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<td>Architecture/History Survey Form</td>
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<td>AASHTO</td>
<td>American Association of State Highway and Transportation Officials</td>
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<td>ADA</td>
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<td>ADAAG</td>
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<td>APE</td>
<td>Area of Potential Effects</td>
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<td>Archeological Resources Protection Act</td>
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<td>Archeological Survey Field Report</td>
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<td>BPD</td>
<td>Bureau of Project Development</td>
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<td>BTLRRH</td>
<td>Bureau of Transit, Local Roads, Railroads, and Harbors</td>
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<td>Bureau of Technical Services</td>
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<td>CAS</td>
<td>Contract Administration System</td>
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<td>Categorical Exclusion</td>
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<td>CEC</td>
<td>Categorical Exclusion Checklist</td>
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<td>CEQ</td>
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<td>CMAQ</td>
<td>Congestion Mitigation and Air Quality Improvement Program</td>
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<td>CMM</td>
<td>Construction and Materials Manual</td>
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<td>CO</td>
<td>Carbon Monoxide</td>
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<td>COA</td>
<td>Cooperative Agreement</td>
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<td>COE</td>
<td>Corps of Engineers</td>
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<td>CRCS</td>
<td>Civil Rights Compliance System</td>
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<td>CSS</td>
<td>Community Sensitive Solutions</td>
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<td>CWA</td>
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<td>D for C</td>
<td>Documentation for Consultation</td>
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<tr>
<td>DBE</td>
<td>Disadvantaged Business Enterprise</td>
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<tr>
<td>DNR</td>
<td>Department of Natural Resources</td>
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<tr>
<td>DOA</td>
<td>Department of Administration</td>
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<td>DOE</td>
<td>Determination of Eligibility</td>
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<td>DSR</td>
<td>Design Study Report</td>
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<td>DTIM</td>
<td>Division of Transportation Investment Management</td>
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<td>DTSD</td>
<td>Department of Transportation Systems Development</td>
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<td>EA</td>
<td>Environmental Assessment</td>
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<td>ECIP</td>
<td>Erosion Control Implementation Plan</td>
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<td>EEO</td>
<td>Equal Employment Opportunity</td>
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<td>EIS</td>
<td>Environmental Impact Statement</td>
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<td>Environmental Process and Documentation Section</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<td>QC</td>
<td>Quality Control</td>
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<td>Quality Verification</td>
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<td>RE</td>
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<td>Region Railroad Coordinator</td>
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<td>SHPO/THPO</td>
<td>State/Tribal Historic Preservation Office</td>
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<td>SMA</td>
<td>State Municipal Agreement</td>
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<td>SOx</td>
<td>Sulfur Oxides</td>
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<td>SR</td>
<td>Sufficiency Rating</td>
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<td>Structure Survey Report</td>
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<td>STIP</td>
<td>State Transportation Improvement Program</td>
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<td>Surface Transportation Program</td>
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Chapter 1 OVERVIEW

About the LPA Guide

The Local Public Agency (LPA) Guide exists to provide information and instructions to the LPA to help them successfully develop certain federally funded transportation projects in accordance with federal and state laws and regulations. This LPA Guide is only intended to address the procedures required for guidance on projects that are let through the State of Wisconsin Department of Transportation (WisDOT) letting process. It should not be used for an LPA to deliver a project through the Local Letting Process. The Local Letting Process is covered in the Sponsor’s Guide to Non-Traditional Transportation Project Implementation. See http://wisconsindot.gov/Documents/doing-bus/local-gov/astnce-pgms/aid/sponsors.pdf

The LPA MUST become familiar with the LPA Guide so that they understand the responsibilities they are accepting when applying for the benefit of using federal funding. The LPA cannot begin any project activity until notification from WisDOT confirming federal authorization has been received. This notification may be written or emailed from WisDOT or its Management Consultant (MC).

CAUTION: The LPA cannot begin any project activity until notification from WisDOT confirming federal authorization has been received

This guide is not intended to include all the details of every state and federal requirement that may be necessary for an LPA project. Instead, it discusses the various roles and responsibilities relevant to an LPA project and where appropriate, references specific outside sources for detailed instructions concerning WisDOT and Federal Highway Administration (FHWA) policies and procedures.

Note:

This guide is a living document and is subject to change as WisDOT or FHWA policies and procedures are updated. For the most recent version of this guide, see the WisDOT Federal Aid Project Delivery website. http://wisconsindot.gov/Pages/doing-bus/local-gov/lpm/default.aspx
The LPA Guide has been broken into the following chapters to aid in addressing the procedures and requirements for delivering your project:

- **Overview** contains an introduction to this guide, a description of the project process and a summary addressing the merits of a project.

- **Organizational Structure** lists and describes the organizations involved in the project along with roles and responsibilities.

- **Federal-Aid (and Applicable State) Requirements** contains a summary of applicable federal and state requirements intended to promote the LPA understanding of each requirement. Each chapter may include specific reference to applicable requirements.

- **Self-Certification Process** is a place-holder chapter. The Self-Certification Process is a program that is being developed that could allow the LPA to self-administer portions of projects.

- **Planning/Programming** contains procedures necessary to get a project selected for federal authorization, identifies funding sources, addresses timelines and financial requirements.

- **Design** addresses the use of consultant services and/or the use of the LPA staff to perform design functions. It also contains guidance for completing the appropriate environmental document for the project’s proposed action, for real estate acquisition utilizing federal/state funds, for design delivery, for agency coordination and the Plans, Specifications and Estimates (PS&E) process.

- **Construction** contains construction requirements, letting procedures, and contract administration. It also addresses the use of consultant services and/or the use of the LPA staff to perform project actions.

- **Close-out** contains guidance on final documentation and closing-out the project.

Questions or Comments regarding this **LPA Guide** should be referred to the WisDOT Bureau of Project Development (BPD), Local Program at DOTDTSDBPDLocalProgram@dot.wi.gov.
Figure 1.1 Overview of the Project Development Process
How should the LPA Guide be used?

For the LPA that is unfamiliar with federal-aid procedures, the LPA Guide serves as an overview and introduction to the federal-aid process. For the LPA that frequently receives the benefit of federal funds for their transportation projects, the LPA Guide also serves as a reference tool to quickly locate more detailed information on a specific topic. The LPA Guide contains checklists and forms that are required by WisDOT to ensure that federal and state requirements are met.

Technical terms and abbreviations used in the LPA Guide are defined in ABBREVIATIONS following the Table of Contents of this LPA Guide. Approved local program forms and checklists from WisDOT regions are available at http://wisconsindot.gov/Pages/doing-bus/local-gov/lpm/proced-tools.aspx

Project Process

Project Life Cycle

The typical life cycle of an LPA project consists of specific phases completed as part of the federal-aid project development process (Figure 1.2). This guide follows the project life cycle and emphasizes the phases of the project development process, which include:

- Planning/Programming
- Design
- Construction
- Close-out

Figure 1.2 Typical Project Life Cycle
Evaluating the Cost and Benefit of Using Federal Funds

Federal monies can be a significant monetary benefit to a local agency considering a road or bridge project. Also, as federal-aid projects are administered by WisDOT, they fall under WisDOT’s Cooperative Agreement (COA) with the Wisconsin Department of Natural Resources (DNR) which is intended to streamline the project permitting process.

Before making the decision to use federal dollars for a project, an LPA needs to understand the various implications that using federal monies bring about. Several elements are listed below which outline some of the differences and issues an LPA should consider when deciding whether to use federal funds for a roadway project. The list is not intended to discourage an LPA from using federal-aid for a project rather the intent is to provide a clearer understanding of the tasks and responsibilities an LPA will undertake on a federal-aid project.

**Control:** By using federal funds for a project, the LPA maintains the responsibility for the project but gives up its authority over the project. The approval and oversight of the design, real estate and construction is provided by WisDOT, but the responsibility for delivery and the design including any errors or omissions remains with the LPA.

**Cost:** The major motivation for using federal funds for projects is the opportunity to reduce the amount of local funding. Federal funding is typically 80% of the project cost but can vary depending on the federal program used. When initially scoping the project and developing estimates as part of the funding application an LPA needs to understand that federal funds will be capped in the State Municipal Agreement (SMA). The cap in federal funds is typically based on the estimates provided by the LPA in their application. Consequently, increases in cost which exceed the cap, for example due to scope change, inflation, or changing WisDOT standards are 100% the responsibility of the LPA.

The WisDOT design process requires that a number of reports such as environmental document, design study report (DSR), pavement type selection report, public involvement plan (PIP), traffic report, intersection control evaluation report, etc. be completed. These reports may not be required on a locally funded project, and add cost to the design process.

If the LPA chooses to fund design with local monies, the LPA is 100% responsible for WisDOT and MC oversight charges which can add 2% to 8% of the cost of construction to the project, depending on the size of the project. The percentage of oversight costs are typically larger on smaller projects and smaller on larger projects. For example, a $250,000 project may have $20,000 of oversight charges and a $2,500,000 project, $75,000 in oversight.

**Schedule:** The WisDOT project development process is not a fast turnaround process. For example, the time span between completing final plans and bidding the project can be as much as six months versus days or weeks for a locally funded project. The LPA also needs to understand that the WisDOT design process to go from start of design to final plans is often a minimum 18-month period even for the simplest of projects, e.g. Simple resurfacing, with no real estate acquisition and minor environmental impacts. In effect, the minimum time span to
go from start design to begin construction is seldom less than 15 to 18 months for federal-aid projects. WisDOT also maintains a fairly rigid letting schedule over which it tries to balance the size of the program to gain the best bid prices, the result is that changing letting schedules for a project is not always easy and the LPA may not always have a project let at the most cost advantageous time – late fall/early spring.

The WisDOT design process has a number of reports and plan submittals that are required for the project to move forward. Review of submittals is completed per FHWA expectations and time must be factored into the schedule for review and approvals. Also, certain activities cannot proceed without prior approval of previous reports or documents. For example, the DSR (the culmination of preliminary design) cannot be approved without the environmental documents, pavement design, and traffic control reports approvals. Real estate acquisition cannot begin until the DSR is approved.

**Standards:** WisDOT has a detailed set of standards that are employed for project design. The criteria for these standards are based partly on state statutes and partly on national standards of roadway and bridge design and construction. These standards and associated criteria are the basis of the Facilities Development Manual (FDM). Most roadway and bridge design should conform to the FDM and statutory requirements. However, design variance can be accepted with proper justification and engineering judgement, and approval from WisDOT.

**Eligibility:** WisDOT has determined that federal funding may not be used for certain activities. These may include the construction of dams that are attached to bridges, streetscaping and other aesthetic treatments (except those required as environmental mitigation), utility costs such as adding or replacing sanitary sewers and water mains, oversizing of storm sewers, and the cost of relocating utilities that have to be relocated for the project and burying overhead utilities.

**Environmental Documentation:** All federal-aid projects are required to follow the National Environmental Policy Act (NEPA) process and produce a defined form of environmental report. The advantage is that the report properly documents impacts as to why a particular alternative is chosen. It also aids in the issuance of permits and in DNR coordination. However, for impacts or issues related to environmental resources such as potential historic sites, archeological sites, or parklands, there can be significant complications added to a project that locally funded projects might avoid.

Additionally, it should be noted that WisDOT/DNR COA may aid in storm water permitting at the project level but does not release an LPA from its obligations under the DNR MS 4 storm water management program.

**Funding Lifespan:** An LPA is typically given six years to complete a project, If the project is not completed in that time the LPA may well lose its funding and be required to reimburse WisDOT for federal funds that have been spent on the project to date. The LPA may also be required to reimburse funds should it decide to drop a project for which the environmental document does not advocate the no build alternative.
In conclusion, the use of federal-aid to fund a highway or bridge project provides significant savings to the LPA but will introduce an increased level of complexity to a project which may well add cost and time to what might be an otherwise simple project. Ultimately, it is for the LPA to decide whether or not the added requirements which come with WisDOT oversight are worth the potential savings.

**Overview of Federal Funding**

Federal-aid funds for LPA transportation projects are available through a variety of funding programs and grants administered by FWHA. Federal-aid transportation funds may only be expended after authorization for specified project activities. While the laws and regulations regarding the use of federal-aid funds discussed in this guide apply to all programs, the WisDOT and FHWA specific policies and procedures discussed apply only to funding programs administered by WisDOT and FHWA that are commonly used by the LPA.

Common local funding programs include:

- Surface Transportation Program – Urban (STP-Urban)
- Surface Transportation Program – Rural (STP-Rural)
- Local Bridge Assistance Program
- Highway Safety Improvement Program (HSIP)
- High Risk Rural Roads Program (HRRRP)
- Congestion Mitigation and Air Quality Improvement Program (CMAQ)

**References, Guides and Manuals**

Frequent references are made to other WisDOT manuals. To view certain WisDOT websites, user will need to register with a username and password. Register and gain access at https://on.wisconsin.gov/WAMS/SelfRegController. The LPA should also become familiar with these manuals for use in project delivery:

FDM:


Standard Specifications for Highway and Structure Construction (Spec Book):


Construction and Material Manual (CMM):

The Sponsor’s Guide:


Other Helpful Websites

FHWA Federal-Aid Essential for Local Public Agencies

http://www.fhwa.dot.gov/federal-aidessentials/

FHWA Contract Administration Manual (includes provisions for all federal-aid contracts)

http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm

General information on a variety of local programs managed by WisDOT can be found at:

http://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/default.aspx
Chapter 2 ORGANIZATIONAL STRUCTURE

Introduction

The success of the local program hinges on the interactive roles and responsibilities of each participant in the program. The following describes the participants along with their roles and responsibilities. These participants include FHWA, WisDOT, the MC, the LPA, the Metropolitan Planning Organization (MPO), the Regional Planning Commissions (RPC), drainage districts, and the designer.

Federal Highway Administration

FHWA has responsibility for obligating funds and providing approval for all federal-aid project agreements, modifications and project authorizations. FHWA has maintained certain approval responsibilities and has delegated certain responsibilities to WisDOT through their Federal Stewardship & Oversight Agreement. This agreement can be found at [http://www.fhwa.dot.gov/federalaid/stewardship/agreements/wi.pdf](http://www.fhwa.dot.gov/federalaid/stewardship/agreements/wi.pdf) and at [http://wisconsindot.gov/rdwy/fdm/fd-05-02-001e001.pdf](http://wisconsindot.gov/rdwy/fdm/fd-05-02-001e001.pdf) As part of their responsibility, FHWA provides oversight of WisDOT’s administration of the local program. For further information, see Federal-aid Essentials for Local Public Agencies at [www.fhwa.dot.gov/federal-aidessentials/](http://www.fhwa.dot.gov/federal-aidessentials/)

Wisconsin Department of Transportation

WisDOT administers the Federal-Aid Local Program through their Federal Stewardship & Oversight Agreement with FHWA, and as a result, serves as the single point of contact for communication with FHWA. WISDOT has a delegated responsibility through this agreement to ensure that federal transportation funds are properly obligated, authorized, and utilized. Each WisDOT region has Local Program Managers (LPM)s who are responsible for program delivery, funding solicitations, and project approvals. Each WisDOT region also has Local Program Project Managers (LPPM)s who are responsible for project delivery of design and construction.

WisDOT (and/or FHWA) shall retain authority for the following:

- Project programming (project solicitation, selection, Transportation Improvement Plan (TIP) and State Transportation Improvement Plan (STIP) inclusion, SMA)
- Phase authorization (design, real estate, construction) and approvals within each phase
- NEPA document approvals
- Section 4(f) and Section 6(f)
- Sole Source Justification Approval
- Disadvantaged Business Enterprise (DBE) Goals
• Local Force Account/Cost Effectiveness Finding
• Rejection of Bids
• Labor Compliance Enforcement (shared responsibility with LPA)
• Project Cost Eligibility
• Project Final Inspection and Acceptance
• Federal-aid Payments

Management Consultants

WisDOT has “responsible charge” on all local program projects; however, they have set up a program where direct project oversight on LPA projects is delegated to a WisDOT MC who reports to a WisDOT LPPM. They have been delegated review and/or approval authority for certain project actions. In this role, they also provide direct guidance to the LPA. The MC works with the LPA to provide guidance/assistance to the local agencies in interpreting the regulations, manuals and guidelines as they apply to specific project conditions.

Note:

Once a project application has been approved, the MC should be the first contact for an LPA to answer questions regarding project delivery.

