

PART 1
Program Development
Chapter 5
State Funded Projects
and Special Program

Locally Administered
Projects (LAP) Manual

CHAPTER 5

STATE FUNDED PROJECTS AND SPECIAL PROGRAM FUNDED PROJECTS

5.1 INTRODUCTION

Because some projects are funded through special funding sources that may have specific requirements related to the funding source and some localities have programmatic responsibility for their entire construction program, there are additional guidance documents or manuals that LPAs may need to reference when administering those projects. This chapter will address exceptions to the typical project development and oversight processes for federal-aid projects. The following types of projects are addressed in more detail in the remainder of this chapter:

- **State-aid projects:** Projects which do not receive FHWA federal aid or will not otherwise be developed as eligible for federal aid but will be reimbursed by VDOT with special or formula allocations.
- **Revenue Sharing Program Projects:** Projects which are funded solely through the VDOT Revenue Sharing program and local government funds. These are a subset of state-aid projects and all streamlining opportunities of the state-aid projects are available. Currently there is a separate revenue sharing program manual that addresses programmatic requirements of the program.
- **Access Program Projects:** Projects which are funded solely through the VDOT access program and local government funds. These include economic development, recreational, and airport access projects. These are a subset of state-aid projects and all streamlining opportunities of the state-aid projects are available. Currently there is a separate access

program manual that addresses programmatic requirements of the program.

- Enhancement Program: These projects receive federal aid. However, since many of them are “non-highway related” and off-system, specific streamlining opportunities are available to them. Currently there is a separate enhancement program manual that addresses programmatic requirements of the program.
- Urban Construction Initiative/Localities Managing Under Programmatic Agreement: Some local governments manage their construction programs through programmatic agreements and have separate guidance documents that are applicable.

5.2 STATE-AID PROJECTS

All projects funded with state formula allocations will be developed to qualify for federal aid. This section is only applicable to projects that are ineligible for federal aid or have been exempted from being developed as federal-aid projects due to funding source (revenue sharing, access, coal severance, etc) or have been provided a project specific exemption.

For state aid projects, responsibility for compliance with applicable state and federal laws and regulations rests entirely with the local government. VDOT does not act in a compliance or regulatory role. VDOT’s oversight of these projects is intended to protect VDOT’s liabilities and interests and will focus on activities which provide that protection. State and federal agencies provide regulatory compliance oversight for these projects. Accordingly, many of the LPA submittal requirements and VDOT oversight activities outlined in this document are not applicable for state-aid projects and, where necessary, are identified throughout the manual.

VDOT will require a certification statement, found in [Appendix 5-A](#), from the LPA, that all applicable state and federal requirements have been met, in place of many of the VDOT oversight activities normally performed for federal-aid projects. This certification is provided to the Project Coordinator prior to award of the construction contract by the LPA. The Project Coordinator will forward the Certification to the LAD director. Failure to provide this certification may result in a loss of reimbursement. During construction, the LPA will be required to submit a certification of compliance with each invoice submitted for reimbursement.

The following is an overview of LPA requirements and VDOT oversight activities for state-aid projects:

Design Requirements/Plan Review

For projects which will be maintained by VDOT, the LPA will design and submit plans for review, in accordance with [Chapter 12](#), of this manual. The frequency of plan reviews is determined by the Project Coordinator and the LPA based on the project risk (see [Chapter 9](#)). VDOT's design reviews will be to ensure that appropriate standards are being used and that the road as designed will not create maintenance issues.

For projects maintained by the LPA, the LPA will certify that the plans have been developed in accordance with American Association of State Highway and Transportation Officials (AASHTO) standards. VDOT will perform plan reviews and will provide technical assistance, only as requested by the LPA.

Environmental Coordination

Local governments are solely responsible for compliance with all pertinent environmental regulatory requirements. VDOT Environmental staff is available as a resource to the LPA; however, the LPA is responsible for all final decisions.

SERP will continue to be performed by VDOT, in accordance with the Memorandum of Agreement between the Secretaries of Transportation and Natural Resources. Any conditions of regulatory approval that come out of SERP are the responsibility of the LPA to fulfill. VDOT has responsibility to ensure that any conditions of regulatory approval that come out of SERP are fulfilled. A condition of regulatory approval does not include statutory or regulatory requirements the LPA must meet, regardless of SERP. Compliance with those requirements for state-aid projects will be certified by the LPA prior to project award.

