sheet does not require the contractor's signature. The following are examples of field sheets:

- Adjustments the contract amount due to minor overruns and underruns of existing contract items within the contract
- Adjust existing contract items to final quantity
- Payment for liquidated damages or adjustments to previously charged liquidated damages
- Adjustments to the contract amount due to changes in GRT calculated and paid within the scope of the contract

### 13.D.3.b. Supplemental Agreement

A written agreement signed by the T/LPA and the contractor to perform work beyond the scope of the original contract that does not fit the definition of a field sheet as described above. A supplemental agreement requires the signature of the contractor. A supplemental agreement cannot be used to add work outside of the advertised termini. Supplemental agreement change orders are the only method authorized for changing the contract and requires approval from the District Engineer (DE) (if adding time) and the CLE before the work can be started.

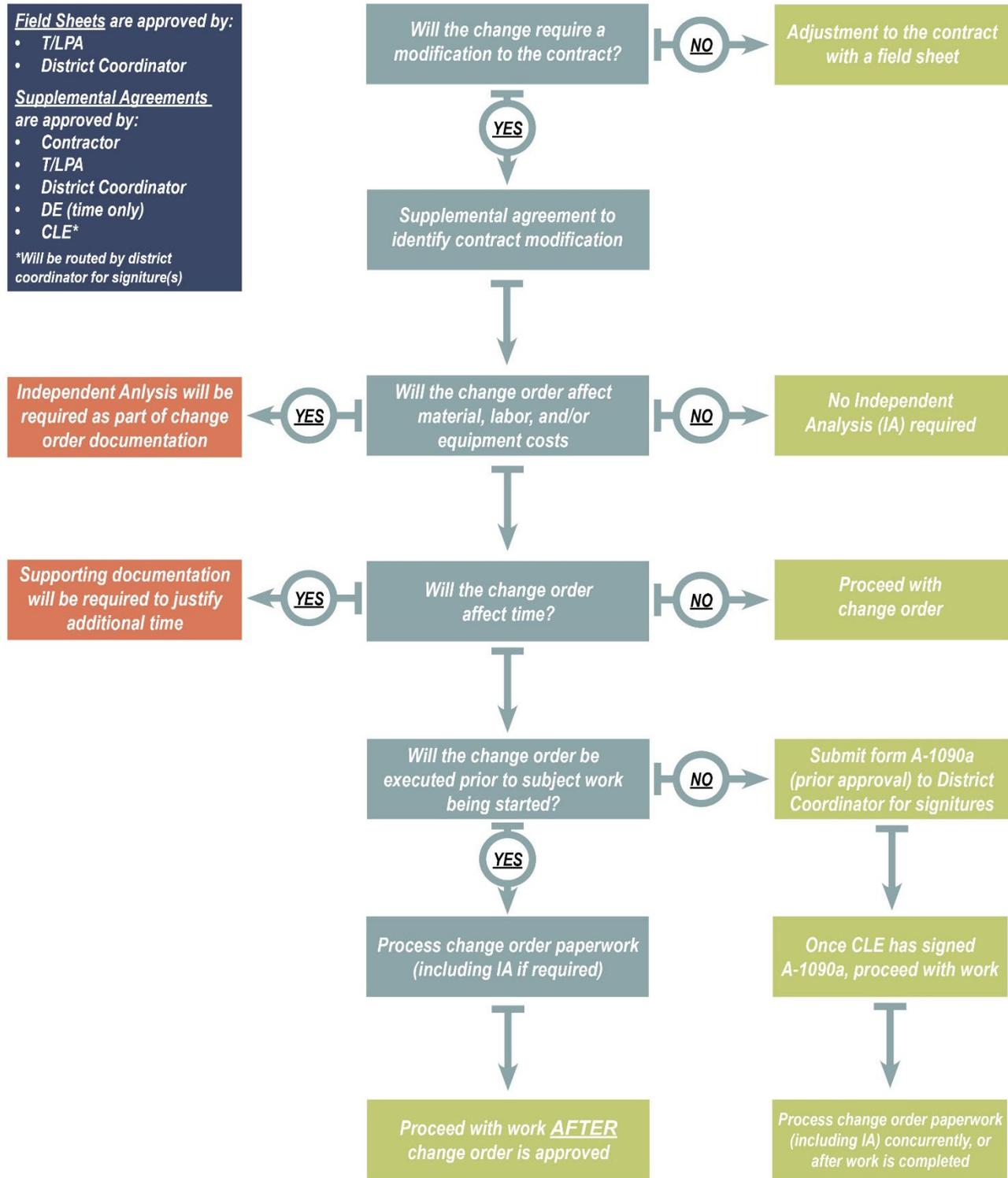
The following are examples of reasons for supplemental agreements:

- Establish new items of work or delete existing items of work
- Modify the scope of the contract, even if the dollar amount of the contract is not changed (modification to specifications, mutual agreements, etc.)
- Modify contract time (requires NMDOT DE approval)
- Establish force accounts (per Section 109.6 of the T/LPA Section 100's 2019 Edition, Force Account).

#### **Note to T/LPAs**

Any work associated with a supplemental agreement requires a fully executed change order or a Form A-1090a (with CLE's signature) prior to the start of work.