Environmental issues, Right of Way (ROW) concerns, hazardous materials, labor compliance, equal employment opportunity, Title VI and DBE are among these areas where assistance may be needed. However, the LPA must not expect the MC to provide quality control for their or their consultants’ design work.

The MC will be the LPA liaison with WisDOT staff having an approval, review, or advisory role for the project. For the project to progress smoothly, it is essential that adequate “two-way” communication and coordination between the LPA and the MC be maintained. Unless otherwise indicated all communication to WisDOT staff must be coordinated with, or through, the MC. General activities (design and construction) that the MC is responsible for include:

• Verify scope, schedule and budget
• Negotiate 3-party contracts
• Receive all submittals from the LPA and coordinate review and WisDOT approvals according to the established schedule or procedure
• Provide guidance if issues are identified
• Monitor the LPA schedule to verify federal obligations can be met
• Act as liaison between the LPA project manager and WisDOT technical staff
• Review real estate documentation for the LPA acquisition
• Process invoices, contracts, designer evaluations, facilitate project closeout, and conflict resolution

Figure 2.1 MC by WisDOT Regions


**Local Public Agency**

The LPA is a governmental entity with taxing authority including townships, villages, cities, counties, and Tribal Nations. The LPA is responsible for identifying and submitting projects eligible for federal funding.
Note:

The LPA contributes the local cost share in the project, and as a result, needs to “own” the project and is ultimately responsible for the design and construction of the project.

The LPA needs to be actively and continually involved with the scoping, design, delivery, and construction of the project. If the LPA is not familiar with the policies associated with the local program, WisDOT’s FDM and this LPA Guide, then the LPA needs to contract with a qualified designer familiar with the policies.

The LPA may utilize a contracted consulting engineer to manage day to day progress of the project. During such arrangement, however, a full-time employee of the LPA must be assigned as the local government employee responsible for the project that must be familiar with and accountable for, all actions the contracted consultant performs on behalf of the LPA.

The LPA must be particularly diligent to ensure compliance with all applicable federal and state requirements.

Note:

Non-compliance can result in partial or complete withdrawal of federal and/or state participation in the project.

In the event of the LPA does not comply with applicable requirements, WisDOT may impose such contract sanctions as it or the FHWA may determine to be appropriate, including but not limited to withholding of payments to the LPA under the SMA until the LPA complies; and/or cancellation, termination or suspension of the SMA, in whole or in part.

WisDOT can delegate certain work activities to the LPA; however, the delegation requires the LPA to maintain an administrative record of project development and delivery activities that sufficiently demonstrate compliance with all federal laws, regulations and policies. Work activities delegated to the LPA could include but are not limited to the following:

- Provide a local government employee in responsible charge for the project
- Consultant selection and administration
- Project design
  - Preparation of environmental documentation in accordance with the NEPA process
  - Scheduling of design documents
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- Design QC/QA
- Public participation/involvement
- Preparation of PS&E
- ROW acquisition
- Utility relocation
- Communicate with designer and MC

**Metropolitan Planning Organization; Regional Planning Commissions; Drainage Districts**

Federal laws require all projects that receive federal highway funding in a state to come from a transportation planning process. In urbanized areas with a population over 50,000, MPOs develop a TIP. The LPA is required to coordinate with the MPO for inclusion in the TIP before the federal funds will be authorized for the project.

Wisconsin has 14 MPOs that share responsibility for transportation planning in 17 metropolitan areas. WisDOT works closely with the MPOs to ensure a comprehensive, coordinated approach to local, regional and state transportation planning in Wisconsin urbanized areas.

The MPOs are responsible to develop a long-range transportation plan that will provide a multi-modal investment strategy for meeting the mobility needs of people and businesses throughout their metropolitan area and are responsible for developing a short-range transportation improvement program which prioritizes projects for federal funding purposes.

RPCs provide planning assistance on regional issues, assist local interests in responding to state and federal programs, act as a coordinating agency for programs and activities, and provide planning and development assistance to local governments. Wisconsin currently has 9 RPCs.

Contact information for the MPOs and RPCs can be found at the following website: [http://wisconsindot.gov/Pages/doing-bus/local-gov/plning-orgs/mpo.aspx](http://wisconsindot.gov/Pages/doing-bus/local-gov/plning-orgs/mpo.aspx)

Drainage districts can and do exist in counties under one of two types:

1. Drainage districts that are still governed by their own drainage boards, operating under Section 88.16, Wisconsin Statutes.
2. All other drainage districts in a county collectively governed by the county drainage board and operating under Section 88.17, Wisconsin Statutes.

Coordination with local drainage boards is required by Section 86.075, which states in part:

Whenever a highway crossing any drainage ditch of a drainage district governed by Chapter 88 is being constructed or reconstructed or a culvert in any such ditch is being replaced, the highway authority in charge of such work shall consult with the drainage board having
jurisdiction of such district for purpose of determining the depth at which such drainage ditch was laid out. (Emphasis added.)

Additional information for coordination with local drainage boards and for a map of counties with drainage districts can be found at [http://wisconsindot.gov/rdwy/fdm/fd-05-15.pdf](http://wisconsindot.gov/rdwy/fdm/fd-05-15.pdf)

**Designer**

The designer is either a member of a consulting firm or an employee of the LPA. The designer needs to be knowledgeable in WisDOT, FHWA and local program policies and procedures.

Responsibilities include:

- Provide quality design documents and plans that comply with WisDOT and FHWA standards
- Identify scope and schedule changes
- Communicate with the LPA and MC regarding scope, schedule and budget throughout the design process
- Be responsible for design quality
- Deliver plans and design documents per the FDM requirements.

**Oversight Matrix**

Oversight responsibilities are identified in the Local Program Development Manual (LPDM) and can be found at the following website:


**Issue Resolution**

WisDOT encourages the resolution of any issue at the lowest level possible. For example, if an LPA has concerns with the timely review/completion/delivery of a product during the development of a project, the first step to resolution should be to communicate with the MC (and the design firm if applicable). Design firms, the LPA or the MC should not automatically call WisDOT to resolve, but should work to resolve the issue and seek guidance or concurrence from WisDOT only when necessary.
Chapter 3 FEDERAL (AND APPLICABLE STATE) REQUIREMENTS

CAUTION: Before beginning any project activities for which federal reimbursement will be requested, read this chapter carefully!

This chapter provides a summary of applicable federal requirements in order to promote understanding and compliance with these requirements. Greater detail on specific activities and procedures is provided in each applicable chapter. The purpose of this LPA Guide is to help each LPA be successful in complying with state and federal requirements.

Compliance is critical since failure to comply may result in denial of reimbursement and the loss of the use of federal funds.

Federal funds may be used to pay project costs for project planning, preliminary engineering and oversight, ROW acquisition, utility relocations, construction and audit.

Note:

FHWA funds may only be expended after authorization by FHWA.

Record Keeping Requirements

It is the responsibility of the LPA to assemble and retain a complete project file that verifies all project expenditures and documents compliance with state and federal requirements. Project files should include official documents, documentation of all approval actions, documentation that fully supports expenditure of funds, documentation of project decisions, and project correspondence. Documents may be kept in an electronic format provided it meets standards.

This file must be retained for a minimum of seven years from the date the LPA requests final project reimbursement, or after the conclusion of any audit, negotiation, or litigation--whichever is later. The LPA must keep all project records and have them available for inspection by FHWA and WisDOT or furnish copies of these documents if requested. For historical projects, the property deed must have a clause to maintain the historical integrity of the public investment.

Federal Regulations and Authorization

Under existing statutes and regulations, WisDOT is responsible for ensuring that all federal-aid projects are carried out in accordance with federal laws and regulations. This responsibility was specifically clarified in 23 U.S.C. 106, as amended by the Moving Ahead for Progress in the 21st...
Century Act (MAP-21, Public Law 112-41) and most recently as part of the Fixing America’s Surface Transportation ACT (FAST Act).

Laws, Regulations and Control Standards

Federal rules and requirements are applicable to any project which is funded with federal dollars, even if only certain phases, segments or contracts are federally funded. The applicability of Federal requirements for any project is determined by any of the following:

1. The use of Federal funds
2. Whether the project is located on the National Highway System (NHS)
3. Whether the requirements are outside of Title 23 USC or based on a law founded outside of Title 23 USC

Additional descriptions and information is available at [http://wisconsindot.gov/rdwy/fdm/fd-05-02-001e001.pdf](http://wisconsindot.gov/rdwy/fdm/fd-05-02-001e001.pdf)

National Environmental Policy Act

NEPA is the basic federal charter for protection of the environment. It is critical to understand that NEPA is a decision-making process. As such, it contains policies and procedures that must be followed. Implementing regulations contain "action-forcing" provisions that make sure each federal agency, state agency, or local public agency act according to the letter and spirit of these laws. The President of the United States and the Governor of Wisconsin, the federal and state agencies, the courts, and each LPA share responsibility for enforcing the act so as to achieve the substantive requirements of these seminal environmental laws.

Public involvement is critical under NEPA and therefore the procedures used must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most importantly, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

Ultimately it is not better documents but better decisions that count. The purpose of NEPA is not to generate paperwork--even excellent paperwork--but to foster excellent decisions and actions. The NEPA processes are intended to help public officials make decisions that are based on proper understanding of environmental consequences, and to take actions that protect, restore, and enhance the environment. The NEPA process also facilitates stakeholder input, interagency coordination and provides a document that is easy for the general public to understand.

FHWA, in 23 CFR 771 (and Federal Transit Administration (FTA) in 49 CFR 662), promulgated regulations (consistent with Council on Environmental Quality (CEQ) regulations) to implement the federal-aid projects.
The FHWA project development process is a balanced approach to transportation decision-making that takes into account the potential impacts on the human and natural resources and the public’s need for safe and efficient transportation improvements.

There are certain decisions that need to be made when moving into the NEPA process. The decisions are:

1. Federal Action – Determine whether or not a federal action will occur – the use of federal funds is considered a federal action.
2. FHWA and WisDOT Oversight – For federal-aid projects, NEPA is a FHWA responsibility; however, WisDOT handles much of the environmental process through its delegated authority with FHWA.
3. Purpose and Need – The purpose and need section is in many ways the most important element of an environmental document it establishes why expenditure of taxpayers’ money is proposed. The purpose and need should be as comprehensive and specific as possible. Information on factors such as safety, system linkage, social demands, economic development, and modal interrelationships, etc., that the proposed project will attempt to address, should be described as fully as possible.
4. Preliminary Design – Preliminary design is necessary to determine impacts, and the decision has to be made as to how much design needs to be done in the NEPA process. Typically, 60 percent design will provide adequate information for a proper analysis of the alternatives, while not overdesigning for the alternatives that may not be chosen.

**FHWA-1273**

Required federal contract provisions are contained in FHWA-1273. This provision must be included in every federal-aid construction contract. The LPA must be familiar with the contents of FHWA-1273 to understand the oversight requirements. Information on FHWA-1273 can be found at [http://wisconsindot.gov/Pages/doing-bus/contractors/hcci/cntrct-info.aspx](http://wisconsindot.gov/Pages/doing-bus/contractors/hcci/cntrct-info.aspx)

**Labor Compliance**

The LPA should comprehend the governing labor compliance regulations including: WI State Statute 103.50, The Davis Bacon Act and the Copeland Anti-Kickback Act. Davis-Bacon and all other federal requirements are in effect regardless of actual project location for these types of projects. Information on federal and state wage rates is available at [http://wisconsindot.gov/Pages/doing-bus/civil-rights/labornwage/default.aspx](http://wisconsindot.gov/Pages/doing-bus/civil-rights/labornwage/default.aspx)

**Title VI of the Civil Rights Act of 1964 and Nondiscrimination**

Title VI of the Civil Rights Act of 1964 prohibits discrimination based upon race, color, and national origin. Specifically, 42 USC 2000d states that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal
financial assistance.” The use of the word “person” is important as the protections afforded under Title VI apply to anyone, regardless of whether the individual is lawfully present in the United States or a citizen of a State within the United States. In addition to Title VI there are other nondiscrimination statutes that afford legal protection. These statutes include Section 162 (a) of the Federal-Aid Highway Act of 1973 (23 USC 324) (sex), Age Discrimination Act of 1975 (age), and Section 504 of the Rehabilitation Act of 1973/Americans with Disabilities Act of 1990 (ADA) (disability). Taken together, these requirements define a broad Title VI/Nondiscrimination requirement consistent with the Civil Rights Restoration Act of 1987.

WisDOT conducts their federally funded local program with the presumption that the LPA is the sub-recipient of federal funding. Therefore, the LPA will need to understand, implement, and enforce Title VI and the related nondiscrimination requirements to ensure that no person in the United States shall, on the ground of race, color, national origin, age, sex, or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under this project and/or program that is receiving the benefit of Federal financial assistance.

Americans with Disabilities Act

Pedestrian facility design must comply with accessibility standards in the Rehabilitation Act of 1973 (Section 504) and the ADA. These requirements apply to all projects involving new or altered pedestrian facilities, not just projects funded by state or federal sources. There are several key ADA-related reference sources to use when designing pedestrian facilities. These are included below. It may be necessary for the LPA to refer to more than one listed resource or to use a more recent standard or guide.

Path/trail projects are also considered pedestrian facilities since they serve pedestrians. Path/trail projects must also comply with the WisDOT Bicycle Facility Design Handbook if it serves bicyclists.


Some standards that have already been approved for building sites (curb ramps, accessible routes, ground and floor surfaces, and bus stops and shelters) are already contained in the ADA Accessibility Guidelines (ADAAG). These standards are available at https://www.access-board.gov/attachments/article/1637/outdoor-guide.pdf and integrated with PROWAG guidelines. Thus, it is acceptable just to follow PROWAG guidance. For shared use paths contained within their own corridor, such as a former rail grade or greenway, ADA Outdoor Development Areas guidelines may be used in place of PROWAG. These outdoor guidelines are available at https://www.access-board.gov/attachments/article/1637/outdoor-guide.pdf.
A Professional Engineer is required to incorporate ADA requirements in all designs as a component of their license credential.

The primary purpose of the ADA program is to ensure that pedestrians with disabilities have opportunity to use the transportation system in an accessible and safe manner. As part of their regulatory responsibility under Title II of the ADA and Chapter 504 of the Rehabilitation Act of 1973, FHWA ensures that recipients of federal-aid and state and local entities that are responsible for roadways and pedestrian facilities do not discriminate on the basis of disability in any highway transportation program, activity, service or benefit they provide to the general public; and to ensure that people with disabilities have equitable opportunities to use the public rights of way system. More on the FHWA ADA program, as well as the applicable laws, regulations, and guidance, can be found at http://www.fhwa.dot.gov/civilrights/programs/ada.cfm. The FHWA Essentials for Local Public Agencies is also helpful and is available at http://www.fhwa.dot.gov/federal-aidessentials/index.cfm. Note: These videos are short informational videos and are not the comprehensive federal regulation.

Bike/Pedestrian Facilities

Federal regulations in 23 USC 217(g) state that bicyclists and pedestrians “shall be given due consideration in conjunction with all new construction and reconstruction of transportation facilities, except where bicycle and pedestrian use are not permitted”. This consideration takes place during the NEPA process. If the results of this consideration show that bicycle and pedestrian facilities are warranted, the expectation is that appropriate facilities will be provided and adequately maintained, for federally-funded projects.

Disadvantaged Business Enterprise Program and Participation

DBEs are contractors, consultants, and other firms owned and controlled by minorities, Native Americans, or women that have been certified under the federal DBE program. DBEs are traditionally smaller firms that have had difficulty getting established in engineering or construction industries.

WisDOT policy, in accordance with the purpose of the federal DBE program as set forth in 49 CFR 26, is to remove barriers to participation, and to create a level playing field for the participation of DBEs in WisDOT programs. This includes assisting DBEs throughout the life of their contracts. As a condition of receiving federal financial assistance, the LPA agrees to abide by WisDOT DBE plans and policies.