Right of Way Acquisition

LPAs acquiring property in their own name, under their own authorities, must meet State requirements as outlined in the Code of Virginia. VDOT does not provide certification of local government compliance with these laws. However, LPAs which will be reimbursed through VDOT programs or acquiring Rights of Way that will be subsequently maintained by VDOT must submit a request for and obtain a ROW acquisition authorization prior to actual acquisition activities. VDOT's role during this authorization will be solely to verify that the LPA is only acquiring necessary lands to build and maintain the project. Compliance with Virginia Code requirements regarding relocations and property acquisitions rests solely with the local government.

Public Involvement

LPAs have specific state Code requirements for public involvement of local government Capital Improvement Projects. Where applicable, LPAs must include the projects in their Capital Improvement Program and follow Virginia Code public involvement requirements applicable to the development of capital projects.

Construction Administration

For projects that will be subsequently maintained by VDOT, construction and materials acceptance practices are expected to be in conformance with [Chapter 13](#). Materials incorporated into the project must be approved by the Department. VDOT will provide oversight to verify adequate construction and an acceptable final product for any project that will ultimately be maintained by VDOT in a manner similar to developer projects constructed under a land-use permit. VDOT site reviews will include a written follow-up of any deficiencies that may impact VDOT's acceptance of the project.

For projects that will be subsequently maintained by the LPA, construction practices must adhere to the LPA's contract requirements.

5.2.1 Revenue Sharing Program

Projects funded solely with revenue sharing funds will follow the same project oversight requirements described above for the phases being funded with revenue sharing funds. Projects using federal aid will meet federal-aid requirements regardless of the amount of revenue sharing or other funding. Projects fully funded through the revenue sharing program are considered approved for advertisement by the CTB at the time of project allocation and further CTB or department approval is not required for advertisement or award. However, the certification of compliance in [Appendix 5-A](#) (Certification Form for State Funded Projects) must be submitted prior to project award.

The [Revenue Sharing Program Guide](#) provides further guidance on project implementation since these projects are not approved through the typical programming process.

5.2.2 Access Programs (Economic Development, Recreational and Airport)

The Access programs managed by VDOT (economic development, recreational and airport) provide funding to offset the cost of road projects that meet very specific criteria. When funding is approved, the CTB's resolution outlines the contingencies that must be met in order for the LPA to receive reimbursement. The LPA is always responsible for acquisition of ROW if necessary, utility adjustments and all permits. The CTB resolution specifically addresses that SERP must be addressed, the ROW must be certified by the LPA and that an agreement must be executed. These projects are considered approved for advertisement by the CTB at the time of project allocation and further CTB or Department approval is not required. However, the certification of compliance in [Appendix 5A](#) must be submitted prior to project award.

VDOT's role with these projects is to ensure CTB contingencies are met prior to reimbursement and provide assistance as needed during the project. For streets that will be accepted for maintenance by VDOT, the plans will be reviewed and VDOT will perform spot inspections as deemed necessary and a final inspection prior to acceptance to ensure the road meets minimum criteria to be accepted into the system of state highways, as applicable. The appropriate Access Program Guide should be consulted for funding guidance.

5.3 ENHANCEMENT PROGRAM

Projects that receive Transportation Enhancement funds must be managed in the same manner as any other federal-aid project, except that projects off highway rights of way and not linked to a regular federal-aid project have specific exemptions from certain federal-aid requirements. These exemptions are identified in federal law and further clarified in several FHWA directives and guidance documents. FHWA has authorized the State Highway Agencies (SHAs) to procure smaller, low cost transportation enhancement projects not located within the highway right-of-way, under the procedures of the "Common Rule." There are numerous streamlining opportunities that are inherent within these

procedures which allow using state procurement processes instead of federal procurement processes. Whether the procedures of the Common Rule are available may not always be evident, and should not be assumed. The VDOT project coordinator should be consulted regarding whether the project qualifies for the more flexible approach prior to assuming it is available for a particular project.

[Appendix 5-B](#) summarizes federal requirements and indicates which may not be applicable on non NHS projects or on projects off federal-aid highway rights of way. [FHWA's Contract Administration Core Curriculum Manual](#) should be used as a resource to clarify these exemptions.