**Figure 9: Change Order Flowchart**



### 13.D.4 Prior Approval

When the processing of a change order will delay work and/or the progress of the project, a prior approval can be completed allowing the work to continue while the change order is being processed. This can be done by completing Form A-1090a, Authorization to Proceed with Work Pending Submission of Contract Change Order – T/LPA Projects, or prior approval.

A prior approval is required for all supplemental agreement change orders, regardless if the work is participating or non-participating, unless a fully executed change order is in place prior to the start of the additional work. Prior approvals can be done in order to expedite the project, such as while cost negotiations are taking place. The T/LPA shall receive prior approval for the change from the T/LPA District Coordinator, DE (if adding time), and CLE prior to work starting. Any work that causes the contract amount to exceed the construction agreement will be the responsibility of the T/LPA.

When the T/LPA issues a change order or performs unauthorized work on a project without prior approval from the NMDOT this may violate the terms and conditions of the Agreement and may constitute non-participation of funding for the project.

### 13.D.5. Independent Analysis

A tool that is used to document estimated cost and support a specific course of action. The independent analysis establishes that the course of action:

- Was undertaken in the best interest of the public
- Considered all available, relevant information, alternative solutions, and negative ramifications prior to making a decision.
- Was not biased, arbitrary or capricious
- Did not unfairly grant an undue advantage to any outside organization
- In so much as possible, did not result in waste, fraud, negligence, or abuse

The T/LPA shall utilize an independent analysis to support, verify, and/or validate requests for federal participation on change orders, including material, labor, and equipment costs.

The T/LPA can request that the District Coordinator pull information from Bid Express and Equipment Manager (Bluebook) to provide cost data and rental rates for the independent analysis. Cost data can also be accessed through the NMDOT Average Unit Bid Price Schedule [online](#). In 2017, FHWA gave a presentation on independent

analysis and what type of information should be included when preparing and/or reviewing them. This presentation was recorded and can be viewed online [here](#).

### **Change Order Format for Field Sheets and Supplemental Agreements Items Required in a Change Order**

1. Description and Purpose of Change Order
  - a. Describe the purpose of the change order. If adding work or adjusting quantities, include item number, item description, unit prices, and quantities for new items or revised quantities for existing contract items
2. Reason for Change Order
  - a. Detailed justification or reason why this change is needed/required.
3. Cost Data
  - a. Total cost of change with justification
  - b. Independent Analysis (if the change order is a supplemental agreement involving additional work)
4. FHWA Participation (Participating or Non-Participating)
  - a. Percent of the total cost of the change order is participating and what percent is non-participating (not to exceed agreement amount)
5. Schedule Impacts
  - a. When additional contract time is requested, the schedule at the time of the impact and a revised schedule, including the impacts to the schedule, must accompany the change request to support the time extension and explain the effect on the contract time
  - b. If no time is requested, document on change order
6. Attachments
  - a. Signed Prior Approval (when applicable)
    - i. Attached the signed Prior Approval Form A-1090a (with CLE's signature)
  - b. Supporting Documentation
    - i. Independent analysis, if applicable
    - ii. Computations
    - iii. Shop drawings (with PE stamp when applicable)
    - iv. Schedules
    - v. Other explanatory documents

## 13.E. Payments

### 13.E.1. Progress Payments

T/LPA shall make progress payments to the contractor in accordance with Section 109.8, of the T/LPA Section 100's 2019 Edition, Progress Payments. Prior to making a progress payment, the T/LPA shall utilize Form A-1320, Monthly Estimate Checklist, to ensure all necessary information has been received from the contractor with the pay estimate.

### 13.E.2. Progress Payment Reimbursements

Once the T/LPA has made the progress payment to the contractor (per Chapter 13, section E.1 above) and received a copy of the canceled check or other proof of receipt of payment to the contractor, the T/LPA will submit a request for progress payment reimbursement to the District Coordinator. This should be done on a monthly basis for each project. The request for progress payment reimbursement shall include a summary table showing the amount to be reimbursed for each item, paid to date totals and New Mexico GRT along with a completed Form A-1320, Monthly Estimate Checklist, and all associated documentation. The T/LPA shall submit these documents, in addition to a copy of the canceled check (or other proof of receipt of payment to the contractor) to the District Coordinator for processing.

The NMDOT will make the reimbursement of progress payment to the T/LPA within 10 business days of receipt of an acceptable request for partial progress payment reimbursement. The NMDOT will pay 100% of the value of work performed and materials complete in place, minus the local match until the sum of the progress payments made equals 95% of the total construction agreement amount or the construction contract amount, whichever is less. The T/LPA will continue to submit requests for partial progress payment reimbursement to the District Coordinator to ensure compliance with federal requirements; however, no additional reimbursement will be made to the T/LPA until the contractor completes the work and it is accepted. The five percent (5%) retained will be reimbursed at the time of the final pay request, see Chapter 13, section G, Final Package Section.