Local goals related to employment and/or minority or women business enterprise programs cannot be incorporated into WisDOT federally funded programs/projects. Intentional or unintentional inclusion of these provisions will cause the project to be ineligible for federal funding. The net impact of these requirements is that no goals other than those set by WisDOT are permissible on any contract.
WisDOT is responsible to FHWA to establish and obtain an annual DBE goal that includes all WisDOT programs using federal funds, including non-traditional transportation projects. Therefore, a DBE goal might be assigned to your project and noted in the SMA. If assigned, the DBE goal is a legal obligation. Failure to carry out its terms is a violation of the SMA and can result in withdrawal of federal financial assistance from the project. In addition, failure to comply with any provisions of the federal DBE regulations will be considered a material breach of contract. Information on this is included in Additional Special Provision 3 (ASP3) at http://wisconsindot.gov/hcciDOCs/contracting-info/asp-3.pdf. The WisDOT DBE Support Services Office, which is part of the Office of Business Opportunity and Equity Compliance (OBOEC), will provide technical assistance as needed. Upon notification to the LPA of its failure to carry out the approved policy, WisDOT is required to impose sanctions that may include termination of the agreement or other measures that may affect the ability of the LPA to obtain future WisDOT financial assistance. DBE goals are typically assigned to the construction portion of the project, but could also be assigned to federally funded consultant contracts.

The DBE goal can be achieved by using a DBE prime contractor, or through one or more subcontractors. One of the most common forms of DBE participation is to subcontract with a certified DBE firm to do trucking, earthwork, landscaping, masonry, or electrical work on the project. WisDOT participates in a Unified Certification Program (UCP) as a primary certifier of UCPS. UCP partners are Dane County, Milwaukee County and the City of Madison. Depending on location, any of these partners may be contacted by firms desiring to obtain certification. However, please note that the DBE certification program is extensive and time consuming, and that DBE credit cannot be applied to a contractor retroactively. Only those firms that have been certified prior to contracting or subcontracting are eligible to satisfy DBE participation requirements. More information on the WisDOT DBE Program, and a list of certified DBEs contained in the DBE Directory, is available at http://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/default.aspx

**The Brooks Act (Consultant contracts)**

State and Federal law require that when federal funds are used the process of procuring a consultant must be based on the qualifications of the consulting firm, not the prices. The Brooks Act, also known as Qualifications Based Selection (QBS) is in conformance with federal regulations published at 23 CFR 172. It is the same process that WisDOT uses when soliciting consultants for state system projects. QBS requirements apply to all related services including: program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services. Procurement of design related services must be conducted following WisDOT policies and procedures published in the Chapter 8 of the FDM.

If the LPA utilizes a consultant to perform any of the programming phase, including developing estimates and completing the project application, they must be aware of the WisDOT Conflict of Interest Policy. WisDOT Conflict of Interest Policy can be found in FDM 8-5-3 at http://wisconsindot.gov/rdwy/fdm/fd-08-05.pdf, as well as the contract boilerplate language.
Further guidance regarding consultants in management roles in local government is found in FDM 8-5-55. It is also required that if this process is used, records must be kept for three years after project is built.

Your MC can assist with the selection process to ensure that you follow a QBS process and are in conformance with the Brooks Act.
Chapter 4 SELF-CERTIFICATION PROCESS

[Place Holder Chapter]

One of the FHWA Every Day Counts Initiatives, the Local Public Agency Certification Program (under development) would enable a Certified Local Agency to be delegated more approval authority and control at the local level when developing federal/state funded transportation projects. The intent is to streamline project delivery, allow the pre-qualified LPA to work with reduced level of oversight and to ensure that federal and state requirements are met. Eligible projects include any federal/state funded, state-let project under the following programs: STP-Urban, STP-Rural, Local Bridge, HSIP, HRRRP and CMAQ.
Introduction

This chapter covers the transportation planning and programming processes (Figure 5.1). For the purposes of this guide, the planning and programming phase includes project solicitation, application, selection, SMA, federal authorization and change management.

Figure 5.1 Typical Project Life Cycle - Planning/Programming Process
Program/Project Solicitation

WisDOT Division of Transportation Investment Management (DTIM) aims to solicit new transportation projects to be included in the various programs each odd numbered calendar year. When a new project application cycle begins, DTIM will solicit project applications on the WisDOT webpage titled “Programs for Local Government”. When solicitations are active, information regarding the project application cycle is available at http://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/default.aspx.

Project Scoping/Application

To justify expenditure of federal tax revenue, every project must show a comprehensive purpose and need and have a logical termini. Additional information is available at https://www.environment.fhwa.dot.gov/projdev/tdmtermini.asp. Accurate scoping includes a
detailed description of the work, a project timeline or schedule, and an estimate of cost. The LPA must document all elements of the project scope in a project application. It is especially important for the LPA to develop a well-defined scope in a project application because WisDOT cannot permit changes to the original scope without written authorization once a project reaches development phase. An accurate well-defined scope is also required to develop an accurate schedule and cost estimate. Without these, potential project delays may impact the LPA budget and financial responsibilities.

**Note:**

The LPA has the option to schedule a site visit with WisDOT region staff as part of the initial scoping process to verify that the scope as defined fits the location.

The estimate of cost in a project application is the basis of the awarded federal funding level. The LPA must develop an accurate project cost estimate because federal funds are ultimately capped based upon an approved application. The LPA is responsible for 100% of project costs in excess of the limit of the federal funding award for a particular project if no additional federal funds are approved.

When solicitations are active, applicants interested in pursuing a potential project, should obtain a project application from the appropriate program website: [http://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/default.aspx](http://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/default.aspx).

**CAUTION:** Failure to follow detailed application instructions or to provide a complete application could delay or jeopardize project approval.

All applications and corresponding program guidelines are provided by DTIM. WisDOT reserves the right not to consider as eligible any application that does not adhere to corresponding program guidelines.

**Note:**

The LPA is encouraged to contact the Region LPM in advance of when the applications are available to discuss their projects. The LPM is a resource for the LPA in this stage.

The LPA should submit complete applications to WisDOT in accordance with application instructions. WisDOT will not consider applications received after the noted deadline.
Funding Sources and Eligibility

It is important to note that local improvement projects on connecting highways are not eligible for STP-Urban, STP-Rural and Local Bridge funds. Per Wisconsin Statutes, funds provided to local units of government are to be used for eligible projects on routes other than state trunk highway or connecting highway routes (Wis. Stats. 20.395(2)(eq); 20.395(2)(ev); 20.395(2)(ex); 20.395(2)(fx); and 84.18(2)(d)).

To continue statewide program stability efforts, WisDOT will manage a full six-year program of projects for each of these programs. WisDOT will solicit for the next program cycle in each odd year.

Some challenges that may impact funding levels for a new program cycle, include:

- Projects approved in past cycles that have not yet been delivered
- State and federal budget constraints

The primary funding programs for the local program are the STP-Urban, STP-Rural, and the Local Bridge Assistance Program.

- STP-Urban - More information on the STP-Urban program can be found at http://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/highway/stp-urban.aspx
- STP-Rural - More information on the STP-Rural program can be found at http://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/highway/stp-rural.aspx
- Local Bridge - More information on the local bridge program can be found at http://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/highway/localbridge.aspx.

Note:

For local bridge, please note that a rehabilitation report must be completed, reviewed and the have the concept approved by WisDOT Bureau of Structures (BOS) prior to the submittal of the project application. Coordination with the LPM is essential.
The prime consulting firm that completes the independent engineering study is not eligible to work on the design project. The study needs to show rehabilitation would satisfy all three of the following:

- Be cost effective
- Extend the life of the bridge by at least 10 years
- Correct all deficiencies

**Bridge Approaches**

Due to limitations on some roadway classifications, local bridge approach costs are limited to only those approach costs that are necessary to render the bridge serviceable (to reach the attainable touchdown points using current standards). On a program level, local bridge approach costs should not amount to no more than 10 percent of the cost for constructing the bridge. In some cases, approval needs to be granted prior to the application submittal.

The “Policy on Local Program Bridge Approaches” is in the FDM. This policy is available at [http://wisconsindot.gov/rdwy/fdm/fd-03-20.pdf](http://wisconsindot.gov/rdwy/fdm/fd-03-20.pdf).

**Additional Funding Programs**

Other funding programs of interest include HSIP, HRRRP, and CMAQ.

**HSIP**

HSIP is a program that funds highway safety projects at sites that have experienced a high crash history. The overall objective of HSIP is to develop and implement, on a continuing basis, stand-alone safety projects designed to reduce the number and severity of crashes on all streets and highways (state and local). The funding ration for HSIP funds is 90 percent federal, and usually requires a 10 percent match of state and/or local funds. Emphasis is on low-cost and data-supported safety treatments that can be implemented quickly. The WisDOT HSIP web page is found at [http://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/highway/hsip.aspx](http://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/highway/hsip.aspx).

**HRRRP**

HRRRP is a subprogram to HSIP that funds projects for construction and operational improvements on county rural major and minor collector roads. Focus includes run-off-the-road crashes, fatal and serious injury crashes and Typically these projects are low complexity, low cost treatments that can be implemented in less than three years. More information about HRRRP is available at the HSIP web page listed above.
CMAQ Improvement Program

CMAQ encourages transportation projects that improve air quality. It also includes efforts to enhance public transit, bicycle/pedestrian facilities, ridesharing programs and facilities, and technologies that improve traffic flow and vehicle emissions. More information is available at http://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/aid/cmaq.aspx

Project Selection

Each program utilizes a separate selection process with input from varying state agencies and committees. Programs are competitive and typically over-subscribed. WisDOT collaborates with the Governor’s office to announce approved projects by mail. Funded projects are also announced on the appropriate program website at http://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/default.aspx

WisDOT staff will perform field reviews of project applications verifying:

- Accurate Improvement Type
- Estimated Cost
- Project Schedule
- Project Eligibility

Schedule for Program Approvals

The STP-Urban, STP- Rural and Local Bridge programs involve close cooperation with local units of government. As a result, guidelines for the cyclical development of these programs, along with subsequent information updates, will continue to be published on WisDOT’s Programs for Local Government website.

State/Municipal Agreement

The SMA is the legally binding financial contract between WisDOT and the LPA that is required for each transportation improvement project. Funding responsibilities are explained for each party regarding each project within the improvement including:

- Project components that are eligible and ineligible for federal participation
- Processes and policies related to project authorization and invoicing
- Responsibilities of each party with respect to roadway or structure ownership, improvement management activities and on-going facility maintenance
- Liability for improvement-related issues and activities
SMAs play an important role in transportation improvement activities. They demonstrate the LPA financial commitment to an improvement which is needed for WisDOT and the Wisconsin Division of the FHWA to authorize a project to spend federal funds.

The project SMA includes discussion of the project cost share, terms and conditions, and project maintenance responsibilities. Once the SMA is final the SMA is sent to the LPA, signed by the LPA Approving Authority and returned to the region.

**Note:**

WisDOT will not authorize a project to incur costs until the signed SMA has been received and approved by the Region.

The SMA will state, at a minimum:

- Scope and location of the project
- WisDOT assigned project ID number(s)
- Percentage and maximum of project costs covered by federal funds
- Percentage of DBE participation required
- Accounting and record keeping requirements
- LPA obligation to maintain the project after construction

A project phase means a distinctive project activity, including design, real estate acquisition, railroad work, and construction.

**Note:**

WisDOT must separately authorize each project phase prior to incurring any state or federally funded costs.

In rare cases, construction of large projects is split into phases if distinct project elements will not be built concurrently. WisDOT assigns each project phase a separate project ID number. It generally takes four to six weeks to process an authorization request. Once FHWA authorizes an activity for charging, WisDOT is required by law to put the full amount in escrow, where it cannot be used for any other project. For this reason, WisDOT does not authorize all project phases at one time. WisDOT avoids authorizing the construction, which is typically the most expensive project phase, for as long as possible, in order to keep as much money as possible available for use on other active project phases.
Costs incurred by WisDOT to oversee and review the project are charged to the project. Based on the information provided in the Project Application, DTIM and Region LPPMs will review the oversight costs to see if these costs are adequate. The costs to oversee and review the project are funded at the same percentage as the design and construction (for example, 80% federal 20% local).

The LPA is responsible for any oversight costs that exceed the project estimate. WisDOT will send an invoice for any amount due for these costs at project close out.

**General Policy/Process Assistance**

For general policy and process assistance please refer to [http://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/highway/tools.aspx](http://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/highway/tools.aspx) or contact regional WisDOT LPM.

**Evaluation of Railroad Conflicts**

**Note:**

All projects within 1000 feet of a railroad must have railroad coordination. Information and assistance regarding railroad coordination is available through the railroad coordinator in each WisDOT region.

Additional information is available at [http://wisconsindot.gov/Pages/doing-bus/freight/default.aspx](http://wisconsindot.gov/Pages/doing-bus/freight/default.aspx).

**Prohibition on Charging Local Oversight Costs to Federal-Aid Projects**

The LPA cannot charge local staff oversight or administrative costs to any federal-aid project.

**Timely Use of Funds**

Projects are expected to utilize federal or state funds within a reasonable timeframe. Failure to do so unnecessarily reserves spending authority that could be used by other eligible local governments.

This WisDOT sunset policy was implemented in the 2011-2014 program cycle and continues to provide ample time for the LPA to program and build improvements without being impacted by the FHWA 10-year requirement. It also helps ensure statewide funding provided by Congress and the state Legislature for local improvements is utilized within a reasonable timeframe.
Note:

In accordance with the WisDOT sunset policy for STP-Rural, STP-Urban, and Local Bridge projects, program cycle projects must be constructed and in final acceptance within six years as identified in the SMA.

Project Substitutions

Project substitutions are discretionary. Please discuss any potential substitutions with the WisDOT regional LPM.

General Instructions

No applications for design only will be approved, and all designs that are requested must be tied to a construction project. As a result, all design funding requests must also request construction funding at the same time.

Existing projects that were approved in previous program cycles may not request additional funding through new program cycle in programs where the statewide rating and ranking process is used (STP-Rural, STP-Urban 5,000-20,000, STP-Urban 20,000-50,000, and Local Bridge).

Financial Management

When the public entrusts its funds to the care of an LPA, they are responsible for ensuring the proper use of these funds by taking all necessary steps to prevent fraud, waste and abuse. The LPA internal controls – those processes and procedures that safeguard assets and achieve their organizational goals – will help to comply with federal regulations while remaining fiscally diligent. The federal government acknowledged the value of internal controls when it first set up a mandatory regulatory framework and instituted compliance audits for any recipient of federal funds.

The foundation of any effective internal control program is documentation and managerial oversight. If the LPA doesn’t have written procedural manuals or desktop instructions, it becomes difficult to demonstrate that it is following federal requirements. The same is true for managerial oversight. If no one is responsible for implementing and monitoring internal controls, it is reasonable to question whether any are being followed.
Internal control is not the function of a few employees in the LPA, but the responsibility of everyone. In executing effective internal controls, the LPA should consider answers to the following questions:

- What role do you have in ensuring that transactions are properly executed and recorded?
- What role do you have in ensuring that organizational assets are safeguarded?
- Are you using written procedures that are up to date and readily available?
- As a leader, are you modeling the types of behaviors that will lead to effective internal controls?

Additional information is available at [http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=12](http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=12)

**Change Management**

Change management is part of every local program project. The goal is to keep local program funding in the local program which will allow WisDOT to maintain a stable six-year program, to minimize changes to budget and schedule and to have a more active role in managing these project budgets and schedules.

Change management covers schedule changes, cost increases/decreases and scope change. Project applications serve as the project scoping document. If changes in schedule, cost or scope are needed, the LPA will need to submit a written change request for WisDOT approval. Change requests should include the following information:

- The project change requested
- An explanation of why the change is needed
- Any changes to the project timeline
- Any cost implications
- If the LPA proposed an altered project location, the change request must include a map that shows both the original location and the requested location.

The LPA should submit change requests to MC. The MC then transmits the request to the LPM for review and approval. Final approval is by DTIM.
Chapter 6 DESIGN

Introduction

This chapter provides an overview of the design phase of a project. It is during the design process that the project progresses through the steps needed to achieve construction-ready design plans, project specifications and estimates. Items discussed in this chapter include consultant contracting, application of standards and procedures, roles and responsibilities, design process and stages, and record keeping.

WisDOT follows a 5-step process for developing a project from concept to construction, which is described in this chapter. These steps include:

- Concept Definition
- Investigation
- Determination
- Final Design
- Pre-Contract Administration

The LPA should account for review, comments, and time frames for all submittals required including timelines for various clearances including environmental, real estate, utilities, and railroad. Communication with the MC and WisDOT is vital to ensure deadlines are met.

If federal-aid highway funds are used in consultant service contracts, the LPA must comply with procedures set forth by WisDOT and FHWA. Federal-aid funding authorization for the design phase covers scoping, environmental clearances, and preliminary and final design activities. The LPA should be prepared to meet state and federal requirements that normally would not be required for locally funded projects. These additional requirements may result in activities and time frames that may be unfamiliar to the LPA. It should be noted that federal authorization
must be secured before project work begins on any activity in which federal funds are used. WisDOT is responsible for ensuring compliance with these procedures and will provide assistance if needed.