The Enhancement Program Procedure Manual continues to be an excellent reference guide for enhancement projects since it addresses some of the unique aspects of this program. This manual can be found at:

http://www.virginiadot.org/business/resources/local_assistance/2009_Enhancement_Manual2.pdf

5.4 URBAN CONSTRUCTION INITIATIVE/LOCALITIES MANAGING UNDER PROGRAMMATIC AGREEMENT

LPAs that have assumed full responsibility for their construction program are provided more autonomy than localities administering individual projects. The programmatic agreement for these localities outlines their commitment to meet all applicable federal requirements. All projects administered by these localities will continue to follow the [Urban Construction Initiative Program Administration Guide](#) until such time that the programmatic requirements are incorporated into this document.

Appendix 5-A

Certification Form for State Funded Projects

Project Number:

UPC:

This certification form is to be used to certify adherence to all applicable laws and regulations pertaining to locally administered state funded projects. This certification form will not be used for projects utilizing any federal funds. The signature at the bottom will certify that **<INSERT LOCAL GOVERNMENT NAME>** has met the following requirements for state funded projects. VDOT may perform project audits to verify compliance with this certification. False or inaccurate statements identified by VDOT or other state regulatory agencies may result in the requirement to return state aid and/or other penalties as allowed by State law.

Initials	Certification Statement
	<p>Check applicable statement:</p> <p><input type="checkbox"/> For highways maintained by the LPA, project plans have been designed in accordance with AASHTO standards and signed and sealed by a Virginia registered P.E. in accordance with DPOR;</p> <p>OR</p> <p><input type="checkbox"/> For highways which will be operated and maintained by VDOT, project plans have been designed in accordance with VDOT Standards and that VDOT has reviewed the plans in accordance with the agreed upon schedule and all necessary design variances/waivers have been attained and the plans have been signed and sealed by a Virginia registered P.E. in accordance with DPOR.</p>
	All required regulatory agency coordination has been made and applicable permits or approvals have been acquired.
	Where VDOT will operate and maintain the highway, that the LPA has performed appropriate due diligence to identify environmental hazards on new right of way and to the best of our knowledge, any existing environmental hazards have been identified and mitigated or a plan for mitigation during construction has been made.
	Project was developed in accordance with State laws and regulations governing public involvement so that adequate and appropriate public notice and opportunity for public comment was provided.
	All right of way has been obtained and that the LPA has legal right of entry onto each and every parcel for the advertisement and construction of the referenced Project.
	The LPA has complied with the Code of Virginia requirements pertaining to relocations and the acquisition of real property.
	All affected utilities have been relocated or companies authorized to relocate their facilities. If not, they are included as in-plan work to be performed by the road contractor.
	The project was advertised in accordance with the Virginia Public Procurement Act and that the advertisement package included all appropriate EEO provisions.
	All environmental regulations as are applicable to local government capital improvement projects and as required by State or federal laws applicable to non federal-aid projects have been met or provisions to meet continuing requirements during construction have been made.

<INSERT LOCAL GOVERNMENT NAME> acknowledges that failure to fulfill its legal obligations associated with those requirements identified in this certification may result in project delays and/or delays or forfeiture of State reimbursements. **<INSERT LOCAL GOVERNMENT NAME>** further acknowledges that obligations associated with those requirements identified in this certification may be subject to audit by VDOT or State oversight agencies.

 Local Government Manager (City Manager, County Administrator, City Engineer or County Director of Public Works or designated authority to sign)

 Date

cc: Project file
 VDOT Project Coordinator
 VDOT Local Assistance Director

Appendix 5-B

NHS, non-NHS, and off Rights of Way Contract Provision Requirements With VDOT Minimum Standards

Summary of Federal Requirements for NHS, Non-NHS and Service Contracts Federal Requirements							
SUBJECT	USC	CFR	OTHER LAWS	Applicability			REMARKS
				Construction Contracts		Non-Highway Construction or "Service Contracts"	
				NHS	Non-NHS		
Prohibition Against Use of Local Hiring Preferences (FHWA-1273 - Sec 1-6)		635.117(b)		Yes	Yes	No	
Prohibition Against the Use of Convict Labor (FHWA-1273 - Sec 1-6)	23 USC 114(b)	23CFR 635.117(a)		Yes	Yes**	No	**Prohibition only applies to projects on Federal-aid highways
Nondiscrimination (FHWA-1273 - Sec II)	23USC 140, 23 USC 324, 49 USC 322, 42 USC 12101-12213, 42 USC 3601-3619	23 CFR 200, 23 CFR 230D, 23 CFR 635.17 28 CFR 35 29 CFR 1630 41 CFR 60 49 CFR 21, 23 28 CFR 50.3 49 CFR 25	*The Civil Rights Act of 1964, Title VI *The Age Discrimination and Employment Act of 1967 *The Age Discrimination of 1975 *The American Disabilities Act of 1990	Yes	Yes	Yes	All contracts and subcontracts of \$10,000 or more