## 13.F. Project Closure and Final Inspection

A minimum of 30 days prior to the projected substantial completion date, unless otherwise approved by the T/LPA project manager, the T/LPA shall ensure the contractor follows the necessary steps for project closure in accordance Section 109.10 of the [T/LPA Section 100's 2019 Edition](#), Project Closure. The steps are as follows:

1. Contractor Notice of Projected Substantial Completion Date
2. Completion Conference
  - a. The T/LPA shall notify the District Coordinator of the completion conference
3. Termination of Contract Time and Determination of Substantial Completion
4. Project Inspection and Development of Punch List
5. Notice of Punch List Completion and Request of Final Inspection
  - a. The T/LPA shall notify the District Coordinator two weeks prior to the final inspection.
6. Final Inspection
  - a. A final inspection report from the CLE with a recommendation to close the project is required as it is part of the final document package. If any findings are noted during the final inspection, the T/LPA shall notify the District Coordinator and CLE how and when those findings are resolved.
7. Contractor Submittal of Final Documentation
  - a. In accordance with Section 109.10.7 of the [T/LPA Section 100's 2019 Edition](#), the T/LPA shall withhold final payment until the Contractor furnishes all documents required by the Contract.
  - b. Contact the District Coordinator to ensure a final audit of B2Gnow and LCPtracker is completed by CCRB. Final payment should not be made without this audit.
8. Physical Completion, Release of Retainage, Final Payment and Final Acceptance
  - a. In accordance with Section 109.10.8 of the [T/LPA Section 100's 2019 Edition](#), the T/LPA shall provide a written determination of Physical Completion (using Form A-1080, Notice of Construction Status) to the Contractor once the above steps 1-7 have been completed.
  - b. At this time, the T/LPA shall prepare the final payment voucher in accordance with Section 109.10.8 of the [T/LPA Section 100's 2019 Edition](#), including withholding of any liquidated damages and/or overpayments.

## **13.G. Final Package**

After making the final payment as outlined in Chapter 13, Section F, the T/LPA will request the final reimbursement from the NMDOT. The final reimbursement request shall be submitted to the District Coordinator and shall include a completed Final Transmittal Package Checklist for All Projects (Form A-1177), and all associated documentation, in addition to all documentation requirements of the progress payment reimbursement per Chapter 13, section E.2.

The T/LPA will work with the District Coordinator for any additional documentation needed to close the project. Project Overnight Division (POD) will issue a letter notifying the T/LPA that the project has been formally closed. The six (6) year requirement for records retention begins at the point of project closure

# APPENDICES

## **APPENDIX A: RELEVANT FORMS**

## Required Forms

Form	Title	Purpose	Responsibility/ Signature	Upload to B2G Now	Upload to LCP Tracker
A-1072	NMDOT Revised Structure List (C-101)	To be completed by the contractor prior to ordering materials pertaining to drainage structures.	Contractor		
A-1077	Labor and EEO Compliance Interview	To be completed by T/LPA field personnel and verified by T/LPA office personnel.	T/LPA		
A-1079	NMDOT Final Acceptance	To be completed by T/LPA when project is complete and ready for acceptance.	T/LPA; DE; State Construction Engineer		
A-1080	NMDOT Notice of Construction Status	To be completed by the T/LPA for each change in construction status.	T/LPA		
A-1081	NMDOT Project Certification	To be completed by the NMDOT certifying the project is complete.	NMDOT		
A-1082	NMDOT Encroachment Removal Certificate	To be completed by the NMDOT when project is on state route.	NMDOT		
A-1083	NMDOT Certificate of Payment of Claims	To be completed by the contractor certifying project completion and requesting final payment.	Contractor		
A-1086	NMDOT Permission to Subcontract Request	To be completed by subcontractor (at any tier) when requesting to work on a T/LPA project.	Subcontractor	X	
A-1088	NMDOT Materials Certification of Compliance Cover Letter	To be completed by the contractor and submitted to the T/LPA prior to installation of materials.	Contractor		
A-1090a T/LPA	Authorization to Proceed With Work Pending Submission of Contract Change Order - T/LPA Projects	To be completed by T/LPA and submitted to District Coordinator for signatures when a change is required to the contract.	District T/LPA Coordinator; DE (time); CLE (Supplemental)		
A-1091	NMDOT Notification To Close a Project	To be completed by NMDOT as part of Final Package.	NMDOT		
A-1102	NMDOT Contractors and Subcontractors Payroll Checklist	To be completed weekly by T/LPA to ensure contractor's compliance with FHWA 1273 in regards to payrolls.	T/LPA		X
A-1103	NMDOT Compass Information	To be completed by District Coordinator as part of Final Package.	NMDOT		
A-1108	NMDOT Subcontract Checklist	To ensure complete subcontract packages are submitted.	T/LPA	X	
A-1147	NMDOT Disadvantaged Business Enterprise Annual Affidavit for Certification	Contractor's must complete annually to maintain DBE status	Contractor		
A-1177	Final Transmittal Package Checklist for all Projects	To ensure a complete Final Package is submitted to close the project and meet all federal requirements.	NMDOT		
A-1236	Labor and EEO Compliance Interview Monthly Summary Report	Summary of Forms A-1077 and A-1265 completed for each month.	T/LPA		X
A-1237	NMDOT Civil Rights/EEO Pre-Construction Report	To ensure that the Contractor, through his EEO Representative, is aware of civil rights/EEO responsibilities under the Contract.	Contractor & T/LPA	X	
A-1239	NMDOT DBE Commercially Useful Function (CUF) Interview and Assessment	To ensure DBE subcontractors and/or suppliers are providing a useful function on the project.	T/LPA	X	
A-1245	NMDOT Bulletin Board Checklist Federal-Aid Projects	To ensure all required documentation is on the contractor's bulletin board	T/LPA	X	
A-1265	Labor and EEO Compliance Interview (Spanish)	Same as A-1077, Spanish version	T/LPA		
A-1320	Monthly Estimate Checklist	To be submitted with each pay app and request for reimbursement.	T/LPA		
A-1321	NMDOT Asset Management Information	To be submitted at project closure when on NMDOT route	T/LPA		
A-1337	T/LPA Summary of Change Orders for Construction Projects	To be submitted at project closure to summarize all change orders on the project.	T/LPA		
C-109	NMDOT Weekly Statement of Work Days	To be completed by the T/LPA weekly on all working day projects per NMDOT spec 108.6.	T/LPA		