There are local program contacts in each region across the state. Local program management consultants are also available as resources for local government. See Chapter 2 for a listing of the MC(s) in each region.

**Design Responsibility**

The LPA can use their own employees, or contract with a consultant for the design of the awarded project. Unless the LPA is experienced in the design process utilizing WisDOT and FHWA policies regulation, and procedures, use of an experienced and qualified consultant is highly encouraged due to the detailed nature of the design process.

For designs that the LPA elects to use a consultant, the LPA must announce general interest in performing engineering services to a roster of eligible consultants. The WisDOT roster of eligible consultants is available at [http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rgistr/roster.aspx](http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rgistr/roster.aspx)

The selection process is described in Section 8-5-20 of the FDM at [http://wisconsindot.gov/rdwy/fdm/fd-08-05.pdf](http://wisconsindot.gov/rdwy/fdm/fd-08-05.pdf)
Design Process

Concept Definition

Investigation
- Initial Data Gathering
- Draft Environmental Document

Determination
- Final Environmental Document
- FHWA Approval

Final Design
- Final Data Gathering
- Engineering (R/E, Railroads, Utilities)

Pre-Contract Administration
- PS&E
- Advertise

Figure 6.2 Design Process Chart

Note:
The selection of a consultant shall be coordinated through the LPPM or MC.
Design Stages

The LPA should follow the design guidance for a typical project. The WisDOT design process is segmented into phases that follow a standardized design progression:

Concept Definition

The Concept Definition is part of the planning/programming section. It involves the application, authorization and consultant selection (if not a local design).

Investigation

The Investigation phase (or 30 percent design) starts with the initial data gathering and goes through the draft Environmental Document submittal.

Determination

The Determination phase (or 30 to 60 percent design) starts with the approval of the environmental document and concludes with the approval of the DSR. The DSR will not be approved in the region until this phase has been completed.

Final Design

During this phase the final elements of the plan are completed, final coordination takes place for railroads and utilities, real estate acquisition is completed, permits are received and PS&E documents are developed. Reviews by the MC, region and central office take place during this stage to ensure that there will be no problems at PS&E that would prevent the plan from being successfully let at the proposed scheduled letting.

Pre-Contract Administration

Guidance for processing the final PS&E is available in FDM Chapter 19 at http://wisconsindot.gov/rdwy/fdm/fd-19-00toc.pdf. PS&E exceptions will be handled according to the statewide procedure. This phase concludes with the construction let.

Each phase has specific requirements and timeframes. The LPA should be aware of this. The development process is detailed in FDM Chapter 3 at http://wisconsindot.gov/rdwy/fdm/fd-03-00toc.pdf. While each project is different, each phase has a defined timeframe and deadlines. A project can take from 18 to 48 months from investigation to bid advertisement.

Public Involvement

Public involvement takes place in all phases of the process and is the responsibility of the LPA. Detailed guidance for public involvement is available in FDM Chapter 6 at http://wisconsindot.gov/rdwy/fdm/fd-06-00toc.pdf.
**Project Scoping**

Project scoping is a critical early step in the Facilities Development Process and is part of the Concept Definition Phase. The LPA is reminded that receipt of federal-aid funding authorization is needed to begin the design process.

**3-Party Contract**

The LPA design contracts with federal-aid are typically 3-party contracts including a consultant. The contract is an agreement between a consultant firm, WisDOT, and an LPA in a 3-party local contract for procurement of services. Each consultant contract consists of the standard language with adjustments as required to match the scope of the contract. These requirements and procedures are listed in FDM Chapter 8 at [http://wisconsindot.gov/rdwy/fdm/fd-08-15.pdf#fd8-15-1](http://wisconsindot.gov/rdwy/fdm/fd-08-15.pdf#fd8-15-1).

**2-Party Contract**

An LPA may also use a 2-party contract to deliver their project. In a 2-party contract, the contract is between the LPA and WisDOT. However, 2-party contracts may also be used between an LPA and a consultant provided there are not federal funds used for the delivery of the project. The requirements and procedures can be found in the FDM at the link listed above in the 3-Party Contract section.

**Environmental Process**

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**CAUTION:** The environmental process is a major hurdle in the design process and can have a big impact on schedule.

This section provides guidance for developing and documenting the NEPA process of federally funded transportation projects, including compliance with various WisDOT and national references, and other related regulations and laws. The NEPA process is the environmental scoping, evaluation and documentation along with the engineering and design activities necessary to select a project’s preferred design alternative. The selected design alternative is recorded in the final approved environmental class action document. If federal-aid funds are used for any part of an LPA project, whether or not federal-aid funds are used for environmental documentation activities, the LPA must follow the procedures included in this chapter.

Federally funded projects must comply with various federal environmental regulations including but not limited to:

- NEPA
- CEQ Regulations
- FHWA Environmental Impact and related procedures
• Section 4(f) of the Department of Transportation Act of 1966
• Section 6(f) of the Land and Water Conservation Fund Act (LAWCON)
• Federal-Aid in Wildlife and Fish Restoration Act (USFWS)
• Endangered Species Act
• Migratory Bird Treaty Act
• Clean Water Act (CWA)
• Clean Air Act
• Procedures for Abatement of Highway Traffic Noise and Construction Noise
• Section 106 of the National Historic Preservation Act
• Federal Natural Resource Policies and Regulations
• Federal Agricultural Law
• Title VI of the 1964 Civil Rights Act

Coordination between federal agencies applicable to a project’s environmental process will need to occur early in the project development process in order to define each agency’s NEPA responsibilities. Thus, it is recommended that the LPA identify and notify known and potential federal agencies during the scoping phase of the project development process.

The LPA should become familiar with the information and documentation requirements that are necessary to complete the environmental process. Environmental issues should be considered as early as possible in the project development process in order to allow sufficient time to obtain the necessary environmental clearances. The LPA should also be aware of the often lengthy timelines associated with the environmental process.

**Environmental Action Type**

In accordance with the CEQ regulations, each federal agency must identify those typical classes of action that:

1. Require an Environmental Impact Statement (EIS)
2. Require an Environmental Assessment (EA), but not necessarily an environmental impact statement
3. Require the preparation of a Categorical Exclusion (CE) - Environmental Report (ER), Programmatic Categorical Exclusion (PCE), Categorical Exclusion Checklist (CEC)
In addition to the CEQ regulations, the guidelines implementing the Wisconsin Environmental Policy Act (WEPA) also require the preparation of an action identification list by state agencies. The WisDOT developed Administrative Rule TRANS 400 which contains the Action Type List. The Action Type List in TRANS 400 sets forth three major action types and their respective environmental documentation requirements. They are:

1. **EIS** - Actions for which an EIS is always prepared. An EIS shall be prepared for any proposed major action significantly affecting the quality of the human environment.

2. **EA** - Actions that may or may not require preparation of an EIS. These actions require that an EA be prepared to determine the significance of the impacts. If it is concluded from the EA that the project impacts will be significant, an EIS is required; if not, a Finding of No Significant Impact (FONSI) is prepared.

3. **CEs** - Actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an EA nor an EIS is required.

   - **ER** - Projects processed with ER documentation will require review and approval by FHWA prior to WisDOT's request to proceed with final design, acquisition of ROW, or construction.
   - **CEC** - Projects processed with CEC documentation will not require individual review and approval by FHWA prior to WisDOT's request to proceed with final design, acquisition of ROW, or construction. FHWA will rely on the certifications and approvals made by WisDOT as the basis for the CE determination and for the approval of subsequent project phases.
   - **PCE** - Projects processed with PCE documentation will not require individual review and approval by FHWA prior to WisDOT's request to proceed with final design, acquisition of ROW, or construction. FHWA will rely on the certifications and approvals made by WisDOT as the basis for the CE determination and for the approval of subsequent project phases.

Current guidance on these action types and various other environmental processes and requirements is included in FDM Chapter 21 on the WisDOT website at [http://wisconsindot.gov/rdwy/fdm/fd-21-00toc.pdf](http://wisconsindot.gov/rdwy/fdm/fd-21-00toc.pdf) and on the environmental program website [http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrces/environment/default.aspx](http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrces/environment/default.aspx)

Technical standards, documents, forms, and checklists are just a few of the resources that can be found on this website as well as guidance on federal and state agency requirements applicable to the environmental process and provides detailed information on the action types listed above.

**Section 404 Permit and Section 401 Water Quality Certification**

Federal permits are required for projects affecting the waters of the United States and associated special aquatic sites which include wetlands. The CWA requires a permit to discharge
fill into Waters of the U.S. The U. S. Army Corps of Engineers (COE) regulatory branch is the permitting agency for CWA Section 404 permits and has the authority to issue permits provided that the state water regulatory agency (DNR) has issued CWA Section 401 water quality certifications. To discharge fill into navigable waters of the U.S., both Section 10 (Rivers and Harbors Act, 1899) and/or Section 404 (CWA) permits are required.

Section 404 of the CWA requires permit authorization from the U. S. Army COE for the discharges of dredged or fill material into waters of the United States. A Section 404 Permit is required regardless of whether the project area is located on public or private property, regardless of funding source and regardless of the type of environmental action.

Early coordination with the DNR, the U.S. Fish and Wildlife Service, and the U. S. Army COE is required whenever a wetland, floodplain, stream, river, or water body is likely to be impacted by dredging or filling.

Guidance and resources are included on the WisDOT website at http://wisconsindot.gov/rdwy/fdm/fd-21-00toc.pdf and the U. S. Army COE website at http://www.usace.army.mil/

The LPA is encouraged to use these resources in preparing Section 404 reports and applications.

Submit Section 404 applications approximately five months to one year before the estimated PS&E date. The earlier the correct information is made available; the sooner the processing can begin. Processing of a routine Section 404 Permit application by the U. S. Army COE is variable. Close and early coordination will assist in reducing delays caused by a lack of information.

Trans 401 was created to establish and implement erosion control and storm water management standards for airport, railroad, highway, and bridge projects which are administered by WisDOT.

Trans 401 establishes minimum performance standards which all projects should meet. An erosion control plan and an erosion control implementation plan are also required under Trans 401. Erosion control and storm water management measures should be maintained and inspected prior, during and after construction or maintenance of a transportation facility.

**Stormwater Reports**

Stormwater reports are required at 30 percent, 60 percent and 90 percent design submittals per the FDM. WisDOT has also developed a post-construction stormwater management program based upon federal regulations, TRANS 401 and the FDM.

The LPA should use the guidelines in the FDM to determine the water quality objectives for a project which can be found at http://wisconsindot.gov/rdwy/fdm/fd-10-00toc.pdf. Consult with the MC if there are questions or concerns about the appropriate objectives.
Each transportation facility that meets these objectives must address the post construction stormwater management issues including:

- Total Suspended Solids
- Peak Discharge
- Infiltration
- Buffer Areas
- Timing
- Swales

The stormwater report is a spreadsheet that, along with accompanying documentation if needed, provides a framework to calculate and document not only a project’s hydrologic and hydraulic analysis but also any potential project runoff quality impacts. It should be used throughout the project to assist the engineer with the development of appropriate and cost effective stormwater treatment practices. Though the stormwater report must be submitted at PS&E, it may also be submitted at the following times:

1. At the project planning level
2. At the Investigation submittal, to reflect stormwater and drainage coordination with all stakeholders
3. At the Determination submittal, to include as much drainage and stormwater design information as is available

The LPA can use the stormwater report to assist with negotiations for any cost sharing of stormwater control practices from offsite runoff with local communities because the stormwater report specifically distinguishes between on-site and offsite runoff and pollutant loading.

Section 4(f)

Section 4(f) of the Department of Transportation Act of 1966 provides that the U.S. Secretary of Transportation shall not approve any program or project which involves the use of any publicly owned land from a public park, recreation area, historic site, or waterfowl or wildlife refuge of national, state, or local significance, as determined by the officials having jurisdiction therefore, unless there is no feasible and prudent alternative to the use of such land and such project includes all possible planning to minimize harm.

Note that Section 4(f) applies to both public and private historic sites, but only to recreational areas that are publicly owned. FHWA has defined a historic site as on or eligible for the National Register of Historic Places. FHWA has also determined that in addition to "taking" or "purchase," “use" can also include the results of adverse impacts. In some circumstances, Section 4(f) might apply where the land affected by a project functions as a Section 4(f)
resource even though it is not a designated public park, recreation area, historic site, or waterfowl or wildlife refuge.

Some examples of Section 4(f) lands, determined on a case-by-case basis, include the following:

- School Property
- National, State, County, Town and City Parks
- Public Play Areas
- Wild and Scenic Rivers
- Conservancy Lands
- Wetland and Stream Easements
- Historical and Archaeological Sites
- Specially Funded Lands

In order to apply a programmatic Section 4(f) to a specific project, the LPA should complete the required information on the appropriate documents for one of the types of programmatic Section 4(f) listed below:

- Projects that use historic bridges.
- Projects that use minor amounts of land from public parks, recreation areas and wildlife and waterfowl refuges.
- Projects that use minor amounts of land from historic sites.
- Bikeway projects

Detailed guidance is provided in FDM Chapter 21 at [http://wisconsindot.gov/rdwy/fdm/fd-21-00toc.pdf](http://wisconsindot.gov/rdwy/fdm/fd-21-00toc.pdf) and on the environmental program website [http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsces/environment/default.aspx](http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsces/environment/default.aspx)

**Section 6(f)**

Section 6(f)(3) of the LAWCON requires that property acquired or developed with LAWCON funds shall not be converted to uses other than for public outdoor recreation use. Acquisition of any land for which LAWCON funds have been used for prior acquisition or improvements invokes the strictures of Section 6(f)(3). Coordination with the DNR is necessary as the DNR is the state agency responsible for administering LAWCON funds. The federal agencies responsible for the management of LAWCON funds and affected lands at the national level are under the auspices of the U.S. Department of the Interior and the U.S. Department of Agriculture. These agencies are the USFWS, the National Park Service, and the U.S. Forest Service.
If a highway project requires the acquisition of Section 6(f) lands, the lands acquired for ROW purposes must be replaced with other property of at least equal fair market value and of reasonably equivalent usefulness and location. Note that Section 6(f) lands are often Section 4(f) lands and should be addressed as such. In evaluating the impacts of the acquisition on these lands, a recommendation of replacement lands should be included, indicating the areas under consideration for replacement.

Section 6(f) requirements do not apply to easements acquired under the National Wild & Scenic Rivers Act of 1968. The Department of Interior administers its own funds for purchasing easements along these rivers.

Projects which affect a small part of a resource protected by LAWCON may use a streamlined procedure to satisfy the requirements of Section 6(f). The DNR Region Environmental Impact Coordinator and the LAWCON Program Coordinator in the DNR Madison office must be included in consultations seeking to address small conversion of Section 6(f) lands.

Whenever a project meets the small conversion criteria, consultation with DNR requires that the LPA provides a signed and dated map depicting the amended Section 6(f) boundaries. Other graphics which convey and clarify the effects of the project on the resource should also be provided to the DNR. The discussion of the small conversion must address the issue of replacement lands. It must be decided, in consultation with DNR whether replacement lands of at least equal value and use will be provided as part of the project or will be deferred to a time and location of DNR's choice. In either case, the LPA shall pay the fair market value for lands it acquires from a Section 6(f) resource.

The LPA is responsible for completing and documenting all relevant background research and investigation information pertaining to Section 4(f) and Section 6(f) resources and determinations.

Hazardous Materials Investigation

It is the policy of WisDOT that all transportation improvement projects under its jurisdiction shall be evaluated to determine if they warrant a hazardous materials investigation. The goal is to discover all contamination as early as possible in the facilities development process to permit the timely consideration of options for avoidance or remediation. Early discovery also allows responsible parties time to remediate contamination prior to construction. It may be in the best interests of the state to avoid all involvement with contaminated parcels. When avoidance is not appropriate, early discovery will allow for efficient and environmentally sound remediation of the contamination.

The first step is to determine if a given project requires a hazardous materials assessment. In general, projects that involve ROW acquisition or more than two feet of excavation also require following this process. See the section on “Potentially Exempt Projects” for a list of projects that normally do not require this assessment in FDM Chapter 21 at [http://wisconsindot.gov/rdwy/fdm/fd-21-35.pdf](http://wisconsindot.gov/rdwy/fdm/fd-21-35.pdf). The LPA must identify any hazardous
materials which may be present in potential project areas. Hazardous materials assessments need to be conducted early in the project development process to minimize the risk of unexpected project costs and risks. The LPA should have a qualified hazardous materials specialist review the project area to assess the potential for hazardous materials.

