

Under what conditions may a Local Agency utilize In-house forces to provide Construction Engineering and Inspection (CEI) services on LAP projects?

Purpose: To update the policy for Local Agency's utilizing In-house forces for the purpose of providing CEI functions (i.e. Inspection, Verification Testing, etc.) and to clarify the differences in requirements for On-System and Off-System projects.

Definitions:

On-System

- Improvements constructed as part of the state highway system and maintained by FDOT
- Traffic signals and roadway lighting on the state highways even though maintained by local agencies under agreement with FDOT
- Major connections with local roads which involve construction of turn lanes on the state highway or other modification to the travel way of the state highway. Where such connections are included in a larger Off-System project, the On-system portion will be defined separately and requirements for the On-System work will be limited to the portion on the state highway system.
- Overpasses or structures over state highways even if not connected to a state highway.
- Exceptions:
 - Work on the state highway right of way where such work does not significantly affect the operation or function of the state highway. Examples may include: resurfacing a local road that connects with a state highway; a bike path or sidewalk on state right of way where the path is part of a larger off-system project and will not be maintained by the FDOT;

On-System Major Project

- All projects on the state highway system involving construction contracts of more than \$10 Million. (based on the engineer's estimate prior to bid)

Off-System

- All projects constructed by local agencies that are not on the state highway system and that are not maintained by FDOT.

Off- System Critical Project

- Projects that, because of their characteristics or complexity, pose a significant risk (safety or financial) to the public if they are not constructed to the highest standards. FDOT's specifications are considered the "highest standards" with safeguards for the public safety and the integrity of the contracting process. The "Big 4" LAP specifications provide equivalent safeguards for public welfare and are also acceptable for use on any project that is not on the state highway system. Projects in this category will generally have the following characteristics, although determination of a "critical project" should be made on a project – by – project basis:
 - Bridges or structures over a travel way or path that carry vehicular traffic (pedestrians, trail or bicycle bridges exempt).
 - Bridges longer than 300'.
 - Other structures classified as bridges that include structural concrete poured on site.
 - Projects with a construction value greater than \$10 Million. This threshold may be increased on projects administered by agencies with a successful track record of constructing larger or complex LAP projects.

Exceptions:

- Bridges and culverts constructed with precast or manufactured members may be treated as "non-critical" projects if such precast or manufactured members are fabricated in accordance with FDOT specifications.
- Box Culverts with less than three barrels and span lengths of 10' or less.
- Large projects such as resurfacing existing roads that are not complex may exceed the dollar value above.
- Other projects may be deemed non-critical if the design and specifications proposed are considered adequate to provide safeguards for the public safety and welfare.

Background:

When a LAP project is constructed on a State Road, FDOT is ultimately responsible to the public and the Federal Highway Administration for all elements of the project, including the construction quality, performance of the contractor, and timely completion of the project. The department has the long term responsibility for maintenance and operation of the facility and for maintaining all of the appropriate construction and testing records for the work. To accomplish this, it is important that all work on the state highways be performed in accordance with FDOT's standards and specifications, including documentation.

For LAP projects that are not on a State Road, the local agency is responsible for the successful execution of the project, compliance with contracting requirements, conformance to "Green Book" and other standards and specifications, and long term maintenance of the completed project. The local agency is responsible to the public during and after the construction. FDOT's

responsibility during construction is to ensure that the federal requirements and other terms of LAP project agreements are met. For agencies with little experience in working with federally funded projects, FDOT also plays an important role in advising and assisting local agencies in meeting federal requirements.

Details:

On-System projects: Local Agencies may utilize In-house forces to accomplish CEI functions on On-System projects with prior approval of the Local Agency Program (LAP) Administrator and appropriate functional area experts. The LAP Administrator will coordinate with the appropriate functional area experts (i.e. District Construction Engineer, District Materials and Research Engineer, etc.) for approval prior to issuing such approval to the Local Agency. Those Local Agencies desiring to utilize In-house forces to accomplish CEI functions on On-System projects shall develop and submit a Quality Assurance (QA) Plan. The QA Plan should identify Materials Testing & Sampling requirements, Laboratory Qualifications, Field and Laboratory Test Result Tracking (data entry), Personnel Qualifications, Personnel Experience, Contractor Evaluation, etc.