**On NMDOT CCRB Website (not required but can be helpful)**

Form	Title	Purpose	Responsibility/Signature	Upload to B2G Now	Upload to LCP Tracker
A-1073a	NMDOT Cost Reduction Proposal	To be submitted by the contractor to the T/LPA when they would like to suggest a Cost Savings Proposal per NMDOT spec 104.8.	Contractor		
A-1074	NMDOT Request for Information	To be submitted by the contractor to the T/LPA when they need clarification on the work.	Contractor		
A-1244	Civil Rights/EEO Pre-Construction Conference Outline	Can be used by the T/LPA as a outline for the Civil Rights/EEO requirements of the contract at the pre-con.	T/LPA		
C-1	NMDOT Minimum Construction Project Files	Template for project documentation filing system.	T/LPA		

**Required Forms to be Submitted by the T/LPA:**

Form	Title	Purpose
A-1341	Project Feasibility Form (PFF)	Used to collect specific project information during the funding application phase
A-1342	Project Prospectus Form (PPF)	Form with basic project information used to determine project feasibility prior to submittal of a funding application.
A-1343	Agreement Request Form (ARF)	To request a Cooperative Agreement or any required amendments to an existing agreement for either design or construction
	Plan Submittal Form	To certify that the T/LPA's person in responsible charge has reviewed the submitted documents
	Environmental Level of Effort (LOE)	Documentation needed to determine the level of effort required for environmental certification
	ISA Determination Letter	Identify all hazmat-related concerns
	Utility Certification Request	Certifies the T/LPA has reviewed the project and lists utility impacts, if any, and all related work is done in accordance with federal regulations
	ROW Certification Request	Certifies the T/LPA has reviewed the project and lists ROW requirements, if any, and all ROW related work is done in accordance with federal regulations
A-1322	ITS Project Checklist	Determines if project is considered an ITS project (minor or major). This is also the project's ITS certification.
	Rail Road Certification Request	Certifies the T/LPA has reviewed the project and lists railroad impacts, if any, and all related work is done in accordance with federal regulations
A-1319	T/LPA PS&E Checklist	Assist with the gathering of the documents required for PS&E meeting and submittal
	Obligation Letter	Letter Certifying the PS&E package has been reviewed
	Work Zone Design Checklist	Assist with identification of traffic control options, impacts, strategies and other general considerations
	Recommendation of Award	T/LPA notifies NMDOT whom they recommend the bid to be awarded to.

## APPENDIX B: LIST OF ABBREVIATIONS AND ACRONYMS

3C	Continuous, Cooperative, and Comprehensive
ADA	Americans with Disabilities Act
ADE	Assistant District Engineer
ARF	Agreement Request Form
CCRB	Construction Civil Rights Bureau
CE	Categorical Exclusion
CE	Cost Estimate
CLE	Construction Liaison Engineer
CMAQ	Congestion Mitigation and Air Quality Improvement Program
CMAQ-F	Congestion Mitigation and Air Quality Improvement Program-Flexible
CMAQ-M	Congestion Mitigation and Air Quality-Mandatory Funds
CME	Construction Maintenance Easement
CUF	Commercially Useful Function
DBE	Disadvantaged Business Enterprise Program
DE	District Engineer
DOT	Department of Transportation
DSI	Detailed Site Investigation
EA	Environmental Assessment
EGB	Environmental Geology Bureau
EIS	Environmental Impact Statement
EEO	Equal Employment Opportunity
eSTIP	Electronic Statewide Transportation Improvement Program
FAHP	Federal-aid Highway Program
FAST	Fixing America's Surface Transportation Act
FFY	Federal Fiscal Year
FHWA	Federal Highway Administration
FTA	Federal Transit Administration

GRT	Gross Receipts Tax
GSA	General Services Administration
HMIB	Hazardous Material Investigation Bureau
HSIP	Highway Safety Improvement Program
IA	Independent Assurance
ICE	Independent Cost Estimate
IDIQ	Indefinite Delivery/Indefinite Quantity
ISA	Initial Site Assessment
ITS	Intelligent Transportation System
LOE	Level of Effort
LRSTP	Long-Range Statewide Transportation Plan
MAP-21	Moving Ahead for Progress in the 21st Century Act
MPO	Metropolitan Planning Organization
MUTCD	Manual on Uniform Traffic Control Devices for Streets and Highways
MPPB	Multi-Modal Planning and Programs Bureau
NEPA	National Environmental Policy Act of 1969
NHPP	National Highway Performance Program
NHS	National Highway System
NMDOT	New Mexico Department of Transportation
NPDES	National Pollutant Discharge Elimination System
NTC	Notice to Contractor
NTP	Notice to Proceed
OIG	Office of Inspector General
OJT	On-the-Job Training Program
PCE	Programmatic Categorical Exclusion
PE	Preliminary Engineering
PEL	Planning and Environment Linkages
PFF	Project Feasibility Form
PIF	Public Interest Finding