FDM 21-35, at the link above, includes a summary of the Hazardous Materials Program Process.

Site assessment and remediation is divided into five phases. Each of the first four phases ends with a report recommending whether there is a need for further action.

Phase 1 - Hazardous Materials Assessment – Uses field observations, interviews and records searched to identify sites that have a high likelihood of contamination.

Phase 2 - Subsurface Investigation - A process to determine if contamination is present. It is conducted by an environmental consultant and involves the collection of soil or water samples near potential sources of contamination to confirm or refute the presence of contamination in that localized area.

Phase 2.5 - Additional Subsurface Investigation and Definition of Extent of Contamination within the ROW - Conducted when the source of the contamination is located off WisDOT property but the contamination extends into the project limits.

Phase 3 - Defining extent of Contamination and Remediation Planning – conducted in the following situations:

- When the contamination source is within the ROW.
- When the LPA proposes to acquire an entire property that contains the source of contamination or that portion of a property that contains the contamination source.
- When the LPA is acting as an agent for the property owner under the Petroleum Environmental Cleanup Fund Award (PECFA) program.

Phase 4 – Remediation - is the actual remediation of the contamination on the site or within the construction zone.

The timing relationship between the phases and the PS&E due date are included in FDM 21-35, Attachment 1.2 and is available at http://wisconsindot.gov/rdwy/fdm/fd-21-35-001att.pdf.

Noise Study Report

An LPA must prepare a noise study analysis in accordance with Federal-Aid Policy Guide (FAPG) Part 772 for any project where a noise impact or impacts (change in noise levels) is expected to occur as a result of the project.
The content and format of noise analysis documentation can vary greatly, depending on the scope and complexity of particular projects. They can vary from completion of the appropriate Factor Sheets of the screening worksheet series to a separate chapter of an EIS. There may be times, however, when the noise analysis will be continuous throughout a project's development process, usually on large, complex projects employing noise abatement measures. In any event, the noise analysis documentation must be concluded and approved prior to PS&E approval.

Regardless of the type of environmental document required for a project, some level of noise impact discussion is necessary. However, the analysis detail and method in which it is reported may differ based on the type of project as illustrated in FDM Chapter 21, found at http://wisconsindot.gov/rdwy/fdm/fd-21-00toc.pdf

Air Quality

Air pollutants are contaminants in the atmosphere. There are both man-made and natural sources of these pollutants. Many man-made air pollutants are a direct result of the incomplete combustion of fuels including coal, oil, natural gas, or gasoline. There are six major atmospheric pollutants from mobile sources:

- Carbon Monoxide (CO)
- Hydrocarbons (HC)
- Oxides of Nitrogen (NOx)
- Total Suspended Particulates (TSP)
- Sulfur Oxides (SOx)
- Photochemical Oxidants

The goal of all of the air quality actions is to ensure that the air quality levels of the various pollutants do not exceed the set standards in any part of the United States. In addition, for parts of the United States where the pollution levels presently are less than the standard, the goal is to prevent significant deterioration of the present ambient air quality. Therefore, any changes in air quality, improvement or degradation, must be monitored.

An air quality analysis is done on a mesoscale (or regional) and a microscale (or corridor) level. Only CO is analyzed on a corridor level. Several other pollutants are analyzed on a regional level, although this is not undertaken on every project. Various laws and regulations mandate the scope of the analysis that is to be accomplished. The LPA should coordinate with WisDOT or MC to determine if any additional analysis is required. Additional descriptions on requirements is provided in FDM Chapter 22 at http://wisconsindot.gov/rdwy/fdm/fd-22-00toc.pdf
Section 106

Section 106 of the National Historic Preservation Act of 1966 (NHPA) (33 CFR 800) declares a national policy of historic preservation: "The protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology or culture." Projects that involve (or potentially involve) effects on such historic properties, require consultation with the State Historic Preservation Office and discussion of potential impacts in the environmental document.

This involves the preparation of reports by qualified professionals contracted by or on behalf of WisDOT, and aids in the completion of these reports. Upon completion of the report(s) the qualified professional will provide appropriate number of copies to WisDOT contact.

The LPA will be responsible for forwarding copies to appropriate parties. Copies are not to be released by the professional, unless agreed upon in advance. The following documentation should be included:

- Wisconsin Public Lands Field Archaeology Permit(s)
- Archeological Resources Protection Act (ARPA) Permit for Federal or Indian Lands
- Tribal Permits for Indian Lands
- Architecture/History Survey Form (A/HSF)
- Archaeological Survey Field Report Form (ASFR) or more detailed Technical Report on Identification Survey
- Archaeological Literature and Records Review
- Archaeological Site Inventory Form (ASI)
- Bibliography of Archaeological Reports Form (BAR)
- Burial Sites Report Form
- Determination of Eligibility (DOE)
- Tribal Historic Preservation Review Worksheet

Note:

The LPA should review the Section 106 process outlined on the WisDOT website at http://wisconsindot.gov/rdwy/fdm/fd-26-05.pdf#fd26-5
The Section 106 process will aid in identifying what is included in each of the above reports including specific requirements, who prepares each type of report, and how many copies to submit. The LPA submits reports to the WisDOT Bureau of Technical Services (BTS) for transmittal to the State/Tribal Historic Preservation Office (SHPO/THPO) under the signature of the WisDOT Historic Preservation Officer (HPO). Each submittal must be accompanied by two copies of the Section 106 Review Form with the following exhibits: county or city map and project plans or aerial photographs showing extent of project and any attachments such as Area of Potential Effects (APE), Archival Review, etc.

The LPA, in coordination with WisDOT, is required to prepare a number or reports including:

- Section 106 Review Form
- Results of Consultation (Tribes and Interested Parties)
- Material Excavation Sites, Archaeological Survey Information Transmittal
- Cemetery/Burial Documentation Checklist
- Finding of No Adverse Effect (FNAE)
- Finding of Adverse Effect (FAE) [also known as Documentation for Consultation (D for C)]
- Documentation of Completed Commitments for Cultural Resources

Endangered Species Consultation

This Act provides for the conservation of threatened and endangered species of fish, wildlife, and plants by federal action and encourages the establishment of state programs. The Act authorizes the determination and listing of endangered and threatened species and the range in which such condition exists; prohibits unauthorized taking of endangered species; provides authority to acquire land for the conservation of listed species with land and water conservation funds; and authorizes establishment of COAs and grants-in-aid to those states which establish and maintain an active and adequate program for endangered and threatened wildlife. Section 7 of the Endangered Species Act requires federal agencies to ensure that any action authorized, funded, or carried out by them does not jeopardize the continued existence of listed species or modify their critical habitat.

If federally listed species are known to exist on a proposed site, the lead federal agency (FHWA in most cases), must initiate Section 7 consultation with the USFWS to ensure that the species and/or its critical habitat will not be adversely affected, although the LPA will be required to supply any additional information that may be needed. The requirements for compliance are discussed on the WisDOT website at [http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrces/environment/endangered-species.aspx](http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrces/environment/endangered-species.aspx).

Threatened and endangered wildlife: Since the language of the state law prohibits the taking, transporting, possessing, processing, or selling of wildlife species, it is unlikely
that WisDOT project activity would be affected. At present, taking is not construed to include destruction or removal of a species' habitat and thus indirectly the species itself. The federal law, however, prohibits the destruction or removal of critical habitat as well as the species.

Threatened and endangered plants species: Since the state law prohibits the removal of a wild plant species from its native habitat, this prohibition would apply to WisDOT project activities, such as relocation, widening, or other upgrading that would involve removal of listed species. This prohibition precludes construction that would require removal of threatened or endangered plants. For new construction on new alignment, it is essential to coordinate closely with the DNR to determine whether such species are present. It is likely that the DNR would require alignment modifications to avoid these sites. For improvements on existing alignment where species cannot be avoided, it is possible that they can be relocated to similar habitat in the new ROW. Each instance will need to be resolved on a case-by-case basis.

The LPA should coordinate with the MC and WisDOT to help determine what level of analysis is required.

WisDOT and DNR Cooperative Agreement

The LPA is responsible for obtaining and complying with all federal, state, and local permits and authorizations that are necessary to construct the project, including DNR permits.

The DNR has the legislative responsibility for administering state natural resources laws and several federal environmental laws.

Since most WisDOT projects have potential effects on some aspect of the natural environment, coordination with the DNR is always a crucial part of project development.

This coordination with the DNR is done through the WisDOT/DNR COA which can be found at http://wisconsindot.gov/rdwy/fdm/fd-20-30.pdf#fd20-30-1.

In accordance with the provisions of the COA, the DNR should be contacted with regard to any project involving their areas of jurisdiction, namely, land and water resources including state and federal wild and scenic rivers, air quality, noise, and hazardous substances. Evidence of that contact, such as letters or records of telephone conversations, meetings, field reviews, etc. should be included in the environmental document.

Native American Notification

The tribal chairperson and the historic preservation person for the Native American tribes should be contacted regarding WisDOT administered projects. A letter notifying the tribes of a project administered by WisDOT should be sent as part of the scoping process. The LPA is to work with the MC to create a standard letter. Consulting tribal representatives shall be invited
to scoping meetings, meetings with other agencies and local officials, public information meetings, and public hearings.

Updated names of the tribal chair and the historic preservation office, along with the addresses of the Native American Tribes may be found under “Tribal mailing list” at [http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/Resources0122-5068.aspx](http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/Resources0122-5068.aspx).

Section 106, 36 CFR 800.2 (c)(2), of the NHPA stipulates that Native American tribes be provided a reasonable opportunity to identify their concerns about historic properties, advise on the identification and evaluation of historic properties (including those of traditional religious and cultural importance), articulate their views on the undertaking’s effects on such properties, and participate in the resolution of adverse effect.

Coordination with all Wisconsin tribes is undertaken for all WisDOT projects and is not limited to projects occurring on tribal or trust lands.

Review Process of Environmental Document

For all transportation facilities development projects involving federal funding or federal-aid assistance, the appropriate federal agency will be a joint lead and approving agency. All cooperating agencies, such as the DNR or the Department of Administration (DOA), shall also review and comment on the document.

Public officials, private interest groups, and members of the public, including minority populations and low-income populations that are potentially affected by or expressing an interest in the proposed action shall be given the opportunity to review EISs and EAs. ERs, CECs and PECs are also available for public examination. More information is available in FDM Chapter 21.

The appropriate regional clearinghouse will act as a local review agency, pursuant to the President’s Executive Order 12372. The Governor’s Executive Order 29 appointed the DOA as the agency responsible for coordinating the requirements under Executive Order 12372. A list of state clearinghouses and the counties they serve is found in FDM 5-1-5 Attachment 5.1 at [http://wisconsindot.gov/rdwy/fdm/fd-05-01-005att.pdf#fd5-1a5.1](http://wisconsindot.gov/rdwy/fdm/fd-05-01-005att.pdf#fd5-1a5.1).

Those agencies which have jurisdiction over an area, or which have a responsibility to a particular interest or area of concern, may be considered a review agency.

The timing of the review process will vary with the complexity of the project, the controversy associated with the impacts, and the number of reviewers. Regions are encouraged to submit a preliminary draft of the environmental document to the BTS Environmental Process and Documentation Section (EPDS) for early review (by EPDS and FHWA) to avoid subsequent delays and to avoid changes in methods, format and content. Based on comments obtained from the preliminary review, the Region will complete the draft document and submit it to...
EPDS for final review and approval and for circulation to cooperating and affected agencies for concurrent review. Prior to transmittal, contact EPDS for the appropriate number of review copies needed. Usually, EPDS requires three copies of an ER, but the number of copies of an EIS or an EA will vary depending on the interest and demand. For the required copies, see FDM 21-10-45 Attachment 45.1 at [http://wisconsindot.gov/rdwy/fdm/fd-21-10-045att.pdf#fd21-10a45.1](http://wisconsindot.gov/rdwy/fdm/fd-21-10-045att.pdf#fd21-10a45.1).

**Real Estate**

The local program has developed a separate LPA manual for ROW acquisition. This LPA Guide will not attempt to duplicate that manual. The LPA Manual for Right of Way Acquisition can be found at [http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrces/re/lpa-manual.aspx](http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrces/re/lpa-manual.aspx)

The purpose of the Manual for Right of Way Acquisition is to provide that LPA a guide to ROW acquisition. The official version of that manual is the online/electronic publication. It is intended to be a living document; hence, it will be revised periodically to reflect new requirements. It will also be changed as needed to make it more useful to its readers. Users should use the current online/electronic publication for reference.

The LPA must follow the minimum procedures outlined in this manual and in the Manual of Right of Way Acquisition to secure the approvals needed to proceed with ROW acquisition on state or federal-aid projects. The request for use of federal funds in ROW is to be coordinated with the WisDOT region Real Estate (RE) Coordinator assigned to the area in which the local project is located.

**Note:**

It is the responsibility of the LPA to ensure that all state and federal procedures and laws are followed. Noncompliance with acquisition requirements and/or acquisitions that compromise the NEPA process will make the project ineligible for federal funds.

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**CAUTION:** State/federal funds in real estate – Do not proceed with the real estate acquisition process until you receive a letter regarding authorization of federal funds and DSR approval.

**Utility Coordination**

Utility companies serve customers that are also served by the road network and have traditionally constructed their facilities on or adjacent to state highway, local road, and municipal street corridors. Because of this permitted use of the ROW along these transportation corridors there is always the potential for conflicts. The objective of good utility coordination in highway design is the continued use of the highway corridor which permits the
construction, maintenance and safe operation of the highway while allowing for shared use by utility facilities.

It is not always possible to design around all existing utility facilities. To reduce or eliminate utility conflicts, it may be necessary to modify the highway design, relocate them off highway ROW or have the utilities rearranged within existing or new highway ROW to be compatible with the new construction. The cost of relocating these facilities may be financed entirely by the utility company, entirely by the LPA, or shared between them based on policy or law. To accomplish this relocation and resolve conflicts requires continuing liaison, coordination, and cooperation between the LPA, WisDOT, consultants, and utility company representatives.

For a project developed by the LPA, the following describes responsibilities for utility coordination. WisDOT Guide to Utility Coordination is available at http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrces/util/default.aspx

Federal funds used for real estate and construction; LPA acquires ROW.

- LPA performs all utility coordination using WisDOT procedures, forms, and agreements. MC reviews plat and reviews and forwards agreement to the Acquisition & Services Section of the BTS.

Federal funds used for construction but not real estate, including situations where no plat is required.

- LPA performs all utility coordination using WisDOT procedures. Suitable forms and agreements have been developed for use by the LPA. (See WisDOT Guide to Utility Coordination Chapter 17). The LPA provides MC a plat and certification by letter or resolution that all necessary utility parcels have been obtained. No WisDOT approvals of individual agreements are required.

The negotiation of compensable utility agreements is performed by the LPA.

**Note:**

All Utility Coordination shall be done in accordance with the Facilities Development Manual and the “WisDOT Guide to Utility Coordination” unless otherwise noted.

**Note:**

For clarification on utility coordination, contact the MC.
Railroad Coordination

Detailed information on railroad coordination is available in FDM Chapter 17 at http://wisconsindot.gov/rdwy/fdm/fd-17-00toc.pdf

**CAUTION: If there is a railroad within 1000 feet of the project in any direction, the LPA should contact the MC.**

Projects with railroad impacts are not simple and don’t fit the streamlined PS&E process. During the project scoping phase, it is important to identify railroad impacts and provide time and effort into the proposed schedule. It is not unusual to add one year (or more) to a project’s schedule for railroad coordination. The Regional Railroad Coordinator (RRC) should be contacted early in the process.

It is important to be aware of the following project limits:

- Project cannot stop just short of a crossing to avoid railroad impacts; it must end at a logical point.
- Cannot gap project or split project into multiple years stopping short of crossing then following up by starting on other side.

Other items of note include:

- When federal or state highway funds are to be used to fund a project, WisDOT, through the Railroad and Harbors Section (RHS) staff is mandated to negotiate necessary agreements with railroads.
- Crossing design submittal is required 24 months prior to letting. The more complex, the longer it will take.
- Coordination for structure work over a railroad usually takes longer than an at-grade crossing.
- Any work within 50 feet of railroad ROW requires the contractor to carry railroad protective insurance.