Summary of Federal Requirements for NHS, Non-NHS and Service Contracts							
Federal Requirements							
SUBJECT	USC	CFR	OTHER LAWS	Applicability			REMARKS
				Construction Contracts		Non-Highway Construction or "Service Contracts"	
				NHS	Non-NHS		
Payment of Predetermined Minimum Wage (FHWA-1273 - Sec IV)	23 USC 113, 40 USC 276 (a) & (c)	23 CFR 635, 309(f), 29 CFR 1, 3, 5	Davis-Bacon Act Copeland Anti-Kickback Act	Yes	**	**	**Construction contracts on a Federal-aid Highway exceeding \$2,000 except Rural collector and local roads
Statements and Payrolls (FHWA-1273 - Sec V)	40 USC 276 (a) & (c), 18 USC 874	23 CFR 635.118 29 CFR 3, 5	Davis-Bacon Act Copeland Anti-Kickback Act	Yes	**	**	**Same as above
Record of Material, Supplies and Labor (FHWA 47) (FHWA-1273 - Sec VI)		23 CFR 635.126		**Yes	No	No	**Applies to NHS projects > \$ 1M (excl. FA, Beaut, RR etc.)
Subletting or Assigning the Contract (FHWA-1273 - Sec VII)		23 CFR 635.116		Yes	No	No	
Safety: Accident Prevention (OSHA compliance) (FHWA-1273 - Sec VIII)	40 USC 333	23 CFR 635.108 29 CFR 1926	OSHA	Yes	Yes	Yes	All construction projects
False Statements Concerning Highway Projects (FHWA-1273 - Sec IX)	18 USC 1020	23 CFR 633A, 23 CFR 635.119		Yes	Yes	Yes	All construction projects

Summary of Federal Requirements for NHS, Non-NHS and Service Contracts							
Federal Requirements							
SUBJECT	USC	CFR	OTHER LAWS	Applicability			REMARKS
				Construction Contracts		Non-Highway Construction or "Service Contracts"	
				NHS	Non-NHS		
Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (FHWA-1273 - Sec X1)		23 CFR 635.112(g) 49 CFR 29		Yes	Yes	Yes	Contracts and subcontracts of \$100,000 or more
Certification Regarding the Use of Contract Funds for Lobbying (FHWA-1273 - Sec X11)	49 USC 322A	23 CFR 635.112(g) 49 CFR 20 49 CFR 29		Yes	Yes	Yes	Contracts and subcontracts exceeding \$100,000
Appalachian Contract Employment Preference	40 USC Appendix 201	23 CFR 633B	Appalachian Regional Development Act	**	**	**	Only APD funded contracts
Buy America	STAA Section 165 ISTEA Section 1041(a) & 1048(b)	23 CFR 635.410		Yes	Yes	**Yes	**All construction projects funded under Title 23
Disadvantaged Business Enterprise	23 USC 140(b)	23 CFR 200 & 230B, C, D 49 CFR Part 26 (DBE) 49 CFR Part 21 (Title V1)		**Yes	**Yes	**Yes	**Applicable as necessary to meet State DBE program goals
Indian Preference on Federal-aid projects (Labor & Employment)	23 USC 140 42 USC 2000e-2i	23 CFR 635.117		**	**	**	**Any project meeting "guidance criteria (see text)