POD	Project Oversight Division
PPF	Project Prospectus Form
PROWAG	Public Right-of-Way Accessibility Guidelines
PS&E	Plans, Specification, and Estimates
PSI	Preliminary Site Investigation
QC/QA	Quality Control/Quality Assurance
REC	Recreational Trails Program
RFP	Request for Proposals
RFQ	Request for Qualifications
ROW	Right-of-way
RTD	Regional Transit District
RTP	Regional Transportation Plan
RTPO	Regional Transportation Planning Organization
RTIPR	Regional Transportation Improvement Program Recommendations
SAM	System for Award Management
SAM-E	System for Award Management-Exclusions
SDDCTEA	Surface Distribution and Deployment Command Transportation Engineering Agency
SE	Systems Engineering
SHPO	State Historic Preservation Officer
SHSP	Strategic Highway Safety Plan
SMP	State Management Plan
SP	Special Provisions
SPB	Statewide Planning Bureau
STBG	Surface Transportation Block Grants
STBG-L	Surface Transportation Block Grant-Large Urban
STBG-S	Surface Transportation Block Grant-Small Urban
STBG-R	Surface Transportation Block Grant-Rural
STIP	Statewide Transportation Improvement Program

STRAHNET	Strategic Highway Network
SUE	Subsurface Utility Engineering
SWPPP	Storm Water Pollution Prevention Plan
TAP	Transportation Alternatives Program
TAP-L	Surface Transportation Block Grant-TAP Large Urban
TCP	Temporary Construction Permit
TESCP	Temporary Erosion and Sediment Control Plan
THPO	Tribal Historic Preservation Officer
TIP	Transportation Improvement Program
T/LPA	Tribal/Local Public Agencies
TMA	Transportation Management Area
TSE	Technical Support Engineer
TTCP	Technician Training Certification Program
TTP	Tribal Transportation Program
USDOT	United States Department of Transportation

## APPENDIX C: GLOSSARY

**Agreement Request Form (ARF)** – The NMDOT form that initiates a cooperative agreement for a T/LPA project.

**Americans with Disabilities Act (ADA)** – A broad civil rights statute that prohibits discrimination against people with disabilities in all areas of public life as described in 42 U.S.C. §§ 12131-12134 (2012).

**Assistant District Engineer** – An engineer employed by the NMDOT assigned to oversee the District Coordinator and assist, if necessary, during the construction phase.

**Building Material Survey** – Sampling of building materials to determine if any contain asbestos or regulated levels of lead.

**B2Gnow** – A software program that tracks DBE participation and prompt payment compliance information.

**Categorical Exclusion (CE)** – An environmental certification for a project which has a documented low potential for significant environmental impacts. This environmental clearance will incorporate interdisciplinary investigations.

**Certified Traffic Control Supervisor (TCS)** – A person who has a current certification by the American Traffic Safety Services Association (ATSSA), the Associated Contractors of New Mexico (ACNM), or an agency or firm approved by the NMDOT to supervise the safety of the work zone.

**Change Order** – A Change Order is the only method authorized for changing the Contract. A written order, with or without the consent of the Contractor, implementing the Contract changes. A Change Order may consist of a Supplemental Agreement or Field Sheet.

**Commercially Useful Function (CUF)** – The execution of work by a Disadvantaged Business Enterprise (DBE) on a construction contract. The DBE must perform, manage, and supervise their own work as well as be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself to provide a CUF.

**Construction Liaison Engineer (CLE)** – An engineer employed by the NMDOT assigned to oversee each T/LPA administered project to ensure compliance with federal requirements. The CLE will perform project inspections on any/all project files and will provide at a minimum a final inspection report on all projects.

**Construction Maintenance Easements (CME)** – A real property interest in land acquired by the T/LPA in conjunction with a Highway, Street, or Road Project to provide permanent access to private property to perform specific construction and maintenance functions.

**Contract** – The entire and integrated written agreement between the T/LPA and the Contractor setting forth the obligations of the parties, including, but not limited to, the performance of the Work and the Basis of Payment. The Contract includes the

Advertisement, Required Documents for Bid Submittal, Standard Specifications, Supplemental Specifications, Special Provisions, Addenda, Notice To Contractors, general and detailed Plans, Standard Drawings, and Notice to Proceed — also any Change Orders and agreements that are required to complete the construction of the Work in an Acceptable manner, including authorized extensions thereof, all of which constitute one (1) instrument.

**Cooperative Agreement** – The agreement between T/LPAs awarded federal funding and the NMDOT outlining the terms of acceptance of funding.

**Cost-Sharing** – The strategy of utilizing multiple funding sources and partnerships among multiple organizations to fully fund a project.