**Certificate of Coordination of Railroad Work with Highway Construction**

A Certificate of Coordination of Railroad Work with Highway Construction is required for all project PS&E submittals regardless of if there are railroad impacts.

The RRC and/or the LPA are responsible for completing the Certificate of Coordination of Railroad Work with Highway Construction at PS&E. The RRC shall sign the Certificate of Coordination of Railroad Work with Highway Construction. The RHS within the Bureau of Transit, Local Roads, Railroads and Harbors (BTLRRH) will review the Certificate of Coordination of Railroad Work with Highway Construction prior to clearing the project for letting.
Application of FDM Standards

The FDM is located on the WisDOT website at http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/rdwy/fdm.aspx.

The LPA should be familiar with the standards and procedures used through the manual. It includes the established standards and guidelines for application on all highways and streets being designed by or for WisDOT. The design information presented is based primarily on policies, standards, and specifications adopted by the American Association of State Highway and Transportation Officials (AASHTO).

Design Delivery

This section provides an overview of the design delivery phase of a project. It is during the design process that the project progresses through the steps needed to achieve construction-ready design plans and project specifications and estimates.

Preliminary Engineering Checklist

Approved local program checklists from WisDOT regions are available at http://wisconsindot.gov/Pages/doing-bus/local-gov/lpm/proced-tools.aspx

Public Involvement Plan

Community sensitive solutions (CSS) is a philosophy of involving the “community” impacted by an improvement project early in the design process. An important aspect of assuring this early involvement is the preparation of the PIP.

A PIP is a detailed and sequential list of planned contacts with the public. It is formulated specifically for each individual project to ensure the affected public has the opportunity to be involved in the project in a planned, orderly manner that is consistent with the WisDOT philosophy of CSS. Since this plan references only intended public involvement, it is updated as intentions change or when planned activities are completed.

The PIP is developed during the scoping stage, prior to the Operational Planning Meeting (OPM). The LPA is responsible for designing the project and is also responsible for developing the plan. The date of this approval will need to be provided later in the synopsis section of the DSR.

For more guidance on developing a PIP see FDM Chapter 6 at http://wisconsindot.gov/rdwy/fdm/fd-06-05.pdf#fd6-5-10

Transportation Management Plan

Information regarding Traffic Management Plans (TMP)s is included in FDM Chapter 11 at http://wisconsindot.gov/rdwy/fdm/fd-11-50.pdf
A TMP is required for all projects that receive federal-aid highway funding and is designed to address changing times of more traffic, more congestion, greater safety issues and more work zones on our highways. These challenges require a systematic and structured approach to ensure traffic management consistency statewide.

A TMP is a set of coordinated transportation management strategies and describes how they will be used to manage work zone impacts of a road project. Transportation management strategies for a work zone include temporary traffic control measures and devices, public information and outreach, and operational strategies such as transportation operations and incident management strategies. The scope, content, and level of detail of a TMP may vary based on anticipated work zone impacts of the project.

The LPA should develop a preliminary TMP during the program level-scoping phase before the Project Management Plan (PMP) approval stage. The LPA needs to maintain consultation with the MC during TMP development.

There are four different types of TMPs and each has its own process and approval. The LPA should identify which TMP is applicable and should coordinate with the MC and region work zone traffic engineer.

Type 1

Projects in this category may cause minimal or no traffic delays. The approval process for this type requires completion of the TMP approval form as documentation. Contact the MC for access to this form. No further approval is required unless the project is subject to federal oversight. For federal oversight projects, the BPD, Project Services Section will forward the completed TMP approval form and the DSR to FHWA for review and approval.

Required TMP components

- Traffic Control Plan (TCP)
- Public Information & Outreach – As appropriate

Type 2

Projects in this category cause minimal traffic delays and may include: lane closures, delays exceeding criteria for short time periods, require detour, etc. Documentation is required in the TMP approval form with narrative on project description, AADT, TMP type, proposed staging and traffic control, public information, amongst other strategies and impacts for the DSR. Highway expansion projects in this category should address project staging, traffic switches, and impacts to intersecting roadways. Attach the TMP approval form to the DSR for approval. For Federal Oversight projects, BPD Project Services Section will submit the TMP to the divisional FHWA liaison for approval.
Required TMP components

- TCP
- Transportation Operations – As appropriate
- Public Information & Outreach – As appropriate

Type 3 and 4

These projects have high public interest because they have more significant impacts. They affect more road users for a longer period during construction than type 1 and some type 2 projects and must be documented in the TMP approval form. Attach to the DSR a separate document describing traffic control, transportation operations, public information & outreach, and incident management strategies for type 4 projects. The TMP approval form may be used as an executive summary for type 4 projects.

Regional traffic engineers, BPD regional liaison engineers and the appropriate FHWA liaisons will review and approve TMPs in these categories.

Follow-up is required at the draft PS&E stage to ensure conformance with the proposed strategies in the initial TMP. The traffic engineering section in Bureau of Traffic Operations (BTO) reviews the TMP for compliance but has no approval authority.

Type 3 Required TMP components

- TCP
- Transportation Operations
- Public Information & Outreach
- Incident Management Plan for projects on freeways/expressways

Type 4 Required TMP components

- TCP
- Transportation Operations Plan (TOP)
- Public Information & Outreach Plan (PIOP)
- Incident Management Plan (IMP)

Matrix strategies for guidance on developing a TMP are listed in FDM Chapter 11 at [http://wisconsindot.gov/rdwy/fdm/fd-11-50.pdf](http://wisconsindot.gov/rdwy/fdm/fd-11-50.pdf). These strategies aid in:

- Minimizing traffic delays
- Improve mobility
- Improve safety for both motorist and worker
• Reduce work duration
• Maintain access to businesses, residents and other stakeholders

A TMP has the following components depending on the complexity of the traffic impacts:

PIOP - Clear and precise strategies and procedures for traveling public and other stakeholders about existing traffic operations and planned changes. These included news releases, public meetings, radio, brochures, telephone hotline signs, internet, etc.

TOP - Strategies adopted for the sustained operations and management of the work zone impact area. These are developed if land or road closures on freeways, expressways, other corridors 2020 routes, or urban arterials cause FDM listed criteria to be exceeded.

IMP - A Work Zone IMP is a set of strategies used to help the contractor and WisDOT respond appropriately to incidents during construction within a reasonable timeframe in order to maintain safe traffic flow through the work zone.

Traffic Forecast Request

Traffic forecasting is the process of estimating the number of vehicles that will use a specific roadway in the future. Forecasts explain what the needs of the future might be and provide benchmarks for proper design and efficient transportation system operation.

Highway traffic forecasts are used for several reasons including to determine design standards, structural requirements and level-of-service analysis. It is WisDOT policy to conduct roadway forecasts on most federally-funded projects and state-funded local bridge projects. It is WisDOT policy that federally-funded local program construction projects, with average annual daily traffic volume of more than 500 vehicles, should be reviewed or conducted by WisDOT Traffic Forecasting Section or Southeast Region Traffic Forecasters, for Southeast Region projects. If a local bridge or roadway project has documented proof of a current average annual daily traffic volume of less than 500, a WisDOT traffic forecast is not required.

It is imperative that designers request a forecast (and counts if needed) early in the life of a design project. Traffic data and forecasts will affect a project’s pavement design, traffic analysis (if required), DSR, preliminary plans, project specifications and project cost estimates. WisDOT requires forecast documents for the project development process to follow standard review and approval procedures.

The LPA should use WisDOT’s Traffic Forecast Request form to request a traffic forecast. The Traffic Forecast Report will then be used to show forecasted mainline traffic. The request form and other additional information can be found at http://wisconsindot.gov/Documents/projects/data-plan/plan-res/tpm/9.pdf.
Preliminary Plans

A preliminary plan should be prepared for every project. Preliminary plans should contain enough detail to prepare a ROW plat, if needed, and to prepare an updated cost estimate and construction schedule. The completed preliminary plan is provided to the MC by the LPA or their designer for review, to gain acceptance of, or receive comments on project concepts prior to submitting the DSR for approval/concurrence. The MC is then responsible for returning the preliminary plan to the LPA, or the designer, within a specified time indicating acceptance or with comments. This process is completed prior to approval of the DSR.

The LPA should use the preliminary plan worksheet located in FDM Chapter 15 at http://wisconsindot.gov/rdwy/fdm/fd-15-01-004att.pdf#fd15-1a4.1. This worksheet is to be used during project scoping to determine the content of the preliminary plan for a specific project. The worksheet is used to determine the adequacy of the preliminary plan submitted. Only items appropriate to a specific project need to be selected. Items unique to a specific project should be added to the list.

Bridge Approach Length Justification

Due to limitations on some roadway classifications, local bridge costs are limited to only those approach costs that are necessary to render the bridge serviceable (to reach the attainable touchdown points using current standards). The reason for this eligibility restriction is that local bridge funds are meant for bridge work only. If bridge funds are used for extended approaches or other non-bridge work then there are fewer local bridges that can be replaced or rehabilitated. For projects on the federal-aid system (functionally classified above a minor collector), there are other eligible funding (such as STP funds) for extended bridge approaches. However, for many local bridges, the roadway is not on the federal-aid system and there are no federal funds available for bridge approach work beyond that which is described above.

On a program level, it has been determined that local bridge approach costs should amount to no more than 10% of the cost for constructing the bridge. It is recognized that there will be some bridges with higher approach costs and some with lower costs, so this is a target average. As such, justification will generally be required for the approach costs for any local bridge project where the approach costs exceed 15%. Sometimes there are very legitimate reasons for the higher approach costs, particularly if there is a bridge replacement that involves increased structure elevation and/or elimination of substandard geometrics associated with the structure.

However, often times the approach costs are due to a decision to include logical and reasonable approach roadway work up to a nearby intersection or other practical ending point. While it may make sense to end the approach roadway work at such a location, it doesn’t mean that it is eligible for federal funding.

Detailed information for bridge approach length justification is included in FDM Chapter 3 at http://wisconsindot.gov/rdwy/fdm/fd-03-20.pdf#fd3-20-1.
Cost Effectiveness Finding

If an LPA (county or other unit of local government) wishes to construct a highway project with its own work force and on its own facility, it must comply with the WisDOT "A Policy on Construction of State and Federal-Aid Highway Projects by Forces and Equipment of Counties or Other Local Governmental Units." The policy has been written to define WisDOT's position, regarding non-competitive bid agreements (force account agreements) with municipalities. The policy establishes general procedures and criteria for entering into force account agreements.

The LPA must show that the public would be best served by using LPA forces and equipment rather than those of a private contractor.

The policy lists three requirements:

1. The LPA must show that they can do the work at less cost than under a let agreement, and
2. The LPA is properly staffed and equipped to do the work.
3. The work must be on their own facility (for which they have jurisdiction).

This policy is shown in FDM Chapter 3 at http://wisconsindot.gov/rdwy/fdm/fd-03-05.pdf#fd3-5.10.9. Guidelines for the preparation and approval of a cost effectiveness finding are discussed in this procedure. Questions about the policy should be directed to the staff of the Project Services Section in the BPD for federally funded improvement projects, or the staff in the Traffic Systems Unit in the BTO for state funded maintenance projects.

Design Study Report

The LPA will need to complete a DSR for all let projects in the improvement program. The purpose behind the document is to document the decisions and rationale for decisions in the development of an improvement project.

The DSR, at a minimum, shall address the following:

- Design criteria proposed, whether within or outside of desirable or minimum standards
- Geometric and safety aspects to be addressed by the project improvements
- Summary and synopsis of important project approvals and decisions and rationale for decision

The DSR must be approved before the final design can begin on a project and before real estate relocation orders can be approved and acquisition can begin. The DSR serves as the bridging document between preliminary and final design, serves as a good summary of project decisions, and a “checkbox” for the LPA for preliminary design. Templates and guidance on
compiling a DSR are found in FDM Chapter 11 at http://wisconsindot.gov/rdwy/fdm/fd-11-04.pdf#fd11-4-10.

**Encroachment Report**

An encroachment is any unauthorized object located partially or wholly within the highway ROW. This includes but is not limited to buildings, signs, fences, or other objects as well as any unpermitted uses such as parking lots, driveways, etc.

Consistent with statutory requirements, it is the policy of the Division of Transportation Systems Development (DTSD) that no encroachments will occupy highway ROW. Under no circumstance will an encroachment be created due to the purchase of new ROW. Existing encroachments that do not interfere with the safe and efficient movement of traffic may be allowed to temporarily remain in place if removal would be impractical or would create a hardship on the owner. The following procedure is established for allowing encroachments to remain via permit.

Appropriate local authorities may issue revocable occupancy permits for highways and streets maintained under their authority, subject to the review and approval of WisDOT as mentioned in the “Procedure for Permits” in FDM Chapter 12 found at http://wisconsindot.gov/rdwy/fdm/fd-12-00toc.pdf. A local agency is to submit the request for revocable permit to the MC for preliminary review and comment. If acceptable, the request is then approved by the LPPM. In making these requests, the local agency is to submit the same information as required by region staff for state trunk highways. If occupancy by revocable permit is denied, the local unit of government will take steps to have the encroachment removed.

LPA should reference FDM Chapter 12 for guidance, requirements, and samples for the encroachment process.

**Structures**

WisDOT Bridge Manual

The BOS maintains a bridge manual on the WisDOT website which can be found at http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrces/strct/bridge-manual.aspx

LPA should be familiar with the standards and procedures used through the manual. It includes the established standards and guidelines for application on all structures being designed for WisDOT. The design information presented is based primarily on policies, standards, and specifications.
Structure Survey Report

The Structure Survey Report (SSR) contains all data necessary to design a structure. It is prepared and submitted by the LPA or their consultant, to the BOS, unless the LPA involvement is not in the structures portion of a design.

Several standard forms have been created for specific situations and can be found at http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrces/strct/survey.aspx, including:

- Separation Structure Survey Report
- Rehabilitation Structure Survey Report
- Steam Crossing/Box Culvert Structure Survey Report

The SSR shall be submitted a minimum of 18 months before the earliest possible PS&E.

Bridge Checklist

During the final design phase, staff from the BOS will review specific aspects of the project. These reviews can occur at different times during final design as the different parts of a project are completed.

A checklist, available at the link listed above in the SSR section, identifies what items are to be reviewed. As each review is completed the central office reviewer will email the LPA to certify their review has been performed. The LPA will retain these emails in their project file and transcribe the review date into the appropriate box in the Summary of Review Documentation included in FDM Chapter 19.

Final Plans and Process Overview

Since each project is different, the scope of the development/design work and the expectations for each stage submittal must be coordinated with the LPPM and with the appropriate WisDOT review groups throughout development/design. All submittals must be made directly to the MC.
Chapter 7 CONSTRUCTION

Introduction

Planning, programming, scoping, and design activities are prerequisites to construction. This chapter describes the primary considerations and activities involved in constructing LPA projects. WisDOT is responsible for administering the bidding and construction of federally funded transportation projects. They are responsible for ensuring that all projects comply with applicable state and federal requirements; providing adequate inspection and supervision during construction of approved PS&Es; and FHWA closeout requirements.

WisDOT and FHWA have policies and procedures that the LPA must follow for projects that received federal-aid funds. This chapter illustrates general procedures and requirements for federally funded projects, and must be followed. For projects that do not receive federal funds, the LPA may follow their own construction procedures; however, if federal-aid funds are used for any part of the project, the entire process must comply will all federal regulations.

Construction Process

As shown in Figure 7.2, the overall construction process includes preconstruction, construction and post construction activities.
Preconstruction

Project Advertisement

Projects are advertised publicly on the WisDOT website approximately five weeks prior to the bid letting. This is where prospective bidders can view bidding procedures, short descriptions of projects including quantities, DBE goals, completion times, contacts, project plans and proposals, proposal status, all questions and answers submitted for the project, and any addenda.

During the advertisement period, bidders submit their sealed bids for the project to WisDOT no later than 9:00 A.M. on the day of the letting. The lettings occur on the second Tuesday of each month and the schedule can be found on the WisDOT website. Lettings are not held in October.
Project Letting

After the advertisement period expires, all sealed bids are publicly opened and read aloud. The bid reading confirms to bidders whose bids are successful and establishes the cost to build the project for the LPA. WisDOT posts the as read bids on their website at approximately 9:30 A.M. on the day of the letting.

Project Award

This reading of bids does not confirm that the lowest bidder is awarded the project. WisDOT will proceed through a process of awarding the contract that involves comparison and analysis of the bids to look for irregularities and to ensure the eligibility or the bidder. Upon completion of this process the contract is awarded to the “lowest responsible bidder”.