Summary of Federal Requirements for NHS, Non-NHS and Service Contracts							
Federal Requirements							
SUBJECT	USC	CFR	OTHER LAWS	Applicability			REMARKS
				Construction Contracts		Non-Highway Construction or "Service Contracts"	
				NHS	Non-NHS		
On-the-Job Training	23 USC 140(a) & (b)	23 CFR 230A		Yes	**	**	**Projects designated by STA in setting State goals
Standardized Changed Conditions Contract Clauses	23 USC 112(e)	23 CFR 635.109		Yes	Yes	No	
Drug - Free Workplace		49 CFR 29		**	**	**	DFW certification applies to direct recipients (not construction contractors)
Publicly Owned Equipment		23 CFR 635.106	OMB Circular A-87	Yes	Yes	No	
Contractor Purchased Equipment for State Ownership	23 USC 302	23 CFR 140 49 CFR Part 18 49 CFR Section 18.3		Yes	Yes	No	
Equipment Rental Rates		48 CFR Part 31	OMB Circular A-87 FAPG NS 23 CFR 635.120	Yes	Yes	No	
Foreign Contractor and Supplier Restriction		49 CFR 30		Yes	Yes	No	
Prohibition Against Convict Produced Materials	23 USC 114(b) (2)	23 CFR 635.417		Yes	**	No	** Prohibition only applies to projects on Federal-aid highways
Patented / Proprietary Products	23 USC 112	23 CFR 635.411		Yes	Yes	No	

**Summary of Federal Requirements for NHS, Non-NHS and Service Contracts
Federal Requirements**

SUBJECT	USC	CFR	OTHER LAWS	Applicability			REMARKS
				Construction Contracts		Non-Highway Construction or "Service Contracts"	
				NHS	Non-NHS		
State Owned / Furnished/ Designated Materials	23 USC 112	23 CFR 635.407		Yes	No	No	
Public Agencies in Competition with the Private Sector	23 USC 112	23 CFR 635.112(e)		Yes	Yes	No	
Salvage Credits		49 CFR 18.36		Yes	Yes	No	
Warranty		23 CFR 635.413		Yes	No	No	
Alternate Bids		23 CFR 635.411(b)		Yes	No	No	
Incentive / Disincentive Clauses		23 CFR 635.127(d,f)		Yes	No	No	
Standard Specifications and Plans		23 CFR 630B		Yes	No	No	
Engineer's Estimate		23 CFR 630B		Yes	No	No	
Method of Construction (low bid for construction contracts)	23 USC 112(a) & (b)	23 CFR 635.104 49 CFR 18.36		Yes	Yes	No	
Owner Force Account / Cost Effective Justification		23 CFR 635B		Yes	Yes	No	
Bonding and Prequalification		23 CFR 635.110		Yes	Yes**	No	**See limitations in text

Summary of Federal Requirements for NHS, Non-NHS and Service Contracts							
Federal Requirements							
SUBJECT	USC	CFR	OTHER LAWS	Applicability			REMARKS
				Construction Contracts		Non-Highway Construction or "Service Contracts"	
				NHS	Non-NHS		
Bid Opening and Tabulation		23 CFR 635.113(a)		Yes	**	No	**See Text
Bid Analysis and Award of Contract	23 USC 112	23 CFR 635.114		Yes	**	No	**See Text
Contract Time		23 CFR 635.121		Yes	No	No	
Change Orders		23 CFR 635.120-121		Yes	No	No	
Claims		23 CFR 635.124		Yes	No	No	
Liquidated Damages		23 CFR 635.127		Yes	No	No	
Progress Payments		23CFR 635.122		Yes	No	No	
Project Supervision and Staffing	23 USC 114 & 302	23 CFR 635.105		Yes	Yes	No	
Subcontracting		23 CFR 635.116		Yes	No	No	
Suspension and Debarment		49 CFR 29		Yes	Yes	Yes	
Termination of Contracts		23 CFR 635.125		Yes	No	No	
Audits	23 USC 112(b) (2) (c)	49 CFR Subtitle A Part 90 48 CFR 31, Federal Acquisitions Regulations	OMB Circular A128	Yes	Yes	Yes	
Records Retention		49 CFR 18		Yes	Yes	Yes	

*Service contracts are generally contracts which do not conform with the definition of "construction" in 23 USC 101(a)(3) and are not considered to be engineering service contracts subject to 23 CFR 172. Certain intelligent transportation system projects may be considered to be service contracts if they do not "... directly facilitate and control traffic flow" (excerpt from the definition of "construction").

*Non-highway construction contracts may include Transportation Enhancement Projects which are not located on highway right-of-way and are not linked to a Federal-aid highway project (i.e. the project would not exist without another Federal-aid project). Examples include bicycle trails, historic preservation, railroad station rehabilitation

projects, etc. (see [Mr. Ptak's November 12, 1996 memo.](#))