**Daily Work Report (DWR)** – A log completed daily by each field inspector documenting the work performed, labor used, and hours worked by the contractor each day. Information may include any or all of the following: employee names, classifications, hours worked, equipment used and who used it as well as items of work performed on the job site.

**Detailed Site Investigation (DSI)** – A focused intrusive hazardous materials investigation during which soil and, perhaps, groundwater samples are collected and analyzed for contaminants. The goal is to define the limits of contamination in soil within the limits of a T/LPA project.

**Disadvantaged Business Enterprise (DBE)** – A small business owned and controlled by minorities, women, and other socially and economically-disadvantaged persons.

**District Coordinator** – The NMDOT staff person who guides T/LPAs through the construction and construction management processes, including project closeout.

**Electronic Statewide Transportation Improvement Program (eSTIP)** – The internet based, electronic version of the Statewide Transportation Improvement Program, the four (4) year fiscally constrained list of all federally-funded and regionally-significant projects.

**Environmental Assessment (EA)** – A concise public document for which a federal agency is responsible that serves to briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or a Finding of No Significant Impact (FONSI).

**Federal Participation (Participating Costs)** – Costs that will be or can be reimbursed with publicly funds.

**Federal Non-Participation (Non-Participating Costs)** – Costs that will not or cannot be reimbursed with federal funds. These costs are still a part of the total cost of the project and should be accounted for in the project agreement. Non-participating costs cannot be part of the required local match.

**Field Sheet** – A type of Change Order that does not require a Contractor's signature.

**Final Inspection** – A walk through of the completed project will be done by the District Coordinator, CLE, and T/LPA and a final report will be provided noting any findings observed at the inspection.

**Final Package** – The paperwork submitted by the T/LPA with the final reimbursement request that certifies the project and files are complete.

**Fixing America’s Surface Transportation Act (FAST)** – The current transportation legislation adopted by the US Congress in 2015 that continued the performance-based planning and programming approach from MAP-21.

**Force Account** – The basis of payment for the directed performance of work, with payment based on the actual cost of labor, equipment, and materials, and including various constant additives.

**Functional Classification** – The grouping of highways by the character of service they provide. The function of a particular roadway class is defined in terms of service to through traffic movements (mobility) versus access to abutting properties (land accessibility). Section 510.6.2 provides additional information regarding functional classification.

**Hazardous Materials** – Any substance, product, waste, or other Material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to all applicable laws all as amended, or any other federal, state, or local statute law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material.

**Inactive Project** – A project which no expenditures have been charged against federal funds for the past twelve (12) months.

**Independent Assurance** – A construction management tool in which a third party, not directly responsible for process control or Acceptance, provides an independent assessment of the Work, Materials, or the reliability of test results obtained from process control and Acceptance testing.

**Independent Analysis** – A tool that is used to document estimated cost and support a specific course of action and shall be utilized by the T/LPA to support, verify, and/or validate requests for federal participations on change orders, including materials, labor, and equipment costs.

**Initial Site Assessment (ISA)** – A broad scoped, non-invasive investigation into the past and present uses of properties. The goal is to identify where contamination might exist based on past and present property usage.

**Intelligent Transportation Systems (ITS)** – The use of advanced communications and data in real time to obtain information about roadway and driving conditions to improve the safety, mobility, and efficiency of how the surface transportation system operates.

**ITS Architecture** – A planning tool that identifies and maps the various transportation issues and needs of multiple stakeholders within a region to select which ITS solutions provide the greatest benefits abstract

**Land Abstracting Units** - is the oversight for T/LPA consultant projects to ensure the title work completed adheres to the ROW Handbook and CFR guidelines.

**LCPtracker** – Software that is used to track compliance with project prevailing wage requirements and collect certain EEO information on all prime contractors and all tier subcontractors for federal reporting purposes.

**Level of Effort (LOE)** – The determination made by NMDOT Environmental Bureau staff about which environmental document is needed for the project.

**Local Public Agency (LPA)** – A municipality, city, county, village, special authority or any other instrumentality of a local government sponsoring a federally-funded transportation project and determined to be qualified to assume the administrative responsibilities for such project by the NMDOT.

**Long-Range Statewide Transportation Plan (LRSTP)** – The statewide, minimum 20-year horizon, long range planning document that outlines the goals for the state's transportation system.

**Lowest Responsible Bidder** – The T/LPA determined Bidder who submits the lowest adjusted and Responsive Bid. The Bidder shall also be responsible and when required furnish information and data to prove that its financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, construction or items of tangible personal property as described in the Advertisement.

**Metropolitan Planning Organization (MPO)** – The policy board of an organization created and designated to carry out the metropolitan transportation planning process.

**Metropolitan Transportation Plans (MTPs)** – The official multi-modal transportation plan addressing no less than a 20-year planning horizon that is developed, adopted, and updated by the metropolitan planning organization (MPO) through the metropolitan transportation planning process.

**Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21)** – The 2012 Transportation Bill adopted by US Congress for a period of three (3) years. This bill emphasized the need for performance-based planning and programming.

**National Highway System (NHS)** – The federal-aid highway system as described in 23 USC § 103(b).

**National Pollutant Discharge Elimination System (NPDES)** – A provision of the Clean Water Act that prohibits discharge of pollutants into waters of the US, including storm water runoff and runoff from erosion.

