



Federal Aid Technical Bulletin

Bulletin No. 03-06

Date: July 17, 2003

Subject: **LAP Certification versus use of JPA when federally funded work is undertaken by local government**

Questions have arisen regarding whether it is permissible or not to utilize a Joint Participation Agreement (JPA) with local governments when the local government undertakes federally funded work (in lieu of a LAP Agreement). FHWA generally requires the local government to be certified under FDOT's Local Agency Program before they are eligible to undertake federally funded work. However, there are certain types of federally funded projects that local governments can undertake without being LAP Certified.

The following paragraphs summarize FHWA policy on this issue, as described in FHWA's letter of July 9, 2003, a copy of which is attached at the end of this Bulletin.

The local government must be LAP Certified if it undertakes construction work, or any related phase of work required to bring a project to construction, such as PD&E, design and/or right of way acquisition.

The local government may utilize a JPA in lieu of being LAP Certified for projects not related to the type of work described in the above paragraph. Examples of this type of project are leasing of equipment or services (such as ferry boat or water taxi), purchase of equipment (such as buses for transit purposes), contracting for research or studies by a University, procurement of a consultant to make arrangements for a conference, etc.

This FHWA policy holds true regardless of the type of funding on the project, whether discretionary, congressional earmark, apportioned or allocated federal funds.

If you have any questions regarding these guidelines, please don't hesitate to contact us.

A handwritten signature in black ink that reads "James B. Jobe".

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July 9, 2003

IN REPLY

REFER TO: HAM-FL

Ms. Christine W. Speer
Assistant Secretary for Finance & Administration
Florida Department of Transportation
605 Suwannee Street
Tallahassee, FL 32399-0450

Dear Ms. Speer:

Subject: Local Agency Program (LAP) and Joint Participation Agreement (JPA)

This letter is in response to the questions your District Offices have regarding the utilization of LAP/JPA Agreements when projects are Federal-aid funded, and specifically when projects are Congressional earmarks.

Pursuant to 23 Code of Regulations (CFR) Part 635.105 (a), the State Highway Agency has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency. Additionally, pursuant to 23 CFR 635.105 (c) (2), when the work is performed under a contract awarded by a local public agency, all Federal requirements shall be met. This being the case, it is our opinion that any local public agency undertaking construction work (and any related phase of work required to bring a project to construction, such as PD&E, design and/or right of way acquisition¹) on behalf of the Department should be fully knowledgeable of all Federal requirements, and consequently be LAP certified. Our interpretation of construction includes not only the actual construction of the highway itself, but also any appurtenant facility such as sidewalk, bike trail, etc.

When work undertaken by a local public agency on behalf of the Department does not include construction, it is our opinion the JPA process will suffice so long as the State ensures that purchase orders or other contracts includes any clauses required by Federal statutes and executive orders and their implementing regulations (49 CFR 18.36). Examples of this type Federal-aid project would be: leasing of equipment or services (ferry boat or water taxi); contracting for research or studies by a University; procurement of a consultant to make arrangements for a conference, etc.

Ms. Christine W. Speer
July 9, 2003

2

We fully understand the extra effort required on behalf of the Districts to qualify the local public agencies for LAP certification for construction projects, but the extra effort should ultimately result in a product void of complications that could result in the ineligibility of Federal-aid funds participation.

We likewise understand the additional workload on the Districts as a result of congressionally mandated earmarks, but the mandates do not relieve us or the Department of the responsibility to assure that Federal requirements are met.

Please let us know if we have not responded to all the questions and concerns regarding this issue.

Sincerely,

For: /s/Ronald K. Gressel
James E. St. John
Division Administrator

Footnote:

¹ This clarification in parentheses was added after requesting clarification from FHWA to address these preliminary phases of work. Ron Gressel provided this clarification via email on July 14, 2003.