Awards are typically made by WisDOT on the Friday following the letting day. Sometimes proposals remain on hold after the initial awards are made due to other circumstances surrounding the bid or project. If this happens, the proposal will be awarded upon approval by WisDOT. Once awards are made, LPA can begin following the execution process via the contract log located on WisDOT Highway Construction Contract Information (HCCI) website.

In accordance with federal requirements, the prime contractor is required to perform at least 30% of the original contract work with the prime contractor’s own organization. The purpose of this requirement is to prevent brokering. Brokering occurs when the company under contract with the owner sublets all or virtually all of the work to other companies.

The DBE goal is determined on a project specific basis and can be found on the front cover of the project proposal. If a goal applies, the bidder must reach this goal by procuring services or materials from a DBE or by subcontracting work to a DBE, unless a “good faith” waiver is granted to the bidder stating they have aggressively solicited DBE participation in an attempt to meet the contract DBE goal and attaining the stated DBE goal is not feasible.

Contract Execution

Once notified of the award, the bidder has ten days to return all documents necessary to execute their contract (signed contract, bond, 30% rule documentation, sublets and DBE documentation).

All documentation is reviewed and approved before contract execution. The contract will be executed with a final signature of approval from the governor. This process can be followed via the contract log located on the WisDOT HCCI website.
Erosion Control Implementation Plan

TRANS 401.08 Wisconsin Administrative Code require the prime contractor to prepare and submit an Erosion Control Implementation Plan (ECIP) for all WisDOT administered projects. The prime contractor must submit the ECIP to the MC at least 14 days before the preconstruction meeting. The complexity of the ECIP depends on the project type.

The ECIP contains project implementation details that indicate the timing of project activities related to erosion control, such as staging and the placement of erosion control practices amongst many other details. It also lists locations of borrow sites and material disposal locations. It is strictly adhered to and can only be changed by an ECIP amendment approved by the MC.

Preconstruction Meeting

At an early date following the award of the contract and submission of required documentation, the MC will arrange the preconstruction meeting. Its purpose is to allow a general and open discussion between region personnel, the contractor, utility companies, railroads, the LPA and other invited parties. The Project Engineer (PE) assigned by WisDOT will generally lead the meeting.

The preconstruction meeting is a vitally important meeting in which WisDOT personnel, consultants, the LPA, and contractor staff become acquainted and begin the process of creating the team that will build the project.
Some of the primary goals of the preconstruction meeting include:

- Establish lines of authority and communication
- Clarify responsibilities of contractor personnel, WisDOT personnel, consultants, subcontractors, and suppliers
- Identify potential issues and the process for resolution
- Resolve potential sources of misunderstanding
- Plan and discuss detailed arrangements necessary for a successful project
- Project-specific materials testing guide and designated materials contacts
- Coordination between the contractor, railroad, and utilities
- Stages for completing the work
- Anticipated traffic problems and traffic handling procedures
- Planned inspection of the work
- Employment requirements of the federal and state governments
- Field office and laboratory requirements
- Necessary steps to be taken to adjust the plan for side roads, private entrances, erosion control, drainage, etc., can then be discussed at the conference

The day of the preconstruction meeting, a field review of the project site with plan in hand is frequently done with project personnel. The LPA is encouraged to participate in these reviews to address any questions and to provide a resource to address any local concerns.

A written record of the conference will be made for the region file and will include names of attendees, topics, plans, problems discussed, and decisions made. A copy will be sent to attendees upon request.

**Note:**

Discuss questions or concerns at the preconstruction meeting, this is an excellent opportunity to have open communication with all parties with an interest in the project.

**Notice to Proceed**

The Notice to Proceed (NTP) authorizes the bidder to proceed with beginning work on the project. This is the last step in the preconstruction phase before construction begins.
The NTP is approved and issued by the MC, and confirms that all required documentation has been received and approved, the contract has been executed, and the project is authorized to begin work.

The contract start date, in which contract time will begin, is typically defined as ten days from the date listed on the NTP or sooner if the bidder begins work before the tenth day. If the bidder begins work after the tenth day, the contract time will begin regardless of actual work beginning on the project.

**Note:**

Most projects do not have excessive contract time frames, so the NTP start date process discourages the bidder from delaying start dates.

**Construction**

**Construction Oversight - General**

Wisconsin statutes provide that improvements of local roads and streets, when federal-aid funds are used for such improvements, will be under the jurisdiction of WisDOT. As indicated in the preconstruction phase, the improvement of a local road or street, when authorized by state and federal authorities, is performed under a contract based on bids. This contract is executed between WisDOT and the lowest responsible and competent bidder.

The administration and inspection of work under federal-aid contracts for the improvement of local roads and streets will be by WisDOT's engineering forces or WisDOT's consultant. In some instances, the inspection of the grading, paving, curb and gutter, etc. may be by WisDOT forces or a separate consultant, and the inspection of specialty work such as sanitary sewer or water supply may be by municipal forces. Municipal forces may also perform other routine inspection duties, if they are pre-qualified. In either event, the agreement with the municipality should clarify that the engineer is in "responsible charge" of the project, and the local inspectors will report to the engineer on site.

Projects are required to follow the procedures outlined in the WisDOT Standard Specifications for Highway and Structure Construction and the CMM. PE and staff utilize WisDOT required field software including, but not limited to “Field Manager”, “Field Information Tracking”, “Material Information Tracking”, and Pantry spreadsheets. The MC provides oversight utilizing the Contract Administration System (CAS).

**Construction Oversight by Consultant**

WisDOT hires consultants for various engineering and related services. Once WisDOT determines the need for consultant staff and selects a qualified firm, the parties negotiate the
scope and cost of the work. The consultants submit the required contract documents for approval and the region/bureau then authorizes the firm to begin work.

The consultant team usually consists of two levels of oversight, the MC (program and project managers that oversee multiple projects) and the project level consultant (PE and project staff that oversee one project). The PE reports to the MC and the MC reports to the WisDOT Project Development supervisor.

Typical construction administration duties performed by engineering staff include, but are not limited to, review of shop drawings and contractor submittals, materials testing and certifications, daily reviews and observations of construction activities, review of staking and surveying, measuring and tracking project quantities, labor compliance, compiling pay estimates, project communication, erosion and site inspections for environmental compliance, preparing and negotiating contract modifications, and document that the workmanship and materials are in accordance with the contract documents.

**Consultant Process**

General interest in performing construction engineering services for WisDOT is solicited from consultants who are included on the WisDOT Roster of Eligible Engineering Consultants. Only firms on the roster are eligible for construction engineering contracts. Firms awarded preliminary or final design engineering contracts are eligible to pursue construction engineering services for that same project under one (or both) of the following conditions;

- A separate firm is under contract to lead the construction engineering effort for that project, who did not have a contract associated with the preliminary or final design of the project (either solely or as part of a joint venture).
- WisDOT employees are leading the construction engineering effort in the field, and design firm staff only provide support for the construction engineering effort.

This policy does not apply to Non-traditional transportation projects covered under the Sponsor’s Guide to Non-Traditional Transportation Project Implementation.

Each fall, WisDOT advertises construction projects for the following construction season on the WisDOT Internet web site. Included there is a set of scope of services narratives for each region’s projects and the normal solicitation procedures for both consultant and WisDOT reference. LPMs assemble local construction package information.

Once published, consultants interested in being considered for available projects must submit a completed Notice of Interest (NOI) questionnaire form to WisDOT by the designated deadline date.
Construction engineering interviews are held each fall at a forum called the construction fair, which typically takes place at a centralized location in the state. Consultants are given a set period of time to present their qualifications and expertise to WisDOT staff.

A region selection committee, led by the Consultant Unit Supervisor, makes recommendations for consultant selections and then submits their recommendations to the Statewide Consultant Engineer for final review.

Following the consultant award for construction engineering services, the MC and the construction services consultant negotiate their contract on the basis of demonstrated competence and qualifications, at fair and reasonable prices.

WisDOT's goal is to negotiate an amount that is fair and reasonable for both WisDOT and the consultant to complete the proposed effort.

Construction Oversight by LPA

Though it is not common, in some instances WisDOT may negotiate with the LPA for field services involving administration, engineering, surveying, inspection, and materials sampling and testing on let road and bridge construction projects on the local system of highways. LPA staff would perform duties of PE and inspector.

LPA personnel are expected to represent WisDOT in the same competent and positive manner, as would WisDOT and/or consultant employees. They are expected to administrate, engineer, survey, inspect, sample, test, and report under the same standards and to the same degree of competency as WisDOT personnel.

To provide construction engineering services on let projects on the local highway system, the LPA is required to be “adequately staffed and suitably equipped”. The local unit must submit form DT2060, Prequalification - Local Unit Performing Construction Engineering for consideration by WisDOT to ensure that the LPA has capable staff and needed equipment to perform construction-engineering services.

To perform construction engineering, the LPA must have at least one staff person that is registered as a professional engineer. Holding a current Certificate of Authorization to practice professional engineering in the state of Wisconsin is satisfactory evidence of professional engineering registration.

Once prequalified to provide construction engineering services, the LPA would indicate their desire to provide those services on a particular project by submitting a "Letter of Interest". That letter would state their desire to provide the services, discuss the staff available for the project, detail the staff experience in providing construction-engineering services, estimate the time each of the staff would be needed, and request approval to provide the services.
WisDOT would review the "Letter of Interest" to be sure the correct number of staff are planned, that the staff are available for the correct time, and that the staff are qualified for construction engineering services. In addition, the LPA must ensure contract compliance, and comply with federal and state requirements, including oversight considerations. If all of these elements are in order, the LPA would be authorized to provide the construction engineering services.

**Note:**

The LPA should be familiar with all state and federal requirements during the construction process including all standards, software, and procedures used in the local program process and have adequate staff available to ensure contract compliance.

Contractor Role

The contractor's goal is to satisfactorily perform and complete, at a profit, the work under contract with WisDOT.

The contractor is required to provide a competent superintendent or designated representative who has full authority to execute directions or instructions of the engineer without delay and to promptly supply all things needed to properly perform the work.

The PE and staff do not manage the contractor's operations. The PE and inspectors do not act as foreperson, superintendent, or coordinator for the contractor. Instructions and suggestions concerning the work are given to the contractor, superintendent, or work supervisor, but not to the workers. Any suggested changes are given solely for the benefit of the work and are clearly differentiated from directions. The prime or general contractor is responsible for coordinating the efforts of various subcontractors.

Contract time/ Schedule

Contract time and schedule will vary depending on the size and complexity of the project. The contractor is required to submit a project schedule indicating that they can complete all project requirements within the specified number of contract days or by the completion date. Timely decision making and monitoring the construction activity aids in maintaining the schedule. Contractors schedules take into account anticipated weather days, holidays, and other weather related activities. Time extensions will only be allowed if justified and approved via a contract modification.
Weekly Progress Meetings

The PE holds regular progress meetings with the MC, project staff, the prime contractor superintendent, and subcontractors. The purpose of the progress meeting is to raise issues and bring them to resolution. The regular meetings provide an opportunity to:

- Review construction progress and future work activities
- Identify potential delays as early as possible for mitigation planning
- Raise issues and bring them to resolution
- Make subsequent action assignments when appropriate

Progress meetings are conducted weekly on typical projects. However, there may be select noncomplex, low-cost projects where weekly meetings may not be necessary. The intent is that these meetings be kept as brief as possible to minimize demands on attendees and enable prompt distribution of notes.

Public Communication

The consultant and/or the LPA are in the best position to provide information about the project, including day-to-day inquiries from citizens, media and the general public. Some guidelines for local program public information include:

- Letters should go out on the letterhead of the LPA. Letters can be sent by the consultant on the consultant's letterhead with the permission of the local municipality
- The LPA should distribute any needed news releases. WisDOT letterhead should not be used for these releases and the text of the release should not indicate the information and/or announcement is being made on behalf of WisDOT
- Local projects with budgets of $300,000 or more may be included on region weekly construction updates. PEs for local projects are responsible for providing the project updates to region communication staff
- The PE should be advised of controversial issues related to local program projects

Open communication is critical to the success of a project. The LPA is encouraged to meet with project staff frequently to communicate any questions or concerns that they may have.

Utility Coordination

Frequently, the facilities of utility companies affected by the construction or improvement of a highway or street occupy portions of the ROW by sufferance, subject to the superior right of the public as represented by the highway agency. These utility companies are obligated, at their expense, to move, relocate, and protect their facilities that are in the way of or that may interfere with construction of the project.
The utility facilities affected by a highway improvement may exist by agreement with the former landowner on newly acquired highway ROW. Where the cost of necessary alterations of a utility facility and release of the utility’s prior rights is an obligation of the agency acquiring the new ROW, a release of the utility land interest is negotiated between the agency and the utility company, and a contract is made to alter or relocate the utility facility.

Utility companies are given advance notice of highway improvements. Plans of proposed improvements are also sent to utility companies so they may make necessary preparations for relocation of their facilities. The project special provisions indicate all associated utilities in the project area and whether they are in conflict or not, where the conflicts exist, and when the anticipated relocations or adjustments will occur. Utility facilities that cannot be relocated or adjusted before construction will be scheduled for alteration during construction and coordinated with the contractor’s schedule in the special provisions.

The LPA is 100% responsible for all costs associated with utility issues involving the contractor, including costs related to utility delays.

Construction Project Documentation

Proposal

The proposal includes the written offer of the bidder, submitted on the prescribed proposal form, to perform the work at the prices quoted by the bidder, also commonly known as the “bid”.

The bidding proposal is the WisDOT-required form the prospective bidder must use to prepare and submit bids for the work.

Contract

The contract includes the notice to contractors, proposal, contract form, contract bond, standard specifications, special provisions, addenda, general plans, detailed plans, notice to proceed, and contract change orders and agreements required to complete the construction of the work in an acceptable manner, including authorized extensions, all of which constitute one instrument.

Materials Records

Materials need to conform to the contract. New products and materials will be used for items permanently incorporated into the work unless the contract specifies or allows otherwise. Construction operations are monitored to identify potential nonconforming materials and prevent their incorporation into the work.

All materials are subject to the engineer’s approval before incorporation into the work. The engineer may inspect or test all materials at any time during their preparation,
storage, and use. Project records contain detailed information and documentation that all material is in conformance with the contract. If items are found to be non-conforming the PE will address the issue with the contractor and comply with WisDOT specified procedures to establish the correct course of action such as removal and replacement, or material credits. Any determination regarding non-conforming materials must be made by WisDOT and may include input from FHWA. The LPA may not determine a material is acceptable if it does not meet specification requirements.

If LPA supplies items to the contractor that are eligible for federal-aid funds, these materials must conform to all applicable contract requirements.

The PE designates one person to act as the materials representative for the project to oversee and ensure all materials are in conformance with the contract. The contractor also designates one person, either a member of the contractor's own organization or acting as an agent for the contractor, to be responsible for communicating with the engineer representative and ensure materials conform to the contract.

If the LPA has questions or concerns about testing and materials that are being used on the project, communication should go through the PE and/or the engineer designated materials representative. If a certain material is preferred to be incorporated into the project, this should be addressed in the design phase of the project and may require a public interest finding. Contractors are contractually required to supply material in conformance with the contract, changes would have to go through the contract modification process.

For large material and testing operations on a project (asphalt and concrete paving, base course, curb and gutter, etc.) WisDOT utilizes a Quality Management Program (QMP). This program allows for product acceptance based on contractors' Quality Control (QC) testing when verified by the WisDOT Quality Verification (QV) process.

This process requires the contractor to provide and maintain a quality control program including a quality control plan, testing frequencies, personnel and lab certifications, and documentation. WisDOT verifies the contractor testing through the QV process. WisDOT representatives also conduct Independent Assurance tests (IA) on the QV and QC testers to ensure compliance and uniformity.

All testing personnel are required to obtain the appropriate levels of certification to conduct their assigned roles and duties. University of Wisconsin – Platteville maintains a list of certified testers for various construction materials as well as training programs and guidance on becoming certified. Laboratories must be properly certified to complete the materials testing activities. The WisDOT website provides a yearly certification list for all qualified laboratories.
Buy America

The “Buy America” requirement is listed in the project special provisions that states all steel and iron materials permanently incorporated on the project are required to be domestic products and all manufacturing and coating processes for these materials from smelting forward in the manufacturing process must have occurred within the United States. Coating includes epoxy coating, galvanizing, painting and any other coating that protects or enhances the value of a material subject to the requirements of Buy America. The exemption of this requirement is the minimal use of foreign materials if the total cost of such material permanently incorporated in the product does not exceed one-tenth of one percent (1/10 of 1%) of the total contract cost or $2,500.00, whichever is greater.