**Notice of Intent (NOI)** – The form required for authorization of coverage under the Construction General Permit for NPDES.

**Notice of Termination (NOT)** – The form required for terminating coverage under the Construction General Permit for NPDES.

**Notice to Contractor (NTC)** – An addition to the contract made prior to advertisement.

**Notice to Proceed (NTP)** – Written notice to the consultant or contractor to proceed with the contract work including the beginning date of contract time.

**Office of Inspector General (OIG)** – The oversight division aimed at preventing inefficient or illegal operations. The Inspector General is responsible for identifying, auditing, and investigating fraud, waste, abuse, embezzlement, and mismanagement.

**Office of General Counsel** – The NMDOT Bureau responsible for all legal reviews and interpretations, including review and signature on agreements and agreement amendments.

**On-the-Job Training Program (OJT)** – A form of training taking place in a normal working situation normally done by observation of a person who knows how to perform the task.

**Person in Responsible Charge** – A full-time, public employee of the T/LPA qualified to ensure that the work delivered is complete, accurate, and consistent with the terms, conditions, and specifications of the Cooperative Agreement for design.

**Planning Liaison** – The NMDOT staff person who guides the T/LPA through the funding application process and provides planning technical assistance to the MPOs and RTPOs.

**Preliminary Engineering** – A phase of an awarded project that includes: scoping, procurement, environmental studies, preliminary and final design (including PS&E), right-of-way and utility activities, and advertisement.

**Preliminary Site Investigation (PSI)** – A broad, invasive investigation of rights of way within a project footprint where contamination is suspected, based on the results of an ISA. The goal is to confirm if contamination exists.

**Project Closure** – The process of closing a construction project as defined in the T/LPA Section 100's 2019 Edition, 109.10 "Project Closure."

**Project Production Package** – The complete list of required documents necessary for the T/LPA to receive a construction agreement. The list includes: stamped plans, all certifications, a contract book, and any additional documents required by federal or state law.

**Plan Submittal Form** – The form T/LPAs must sign and include with all plan submittals to the Region Coordinator and Construction Liaison Engineer (CLE) certifying that the T/LPA has reviewed the plans and concurs with the submittal.

**Plans, Specifications, and Estimates (PS&E)** – A review meeting to be held prior to the obligation of federal funds including the plans and specifications describing the location, design features and the construction requirements in sufficient detail to facilitate the construction, the contract control and the estimation of construction costs of the project. No project or part thereof for actual construction shall be advertised for bidding (nor work commenced by force account) until the PS&E has been approved.

**Program Coordinator** – An NMDOT staff person from the NMDOT Multi-Modal Planning and Programs Bureau (MPPB) who oversees specific funding programs such as Transportation Alternative, Recreational Trails, or Congestion Mitigation & Air Quality.

**Programmatic Categorical Exclusion (PCE)** – A sub-type of Categorical Exclusion which certifies that a project is known by its very nature to not have significant environmental impacts or involve unusual circumstances.

**Progress Payment** – A monthly payment, including zero dollar (\$0.00), provided by the T/LPA to the Contractor for Work, subject to adjustment by the T/LPA.

**Project Feasibility Form (PFF)** – A one (1) page form with basic project information that is used as a discussion tool to determine project feasibility prior to submittal of a funding application.

**Project Prospectus Form (PPF)** – A form used to collect specific project information during the funding application phase. It includes sections for performance measures and planning factors in addition to detailed project termini, scope, and funding information.

**Project Superintendent** – The contractor's agent authorized in writing to be in responsible charge of the project.

**Public Interest Findings (PIF)** – A document prepared by the T/LPA that analyzes pertinent data and develops supporting documentation to justify why it is in the public's best interest to allow deviation from federal regulations when the T/LPA elects to require a specific product when other acceptable products are available.

**Quality Assurance (QA)** – The T/LPA's sampling, testing, inspection, and other activities to determine payment and make acceptance decisions including quality control, acceptance by the agency, and use of qualified laboratories by both parties.

**Quality Control (QC)** – The contractor's actions and considerations necessary to assess production and construction processes so as to control the level of quality being produced in the end product. Quality control includes sampling and testing by the contractor to monitor and adjust its process. Quality control does not include acceptance sampling and testing by the T/LPA.

**Region Coordinator** – The NMDOT staff person who guides T/LPAs through the agreement, procurement, and project development processes.

**Regional Transportation Plan (RTP)** – The long-range plans created by RTPOs for the rural areas of the state.

**Regional Transportation Planning Organization (RTPO)** – The organization established by NM legislation, in accordance with 23 USC 135(m), to enhance the planning, coordination, and implementation of statewide strategic long-range transportation plans and transportation improvement programs with an emphasis on the needs of nonmetropolitan areas.

**Request for Proposals (RFP)** – A solicitation for proposals from consulting firms for a scope of work provided by the T/LPA.

**Special Provisions (SP)** – Additions and revisions to the Standard and Supplemental Specifications covering conditions applicable to an individual Project.

**Specifications** – A general term applied to all written provisions and requirements pertaining to performance of the Work.