In addition to providing the information above, the following specific requirements would need to be addressed by the QA Plan for On-System projects:

- Provide a list of employees along with experience and qualifications proposed to perform CEI services. This would require appropriate levels and numbers of Professional Engineering staff with construction management experience to perform the role of Senior Project Engineers and Project Administrators. Additionally, experienced, qualified staff would be required in appropriate numbers for the project inspection efforts and for contract compliance monitoring. Project staffing level guidance may be obtained from the State Construction Office website at:
<http://www.dot.state.fl.us/Construction/DesignBuild/ConsultantCEI/ProjectStaffingHistory.xls>
- CEI employee experience and qualification guidance may be obtained from the State Construction Office website at:
http://www.dot.state.fl.us/Construction/DesignBuild/ConsultantCEI/CEI_ScopeOfServices.doc
- Outline means to assess the performance of staff assigned to the project. This plan would need to specifically identify how the Local Agency ensures: that the contractors have performed the proper sampling and testing and entered results; that staff have taken required sampling and testing and entered results; that staff have kept up with the progress payments to the contractor; that staff have documented as-built drawings and quantities to be used for final estimates to the contractor; that staff have regularly monitored the contractor's compliance with Equal Employment Opportunity (EEO) requirements; that staff have monitored contractor's wage rates for compliance with wage tables provided by the US

Department of Labor; and that staff have monitored the subletting arrangements between the prime contractor and its subcontractors. Specific EEO and contract compliance requirements are found in the FDOT Contract Compliance Workbook at:

<http://www.dot.state.fl.us/equalopportunityoffice/ContractComplianceWorkbook.shtm>

- Outline the Local Agency's plan for: addressing claims analysis for any/all claims submitted by a contractor; preparing defense of the claims as CEI for the project; participating in Disputes Review Boards or other dispute resolution processes; participating in litigation in the event of lawsuits; and analyzing issues that may be deemed to be the liability of the Local Agency for damages to the Department.
- Outline the Local Agency's plan for addressing responsibility for any CEI errors made during the administration of these projects.

Off system projects: Staffing and qualifications required for off-system projects may be different from the requirements for on-system projects.

- Qualifications of staff:
 - For staffing off-system projects, it is not necessary for the staff to hold CTQP qualifications as long as the personnel have demonstrated competence through training and experience appropriate for the specific project.
 - Typical staffing levels for Local Agency projects should be based on the complexity of each project.
 - FDOT will review the agency's staffing plan when LAP certification for CEI is being considered. For agencies with limited Federal Aid CEI experience, the certification may include conditions regarding additional oversight by FDOT, but generally, FDOT approval of CEI staffing will not be required on a project by project basis.
 - If a Local Agency has in the past performed CEI duties on LAP projects, such agencies shall be allowed to continue to perform such duties. It is understood that if an agency has completed CEI duties in the past, such certification has been already accepted by FDOT.
- Requirements for record keeping
 - The local agency will maintain all required records including test results in the agency's record system, and this will be available for inspection and review by the FDOT and FHWA as needed.
- Requirements for contract administration
 - Issues like claims disputes, supplemental agreements, cost overruns, etc. will be handled by the local agencies. This agency process should be reviewed as part of the certification process, and any extraordinary requirements should be handled as a condition of LAP certification or as a requirement in the LAP contract for a particular project.

References: 23CFR637.207, 23CFR637.209, Local Agency Program Manual Chapter 23, FDOT Material Manual Section 5.2.

Exceptions: Local Agency's would be required to contract with FDOT Pre-qualified Consultants for the following projects:

- On-System Major Projects
- Off-System Critical Projects

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