Upon completion of the project the contractor certifies to the engineer, in writing, that all steel, iron, and coating processes for steel or iron incorporated into the contract work conform to these "Buy America" provisions.

Note:

All steel and iron incorporated into the project must meet “Buy America” requirements, which is different than “Buy American”

Haul Roads

A haul road is any road utilized for hauling materials incidental to the construction of the project.

The LPA is responsible for any damage caused by legally hauled loads, including permitted Oversize/Overweight (OSOW) loads. The contractor is responsible for any damage caused to haul roads if they do not obey size and weight laws, use properly equipped and maintained vehicles, and do not prevent spilling of materials onto the haul road. The LPA can impose special or seasonal weight limitations but this should not be used for the sole purpose of preventing hauling on the road.

PEs will assist the LPA with documenting haul routes if requested. Specific haul routes may not be designated in the contract without a public interest finding that is approved by WisDOT and FHWA (if applicable).

Source Documents

The PE and staff under the PE’s jurisdiction are required to maintain accurate and complete records of the work during the administration of a construction contract.
It is of prime importance that measurements and calculations of contract quantities are accurate, complete and detailed enough to sustain an audit, and that records of all activities pertaining to the contract contain sufficient detail and are clear enough to be read and understood by anyone unfamiliar with the contract.

The PE and project staff compute quantities of contract items. A systematic method of making computations by breaking a problem into logical and simple steps, while avoiding shortcuts, is followed. Emphasis is placed on accuracy, precision, neatness, and completeness. The computations are made on assumption that they must withstand review or analysis in future years.

Standard forms are provided for reporting progress on various phases of work and for reporting other activities pertaining to the administration of the contract.

Personnel must use various customized spreadsheets and documents known as “Pantry software” to perform various computations for project items.

**Correspondence Files**

Correspondence is documented and filed to provide an accurate record of activities. These include pertinent emails, letters, complaints, reports, etc. All correspondence related to the construction phase of the project from the LPA should be forwarded to the PE to be included in the correspondence file.

**Engineer’s Diary**

The engineer’s diary is primarily a record of the daily work performance of the contractor. It is also a record of many other significant, contract-related matters. This diary is one of the most important of all the required records and is written so that project activities and status on any given day will be clear to any present-day or future reader.

Most contracts are administered in FieldManager® software which contains an electronic version of the engineer's diary including site time, comments, and Inspector Daily Reports (IDR).

The inspector for each major work operation keeps an individual IDR which contains detailed descriptions including, but not limited to, work activities, contractor forces, testing, delays, inspection checks, requests from others, correspondence with the public, contractor or others, and any other relevant information.
Labor Compliance

All contracts let to bid and entered into by WisDOT for the construction of highways contain provisions governing the employment and payment of persons hired by contractors, subcontractors, and suppliers to perform the contract work.

Labor and wage compliance contains several elements:

**Equal Employment Opportunity (EEO)**

Federal laws require that employers provide equal employment opportunities in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment and to not discriminate on the basis of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information.

Nondiscrimination requires goals and timetables for minority and female participation to be stated in the contract. The contractor is required to do the following:

- Take affirmative action to ensure equal employment opportunity
- Post notices stating provisions of the nondiscrimination clause
- Notify each labor union or workers association, with which an agreement exists, of the contractor’s agreement relative to nondiscrimination
- Include the nondiscrimination clauses in all subcontracts and supplies contracts

**DBE**

DBEs must have equal opportunity to participate in all contracts. The contract special provisions have detailed information on this requirement.

The contractor must do the following:

- Post notices on the contractor’s EEO policy at locations accessible to employees and applicants, and make it known at employee meetings and in handbooks
- Conduct systematic and direct recruitment of minority group and female applicants
- Inspect job site conditions periodically
- Evaluate wages periodically
- Review personnel actions
• Investigate all complaints and take corrective action
• Assist minority group and women employees and applicants by offering training and apprenticeship programs

**Prevailing Wage Compliance**

Both federal and state law establish mandatory prevailing wage rates for each employment classification. The payment of predetermined minimum wage requires that all workers must be paid once per week at the wage rates attached to the contract. The wage rate schedule is posted at the job site and can also be found in the contract special provisions. By federal law, wages and fringe benefits must be paid in full without deduction or rebate, except where permitted by regulation.

**Payroll Submission (CRCS) Compliance**

Prevailing wage compliance on federal and state funded projects includes the requirement that contractors enter electronic payrolls weekly through the WisDOT Civil Rights Compliance System (CRCS). The contract special provisions have detailed information on this requirement.

**Transportation Alliance for New Solutions (TrANS)**

TrANS is a means of encouraging the development of the next generation of workers through a 120-hour industry awareness class that prepares applicants for work in road construction trades. Employers of graduates of the TrANS educational program may receive a per-hour wage reimbursement from WisDOT.

Graduates and apprentices will be paid at the predetermined rates for their work, if enrolled in a bona fide program. The contract special provisions have detailed information on this requirement.

**Subcontractor Payment**

The prime contractor is required to pay a subcontractor for their work within ten days of receiving a progress payment unless written notification to the subcontractor and WisDOT documenting “just cause” for withholding payment. The contract special provisions have detailed information on this requirement.

WisDOT is responsible for enforcement of the contract labor provisions to the same extent as any of the other contract requirements. The region labor compliance specialist assists the PE with the detailed enforcement duties connected with contract labor provisions.
Contract Modifications

It is the contractor's responsibility and duty to construct the project in accordance with the requirements of the plans, special provisions, and specifications as originally drawn and written, however, there may be instances where the original contract needs to be altered to complete the project. This is completed through contract modifications. These represent alterations or revisions of plans and item quantities, revisions of bid item method of measurement, omission of work items found unnecessary during construction, time extensions, material credits, and extra work required to properly complete the project.

In general, any changes or modifications to the contract once it has been awarded is considered to be a contract modification. The process involves preparing and approving a contract modification justification before the work begins that lists the description and need for the change, consequences, alternatives, cost, justification of price, and consideration for time extensions. The justification is created by the PE and submitted to the MC for approval. The justification can also be sent for approval to the LPPM, WisDOT supervisor, section chief, and FHWA depending on the dollar amount involved.

Once approved the actual contract modification is created using FieldManager® and the CAS. The contract modification is circulated to the appropriate parties including the PE, contractor, MC, WisDOT, and FHWA (if required) for acceptance and signature. Once approved by all parties, it becomes part of the contract. The PE should also keep the LPA informed on all contract modifications.
The following figure demonstrates the CCO specification in a flowchart process.

Figure 7.3 Section 104.2 Revisions to the Contract

Due to the congressional mandate to select contractors based on low bids, federal laws and regulations limit the ability of the LPA to add work to federal-aid work. This congressional requirement is not overridden by cost or convenience issues. Where safety does create an urgent need, WisDOT should use emergency contracts to select contractors, not contract modifications. There is no set rule regarding the scope of a contract, but factors to consider include whether the work to be added falls within the physical area of the project work, and whether the work is within the environmental document.

CAUTION: The LPA should be aware that extension of work outside of the contract limits and intentions is not permitted on a federally funded project. Careful consideration should be given during design in regards to limits and plan intentions. If there are unique circumstances, the LPA should work through the MC who will work with the LPPM and FHWA to determine if this may be permitted and ensure adequate steps are taken.
Participating and Non-Participating Funds

Participating funds are illustrated in the SMA. Participating funds generally include the plan items with a certain percentage utilizing federal funds and the remaining percentage funded by the municipality or local government up to a federal funding cap shown in the SMA. Costs over the federal funding cap are considered non-participating costs and are 100% local government responsibility.

As the work progresses, the state will bill the LPA for work completed which is not chargeable to federal funds. Upon completion of the project, a final audit will be made to determine the final division of costs. If reviews or audits show any of the work to be ineligible for federal funding, the LPA will be responsible for any withdrawn costs associated with the ineligible work.

Responsibilities

Standard spec 104.3 describes the process to be used when contractors identify what they think is a potential change to the contract. This notification clause is intended to address communication problems and to have the following benefits:

- Early and clear notification of potential changes
- Better exchange of information
- Mechanisms to keep resolution process moving
- Reduced number of claims

The process is designed to resolve the issue at each step but should be solved at step 1 for a majority of changes. The process is split into three steps:

1. Oral notice
2. 2-day written notice
3. 5-day written statement

The sole purpose of the contractor notification process is to answer the entitlement question. Is the contractor entitled to a modification for the work in question, or is WisDOT entitled to get the work done within the existing contract? The notification process is not used to negotiate the contract modification. Standard specifications provide direction to negotiate the time and cost aspects of the change. The specification and process to use is described below:

The contractor starts by telling the PE what they perceive to be a contract change. The engineer gets a couple of days to talk it over and decides if the situation warrants a contract modification. If the PE decides that this is a change, then both parties would proceed to revise the contract, or the PE could decide that it isn’t a change and discuss it to the contractor’s satisfaction such that the contractor would drop the issue.
In the event the issue hasn’t been resolved in the first 2 days, one of the two following options could have happened. The PE didn’t respond, or the contractor disagreed with the PE’s initial decision that the situation isn’t a change to the contract. In either event, the contractor keeps the process moving within 2 days of the initial oral notice.

If the contractor decides to pursue the potential change, they do so by providing the 2-day written notice. The content requirements for this notice are specified in the standard specifications. Within a day the engineer will give a simple written acknowledgement so both parties are officially on notice that this situation is to be formally addressed as a potential change. Beyond that, the PE has 5 business days to decide if there is a change to the contract. The PE could decide “yes”, and proceed to revise the contract. If the PE decides “no” or there is no answer within 5 business days, the contractor will again decide to either drop the issue or pursue the potential change.

If the contractor decides to pursue the change, the contractor can provide a 5-day written statement as early as 5 business days of the 2-day written notice. The content requirements for the 5-day statement are specified in standard specifications. The contractor should not do repetitive paper work and should be simply building on the information provided initially.

The PE will attempt to resolve the issue and decide if there is a change to the contract. The specification requires the PE to respond in writing within 5 business days and the content of this response is described in the standard specifications. The PE can respond yes, no, or request for more information. Once this is decided, the contractor can then drop the issue, provide requested information, or pursue the unresolved change by filing a notice of claim as described in the standard specifications. The timing requirements for the contractor 2-day and 5-day notices are not precise. They are the earliest time from the proceeding step that the contractor can keep the process moving but they are not a deadline.

Claims

In the mutual interest of all parties, WisDOT vigorously promotes resolution at the most immediate opportunity, and advocates timely submission of claims and responses to them. Objective claim analysis requires reconstruction of circumstances and events that occurred before submission of the claim. This analysis becomes more difficult with the more time that has elapsed since the events that caused the claim.

The purpose of a claim may be to recover extra costs due to changes in scope, differing site conditions, or delays. These instances should be easily identifiable by both the PE and contractor, so the contractor is required first to request a revision to the contract per standard specifications. If a revision is not agreed, the contractor may proceed using the claim process.

Standard specification provides that the contractor must notify the PE, in writing, of intent to file a claim for extra compensation. This notice must be filed before beginning any work that
may provide a foundation for the claim. If the contractor does not notify the PE in this manner, WisDOT may deny the claim.

All parties involved in a dispute or claim are strongly encouraged to resolve the issue at the project level and within the terms of the contract. If the issue remains unresolved at the project level, and a claim is filed, it will be considered by appropriate region construction section staff in consultation with the appropriate BPD staff. If the claim remains unresolved at the region level, an administrative review and determination will be made by the director of the BPD.

If the claim remains unresolved at the bureau level, an administrative review and determination will be made by the administrator’s claim review panel. If the claimant is dissatisfied with the decision of the claim review panel, the decision may be appealed to the secretary of the Department of Transportation or directly to the State of Wisconsin Claims Board. The decision of the secretary may also be appealed to the state Claims Board.

Site Visits

The PE is typically on site every working day and serves as the “eyes” and the “ears” for WisDOT. All communication shall go through the PE. The MC performs site visits as needed. It is encouraged that LPA visit the site as frequently as needed with the PE to discuss questions or concerns. LPA shall avoid direct contract related communication with the contractor(s) and shall go through the PE with contract related communication.

As-Built Records

Upon completion of the project, the PE will submit an electronic as-built plan with changes from the as-let plan that were built into the project.

As-built plans include, but are not limited to, major grade changes, adjustments to drainage structures, relocated private and field entrances, culvert changes, undercut areas, omissions and errors, change order items, benchmarks, relocated or added utilities, and other major changes from plan.

If a structure is included in the project, a separate “structure” as-built will be created. These include, but are not limited to, bench marks, utility changes, piling changes, change order items, vertical clearances to roadway, surface treatments, riprap changes, cofferdams and seals, and other major changes.

The electronic file in DOTView is the WisDOT official document for the as-built plan. The process for uploading as-builts into DOTView is completed by the regions records coordinator. Once an as-built is submitted to the region with the final construction records all request for electronic copies are to be processed through the regional records coordinators. If a local municipality or other outside source has an interest in obtaining an as-built prior to processing in DOTView the request shall be routed through the PE or MC.
Post Construction

Substantially Complete

The MC sends a substantially complete letter to the contractor when the facility is available for use by the general public, all contract and change order items are complete, the final walkthrough is complete, and a punchlist and material needs list is created. This stops contract time and begins day one of the finals process.

Conditional Final Acceptance

The MC sends a conditional final acceptance letter after the substantially complete letter when the punchlist is complete and all missing documentation has been received and approved. Conditional final acceptance relieves the contractor of maintenance responsibility.

Project Records Submission

The PE is responsible for creating and filing all required final project records. Within 60 days of the MC issuing the substantially complete letter, the PE submits the final project records to the MC for review. Final records include all source documents and items payment records, time charges, estimates, contract modifications, engineer diaries, all material and testing records, explanation in quantity variations, evaluations of contractor’s performance, design quality index, letters, ECIP and revisions, meeting minutes, permits, agreement, commitments, labor compliance, as-built, and any other documentation specific to the project.

Project Records Acceptance

MC corresponds with PE and any issues with records are resolved. The MC accepts the PE and completes the final material certification and final records review. Retainer can be reduced at this point if requested and MC concurs.

Semifinal Estimate

After MC accepts records the semifinal will be sent. This occurs within 120 days of the substantially complete date. The MC sends the semifinal estimate to the contractor and the PE. Within 30 days of the semifinal being sent, the contractor reviews the semifinal and responds in one of three ways. The semifinal is signed and returned to the MC certifying that the contractor agrees with all quantities listed on the semifinal or indicates minor differences, the contractor does not submit the semifinal within 30 days, which defaults into acceptance by the contractor, or returns the semifinal unsigned stating major items of disagreement.

If signed with no adjustments or not returned at all, the MC proceeds onto the final estimate process. If minor changes are requested and approved, the PE adjusts estimate and notifies MC. If contactor indicates major disputes, the PE resolves issues and disputes and makes adjustments to the estimate. Contractor then signs adjusted semifinal and returns to MC.
Final Estimate

Following semifinal disputes and acceptance, the final estimate is submitted to the contractor and approved by MC within 180 days of substantially complete date.

Final Acceptance

After final estimate and payroll records are approved, the MC issues a final acceptance letter and signs completion certification. This completes the construction phase of the project and indicates final acceptance.

Failure to discover defective work or materials before final acceptance does not prevent the department from rejecting that work or those materials later. The department may revoke final acceptance if WisDOT discovers defective work or materials after it has accepted the work.

Note:

Finalizing the project can take up to 6 months from the substantially complete date.
Chapter 8 CLOSE-OUT

Introduction

The construction phase of the project is completed once the MC signs the completion certification. However, the LPA may have obligations after the final acceptance. The LPA should review their SMA to understand and identify all continuing obligations and responsibilities. The LPA risks having to repay federal project funds if obligations after construction as outlined in the SMA are not completed.

![Figure 8.1 Typical Project Life Cycle - Close-out Phase](image)

Record Keeping and Reporting

After project closeout, the LPA remains responsible for archiving accounting records and supporting financial audits. Although federal regulation only requires the retention of all federal-aid project records for a minimum of three years following the last “action” on the project by the LPA, Wisconsin state statutes require a minimum of seven years. An exception to this general statement is the closing of a warranty on a project. This also constitutes an “action” that will restart the seven-year retention timeframe.