**State Historic Preservation Officer (SHPO)** – An individual that is permitted to meet the requirements of the Cultural Properties Act, NMSA 1978, 18-6-1 through 17 and issued by the Cultural Properties Review committee with the concurrence of the State

Archaeologist and the State Historic Preservation Officer or appropriate Tribal Preservation Officer, or federal land managing agency when applicable.

**Statewide Transportation Improvement Program (STIP)** – A statewide, prioritized listing/program of transportation projects covering a period of 4 years that is consistent with the long range statewide transportation plan, metropolitan transportation plans, and Transportation Improvement Programs (TIPs), and required for projects to be eligible for funding under Title 23 USC and Title 49 USC Chapter 53.

**Storm Water Pollution Prevention Plan (SWPPP)** – A plan that describes the process for evaluating potential pollutant sources at a project site and selects and implements appropriate measures designed to prevent or control the discharge of pollutants in storm water runoff.

**Strategic Highway Safety Plan (SHSP)** – A comprehensive plan, based on safety data, developed by a state transportation department that (A) is developed after consultation with (i) a highway safety representative of the Governor of the state; (ii) regional transportation planning organizations and metropolitan planning organizations, if any; (iii) representatives of major modes of transportation; (iv) state and local traffic enforcement officials; (v) a highway-rail grade crossing safety representative of the Governor of the state; (vi) representatives conducting a motor carrier safety program under 49 USC § 31102, 31106, or 31309; (vii) motor vehicle administration agencies; (viii) county transportation officials; (ix) state representatives of non-motorized users; and (x) other major federal, state, tribal, and local safety stakeholders; (B) analyzes and makes effective use of state, regional, local, or tribal safety data; (C) addresses engineering, management, operation, education, enforcement, and emergency services elements (including integrated, interoperable emergency communications) of highway safety as key factors in evaluating highway projects; (D) considers safety needs of, and high-fatality segments of, all public roads, including non-state-owned public roads and roads on tribal land; (E) considers the results of state, regional, or local transportation and highway safety planning processes; (F) describes a program of strategies to reduce or eliminate safety hazards; (G) is approved by the Governor of the state or a responsible state agency; (H) is consistent with 23 USC § 135(g); and (I) is updated and submitted to the Secretary for approval as required under 23 USC § 148(d)(2).

**Sub Grantees** – Agencies that receive federal funding from a pass-through agency, in this case, T/LPAs are Sub Grantees and the NMDOT is the pass-through agency for federal funds.

**Supplemental Agreement** – A type of change order that may require contractor signature.

**Subsurface Utility Engineering (SUE)** – A process for accurately identifying the quality and location of subsurface utility information needed for plan development and for acquiring and managing that level of information during the development of the project.

**System for Award Management (SAM)** – The federal procurement system designed to streamline the process of obtaining and procuring federal contracts. All entities that do business with the NMDOT must be registered in the system and receive a DUNS number.

**Systems Engineering (SE)** – A method of project development and engineering that ensures the ITS elements implemented in a transportation project are truly needed and that the system is designed to provide useful information to the traveling public.

**Technical Support Engineer (TSE)** – An Engineer employed by the NMDOT District to assist T/LPAs during the planning phase with technical support and estimates.

**Technician Training Certification Program (TTCP)** – A program approved by the Associated Contractors of New Mexico (ACNM) that certifies construction inspectors in various specialties such as concrete and asphalt testing. T/LPA inspectors are required to be certified through this program.

**Temporary Construction Permits (TCP)** – A temporary interest in land acquired in conjunction with a Project to provide for the temporary use of private property for the duration of the Project to perform construction activities as designated in the Contract.

**Termination Date** – is the period of time during which the T/LPA is expected to complete all activities described in the ARF, by phase, and to expend all funds. The project closeout process and associated timeframe should be included in the timeline and the termination date should be based off the total timeframe. This date will also refer to and match the termination date for the Cooperative Agreements.

**Title VI** – A chapter of the Civil Rights Act of 1964 and its subsequent amendments and supportive legislation that prohibits discrimination on the basis of race, disability, age, color, religion, sex, sexual orientation, gender identity, and national origin on federally assisted programs and activities. Title VI makes it a policy of the United States that discrimination will not occur in programs and activities receiving federal funds.

**Transportation Improvement Program (TIP)** – A prioritized listing/program of transportation projects covering a period of four (4) years (or more) that is developed and formally adopted by a metropolitan planning organization (MPO) as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under Title 23 USC and Title 49 USC Chapter 53.

**Transportation Management Areas (TMA)** – An urbanized area with a population over 200,000, as defined by the U.S. Census and designated by the Secretary of Transportation, or any additional area where TMA designation is requested by the Governor and the metropolitan planning organization (MPO) and designated by the Secretary of Transportation.

**Tribal Government** – A duly formed governing body for an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, Public Law 103-454.

**Tribal Historic Preservation Officer (THPO)** – An individual that is permitted to meet the requirements of the Cultural Properties Act, NMSA 1978, 18-6-1 through 17 and issued by the Cultural Properties Review committee with the concurrence of the State Archaeologist and the State Historic Preservation Officer or appropriate Tribal Preservation Officer, or federal land managing agency when applicable, focusing on tribal lands.

**Tribal Transportation Program (TTP)** – A funding program awarded to federally recognized tribes that can be used to match federal funding awarded through NMDOT programs.



